

**NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION**

**Case No: IA-2021-002**

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**In the Matter of the Interest Arbitration between:**

**PASSAIC COUNTY SHERIFF'S OFFICE,**

**PUBLIC EMPLOYER**

**and**

**POLICEMEN'S BENEVOLENT ASSOCIATION, LOCAL 197,**

**EMPLOYEE ORGANIZATION**

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**INTEREST ARBITRATION  
DECISION AND AWARD**

**BEFORE:**                      **Ira Cure, Esq.**  
                                     **Interest Arbitrator**

**APPEARANCES**

**For the Employee Organization:**

Frank M. Crivelli, Esq.  
Donald C. Barbati, Esq.  
Crivelli & Barbati, L.L.C.

**For the Public Employer:**

Lester E. Taylor, Esq.  
David I Solomon, Esq.  
Florio Perrucci Steinhardt  
Cappelli Tipton & Taylor, L.L.C.

## **I. PROCEDURAL BACKGROUND**

On September 3, 2020, the Policemen's Benevolent Association, Local 197 on behalf of the unit of County Correctional Officers and Correctional Officer Recruits ("Local 197" or "Union") employed by the Passaic County Sheriff's Office ("County") filed a Petition to Initiate Compulsory Interest Arbitration ("Petition") with New Jersey's Public Employment Relations Commission ("PERC"). By filing the Petition, Local 197 asked PERC to appoint an interest arbitrator pursuant to the Police and Fire Interest Arbitration Reform Act, *N.J.S.A. 34:13-16(e)(1)* to make an award concerning a successor collective negotiation agreement. ("CNA") with the County of Passaic ("County"). On September 16, 2020, I was appointed to serve as interest arbitrator<sup>1</sup>.

Pursuant to *N.J.S.A. 34:13-16(b)(3)*, on October 8, 2020, I conducted a mediation session with the parties to "effect a voluntary resolution of the impasse." At the conclusion of the October 8, 2020 mediation session, it was determined that the impasse should proceed to interest arbitration. I conducted arbitration hearings on October 27, 2020, and October 29, 2020. The hearings were conducted via Zoom teleconferencing.

Local 197 offered the testimony of: (1) Union President, Correctional Police Officer John Welsh; (2) Donald Barbat, Esq.; and (3) municipal finance, budgeting, property tax and local government policy and practice expert, Dr. Raphael Caprio. The County offered the testimony of: (1) self-insurance expert, Michael Atkinson; (2) County Finance Director Richard Cahill; (3) division head for payroll and pensions Jason Mitchell; and (4) County Undersheriff Joseph Dennis.

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<sup>1</sup> There is a related proceeding concerning the rank-and-file officers represented by Policemen's Benevolent Association, Local 197A bearing index number IA-2021-002. While there is overlap between the two proceedings, there will be separate awards.

Frank M. Crivelli, Esq., Donald C. Barbati, Esq. and Michael DeRose of the firm of Crivelli & Barbati, L.L.C. represented the Union. Lester E. Taylor, Esq. and David I. Solomon, Esq. of the firm of Florio, Perrucci, Steinhardt, Cappelli Tipton and Taylor, L.L.C. represented the County.

Both parties were afforded a full opportunity to examine and cross-examine witnesses, submit evidence, and present arguments in support of their respective positions. Both parties submitted briefs by December 5, 2020 and the record was closed at that time. The evidence adduced and the positions and arguments set forth by the parties have been fully considered in preparation and issuance of this Interest Arbitration Decision and Award.

## **II. PROPOSALS**

### **A. FINAL UNION PROPOSALS**

The Union presented the following proposals for my consideration:

P.B.A. #197 submitted the below final economic and non-economic offers for the Arbitrator's consideration:

#### **1. Amend Article 1 – Witnesseth**

NOW THEREFORE, be it resolved, that the Employer and the Association mutually agree that the following shall represent the Agreement reached as a result of collective negotiations for the contract years, effective ~~January 1, 2007~~ **January 1, 2019**, and shall remain in full force and effect until ~~December 31, 2014~~ **December 31, 2023**, or until a successor Agreement is negotiated and executed, whichever shall last occur.

#### **2. Amend Article 3 – Grievance, Section A as follows:**

A. The Employee shall present the grievance in written form to the Employee's immediate Shift Commander within ten (10) days of its occurrence. The Shift Commander shall then attempt to adjust the matter and shall respond ~~verbally~~ **in writing** to the Employee within ten (10) working days.

### **3. Amend Article Six – Overtime**

Add a New Section:

Any and all overtime worked on a holiday or the date a holiday is scheduled to be celebrated shall be paid at the double time rate.

### **4. Amend Article 7 – Salaries**

A. Base Annual Wages for Employees covered by this Agreement shall be set forth in Schedule A annexed hereto. The salary schedules shall be modified at each step and rank by the following percentages on each effective date and retroactive to each effective date as applicable.

- Effective and retroactive to January 1, 2019, employees will move one (1) step on the Salary Guide and the top step of the salary guide shall be increased by three and one quarter percent (3.25%). For all employees that are currently “off guide”, each employee shall receive a three and one quarter percent (3.25%) cost of living increase in his/her salaries.
- Effective and retroactive to January 1, 2020, employees will move one (1) step on the Salary Guide and the top step of the salary guide shall be increased by three and one quarter percent (3.25%). For all employees that are currently “off guide”, each employee shall receive a three and one quarter percent (3.25%) cost of living increase in his/her salaries.
- Effective and retroactive to January 1, 2021, employees will move one (1) step on the Salary Guide and the top step of the salary guide shall be increased by three and one quarter percent (3.25%). For all employees that are currently “off guide”, each employee shall receive a three and one quarter percent (3.25%) cost of living increase in his/her salaries.
- Effective and retroactive to January 1, 2022, employees will move one (1) step on the Salary Guide and the top step of the salary guide shall be increased by three and one quarter percent (3.25%). For all employees that are currently “off guide”, each employee shall receive a three and one quarter percent (3.25%) cost of living increase in his/her salaries.
- Effective and retroactive to January 1, 2023, employees will move one (1) step on the Salary Guide and the top step of the salary guide shall be increased by three and one quarter percent (3.25%). For all employees that are currently “off guide”, each employee shall receive a three and one quarter percent (3.25%) cost of living increase in his/her salaries.

\*For purposes of clarification an employee is considered to be “off guide” if his or her current base salary exceeds the 2018 maximum salary

**Any Union Employee who is promoted to the rank of Sergeant shall suffer no decrease in base salary for accepting said promotion. Should the employee's base salary exceed any particular step of the Sergeant's salary guide the employee shall be placed at the next highest step on the new rank that provides an increase in salary.**

### **SCHEDULE A**

	2018	2019	2020	2021	2022	2023
<b><u>Step</u></b>						
Step 1	\$38,301	\$38,301	\$38,301	\$38,301	\$38,301	\$38,301
Step 2	\$41,397	\$41,397	\$41,397	\$41,397	\$41,397	\$41,397
Step 3	\$47,420	\$47,420	\$47,420	\$47,420	\$47,420	\$47,420
Step 4	\$53,443	\$53,443	\$53,443	\$53,443	\$53,443	\$53,443
Step 5	\$60,807	\$60,807	\$60,807	\$60,807	\$60,807	\$60,807
Step 6	\$67,708	\$67,708	\$67,708	\$67,708	\$67,708	\$67,708
Step 7	\$75,607	\$75,607	\$75,607	\$75,607	\$75,607	\$75,607
Step 8	\$84,735	\$84,735	\$84,735	\$84,735	\$84,735	\$84,735
Step 9	\$92,513	\$92,513	\$92,513	\$92,513	\$92,513	\$92,513
Step 10	\$98,175	\$101,365	\$104,660	\$108,061	\$111,573	\$115,199

B. All E.M.T.'s will be paid an additional One Thousand (\$1,000.00) Dollars per year incorporated into their base salary. This additional one thousand (\$1,000.00) Dollars will cease immediately if the Employee fails re-certification. **~~No new E.M.T.s shall be added after January 1, 2004. In addition, EMT compensation shall permanently cease for any employee hired before January 1, 2004 that fails re-certification at any time, regardless of whether such employee becomes re-certified.~~** All costs in obtaining an initial EMT certification will be paid by the employee. However, an employee who seeks to obtain an EMT certification may, with the Sheriff's approval, receive their certification from the Passaic County Community College at the employer's expense.

Add a New Paragraph D

**D Hazardous Duty Pay**

**1. Hazard differential pay shall be considered additional pay for any employee assigned to perform hazardous duty or work involving physical hardship. A duty shall be considered hazardous if it involves extreme physical discomfort or distress especially if protective devices will not entirely mitigate the danger or hardship involved; and/or it could result in serious injury/illness or death.**

**2. The County shall compensate an employee in the performance of a hazardous duty with an eighty dollar (\$80.00) flat shift premium over the employee's regular hourly wage. This differential shall be paid only for shifts actually worked. Furthermore, an employee shall receive hazard differential pay for any work performed during overtime hours associated with the hazardous duty on a prorated basis at the rate of ten dollars (\$10.00) for every hour worked.**

**3. Hazard pay differential shall be warranted under the following conditions:**  
**a) whenever a State or County Emergency is declared;**  
**b) for exposure to a physical hardship;**  
**c) for exposure to a hazardous condition.**

**In circumstances where hazardous pay is warranted, the employer has a responsibility to initiate positive action to eliminate any danger and risk which may contribute to or cause the physical hardship or hazard.**

**5. Amend Article 8 – Increments and Longevity**

Add New Paragraph C.

**C. Length of employment for all new Employees will be determined by length of service with the County of Passaic.**

**6. Amend Article 10 – Vacation, Sick Personal and Bereavement Leaves**

Replace Paragraph D., Death Leave, with the following:

**D. Bereavement Leave**

**Employees are entitled to three (3) consecutive calendar days leave of absence for the death of an employee's immediate relative.**

**Bereavement Leave shall not extend beyond three (3) consecutive calendar days immediately following the death or funeral of a family member unless approved by the County Administrator. "Immediate Relative" includes spouse, civil union partner, child, parent, stepchild, stepparent, sibling, grandparents, mother-in-law, father-**

in-law, daughter-in-law, son-in-law, grandchildren, niece, nephew, uncle, aunt, or any person related by blood or marriage residing in an employee's household. Employees are paid for all working days during the Bereavement Leave. Employees may be asked for proof at the discretion of the Personnel Department or Administration.

An additional day shall be given in the event of the Employee's spouse or children's death.

**7. Amend Article 14 – Medical Benefits**

Add New Paragraph

As of January 1, 2021, all Employees shall no longer be permitted to enroll in the County's Traditional Health Care Plan. All Employees still enrolled in the Traditional Healthcare Plan shall exit the Traditional Healthcare Plan no later than January 1, 2021.

**8. Amend Article 16 – Ceremonial Activities**

Whenever a sworn law enforcement Officer, as defined by *N.J.S.A. §43:15A-97*, is killed in the line of duty in the State of New Jersey, the County agrees to send a minimum of ~~six (6)~~ **two (2)** uniformed supervisors to participate in funeral services for the said deceased law enforcement Officer, so long as the funeral services take place within the State of New Jersey, or, if outside the State of New Jersey, within a fifty (50) mile radius of the Passaic County Jail. Subject to the availability of same, the Employer will permit ~~two (2)~~ **one (1)** County vehicle to be utilized by the members in the funeral service.

Officers participating in such funeral service shall not be entitled to any compensation during the time in which they are participating in said funeral service unless otherwise agreed to by the Sheriff's Office.

## B. FINAL COUNTY PROPOSALS

The County presented the following final offers referenced below for my consideration:

### 1. Duration:

January 1, 2019 Through December 31, 2022

### 2. Article 5(A) – Work Week Hours of Work

A. All Employees employed in the continuous operation of the ~~Corrections and Patrol Units~~ **of the Sheriff's Office** shall have a workweek, ~~inclusive of two week ends,~~ consisting of four (4) consecutive days on and two (2) consecutive days off.

The basic hours of work for four and two (4 & 2) Employees shall be from 7:00AM to 3:00 PM, 3:00 PM to 11:00 PM and 11:00 PM to 7:00 AM. **with the ability to stagger shifts by 120 minutes.** All four and two (4 & 2) Employees shall be allowed one (1) thirty (30) minute lunch period at a time and in an area designated by the Supervisor.

The basic hours of work for five and two (5 & 2) Employees shall be from 8:00 AM to 4:00 PM **7:00AM to 3:00 PM, 3:00 PM to 11:00 PM and 11:00 PM to 7:00 AM with the ability to stagger shifts by 120 minutes.** All ~~five and two (5 & 2)~~ Employees shall be allowed one (1) thirty (30) minute lunch period **at a time and in an area designated by the Supervisor.**

### 3. Article 5(B) – Work Week-Hours of Work

~~B. For those Employees assigned to the Courthouse, the basic workweek shall consist of Monday through Friday from 8:15AM to 4:15PM, inclusive of one (1) hour lunch period. The Employer shall have the right to limit lunch periods of Court House Personnel to thirty (30) minutes.~~

### 4. Article 5(G) – Work Week-Hours of Work

~~G. Effective January 1, 2004, all newly hired Officers without prior law enforcement experience who are hired as a Correction Officer must complete two (2) years of service at the Passaic County Jail prior to applying for a lateral title change to Sheriff's Officer. The foregoing restriction shall not apply to inter-governmental transfers or investigators.~~

### 5. Article 6(E) – Overtime Payment

E. In lieu of overtime compensation, any Employee assigned to the K-9 Unit will be entitled to **five (5) compensation days and a take home vehicle** one hour per day during their



~~shift to care for his/her canine. The one (1) hour shall be the first 30 minutes of the Employee's shift and the last 30 minutes of the Employee's shift. The PBA and the employees expressly acknowledge and agree that they shall not be entitled to any additional compensation, benefits, or overtime in connection with the care of their canine except for additional required K-9 training programs or clinics that have the prior written approval of the Sheriff or his designee.~~

## **6. Article 7(A) – Salaries/Compensation**

A. Base annual wages for Employees covered by this Agreement shall be as set forth in **Schedule A** annexed. The salary schedules shall be modified at each step and rank by the following percentages on each effective date and retroactive to each effective date as applicable.

**• Effective January 1, 2019, employees will either move one (1) step on the Salary Guide or all those employees at maximum will receive a one percent (1%) cost of living adjustment.**

**• Effective January 1, 2020, employees will either move one (1) step on the Salary Guide or all those employees at maximum will receive a one percent (1%) cost of living adjustment effective January 1, 2020.**

**• Effective January 1, 2021, employees will not move on the Salary Guide. Those employees at maximum will receive a one percent (1%) cost of living adjustment. Employees shall receive \$3,000 on top of base salary effective July 1, 2021.**

**• Effective January 1, 2022, employees will not move on the Salary Guide. Those employees at maximum will receive a one percent (1%) cost of living adjustment. Employees shall receive \$3,000 on top of base salary effective July 1, 2022.**

***[Following the closing of the record, the parties continued to negotiate, on November 19, 2020, the County amended its wage proposal as follows:***

***2019 step movement or 2% increase for those at max/off guide;***

***2020 step movement or 2% increase for those at max/off guide;***

***2021 step movement or 1% increase for those at max/off guide;***

***2022 step movement or 1% increase for those at max/off guide;***

***2023 step movement or 2% increase for those at max/off guide;]<sup>2</sup>***

## **7. Article 7(B) – Salaries/Compensation**

B. All E.M.T.'s will be paid an additional One Thousand (\$1,000.00) Dollars per year incorporated in the base salary. This additional One Thousand (\$1,000.00) Dollars will cease immediately if the Employee fails re-certification. ~~No new E.M.T.s shall be added after January 1, 2004. In addition, EMT compensation shall permanently cease for any~~

<sup>2</sup> Email to Frank Crivelli dated November 19, 2020.

~~employee hired before January 1, 2004 that fails re-certification at any time, regardless of whether such employee later becomes re-certified.~~ **All costs in obtaining an initial EMT certification will be paid by the employee. However, an employee who seeks to obtain an EMT certification may, with the Sheriff's approval, receive their certification from the Passaic County Community College at the employer's expense.**

## **8. Article 8 – Increments and Longevity**

During the term of this Agreement, increments to which the Employees are entitled shall be awarded as follows:

A. All Employees whose anniversary date falls between January 1 and June 30 shall receive the increment to which they would have been entitled on their anniversary date, retroactive to January 1 of the contract year.

B. All Employees whose anniversary date falls between July 1 and December 31 shall receive the increment to which they would have been entitled on their anniversary date, retroactive to July 1 of the contract year.

**C. An Employee's anniversary date shall be determined based upon the employee's initial date of employment as an officer within their title, as defined by the Civil Service Commission.**

D. Longevity pay shall be determined by length of employment as follows:

- A. 2% of base pay at the beginning of seven (7) years;
- B. 4% of base pay at the beginning of ten (10) years;
- C. 6% of base pay at the beginning of fifteen (15) years;
- D. 8% of base pay at the beginning of twenty (20) years;
- E. 10% of base pay at the beginning of twenty-five years.

E. ~~\* As of January 1, 1992,~~ Length of employment for all new Employees will be determined by length of service with the County of Passaic.

F. All employees hired subsequent to January 1, 2017 shall be entitled to "senior officer pay" in lieu of longevity pursuant to the following schedule:

- a. Twenty-five hundred (\$2,500) added to the base pay of employees after fifteen (15) years of service;
- b. Thirty-five hundred dollars (\$3,500) added to the base pay of employees after twenty (20) years of service;
- c. Five thousand dollars (\$5,000) added to the base pay of employees after twenty-four (24) years of service;

(Per MOA)

## 9. Article 9 – Night Differential

Employees hired prior to January 1, 2000 working on shifts whose working hours fall between 3:00 PM and 7:00 AM shall receive, in addition to their regular pay, and additional ten (10%) percent of their base salary which shall be incorporated into their base pay. ~~This ten percent (10%) night differential shall be divided equally into the number of pay periods in each year, and said amount, incorporated into the base salary, shall be paid each regular pay. Said amount shall also be paid to all employees working the second and third shifts when on vacation, personal, sick and holiday leave.~~

~~An additional ten percent (10%) may also be paid to the employees who do not strictly fall into the above categories if their responsibilities sometimes call for odd hours, and if authorized by the sheriff or his designated representative.~~

~~Effective January 1, 2000, the current night differential paid to Employees~~ **Employees hired after January 1, 2000** working the 11:00 PM to 7:00 AM shift, will decrease to **shall receive** five (5%) percent **of their base salary**. for all new Employees hired after January 1, 2000.

As of September 6, 2016, night differential paid to employees working the 3:00PM to 11:00PM shift, ~~will decrease to five~~ **shall receive** five (5) percent for all new employees (as per MOA).

~~The This ten (10%) percent~~ **night differential shall be divided equally into the number of pay periods in each year, and said amount, incorporated into the base salary, shall be paid each regular pay. Said amount shall also be paid to all Employees working the second and third shifts when on vacation, personal, sick and holiday leave. Should an employee be out on an extended medical leave of forty-five (45) calendar days or more, the employee shall not be entitled to the night differential during that period.**

**Up to an additional ten percent (10%) may also be paid to the employees who do not strictly fall into the above categories if their responsibilities sometimes call for odd hours, and if authorized by the sheriff or his designated representative.**

## 10. Article 10(D) – Vacation, Sick, Personal, and Death Leaves

### D. Death **Bereavement** Leave

Every Employee covered by this Agreement shall be allowed three (3) **consecutive calendar days of leave, to be utilized upon either the death or funeral of an** ~~per death for use in the event of death in the immediate family~~ **member** of the Employee.

For the purpose of this Section, the immediate family is defined as the Employee's ~~spouse, children, parents, siblings, grandparents, grandchildren, mother or father-in-law, sister or brother-in-law, son or daughter-in-law, or a member of the Employee's immediate household.~~ **spouse, civil union partner, child, parent, stepchild, stepparent, sibling, grandparents, mother-in-law, father-in-law, daughter-in-law, son-in-law, grandchildren, niece, nephew, uncle, aunt, or any person related by blood or marriage residing in an employee's household. Employees are paid for all working days during the Bereavement Leave. Employees may be asked for proof at the discretion of the Personnel Department or Administration.**

An additional day shall be given in the event of the Employee's spouse or children's death.

#### **11. Article 10(E) – Vacation, Sick, Personal, and Death Leaves**

##### **E. Sick Time Cash in Retirement Benefit**

Upon retirement, all Employees shall receive payment for accumulated sick time in the amount of fifty (50%) percent of the accumulated sick time with a maximum amount of Fifteen Thousand (\$15,000.00) Dollars.

**Twelve Thousand (\$12,000) dollars for employees hired after January 1, 2015.**

#### **12. Article 11(B)&(C) – Holiday Compensation**

~~B. Those Employees having a four and two (4 & 2) workweek shall paid at the rate of double their base salary whenever their regularly scheduled workday falls on a recognized holiday, providing they did not call in sick the day before or the day after the holiday.~~ **Any employee covered under this CBA, working on a holiday, will be paid at a rate not to exceed double their regular base salary.**

**C. Those employees on a 4&2 schedule will only be entitled to double their base salary provided they did not call in sick on the recognized holiday, the day before or the day after said holiday.**

**D. Those Employees having a five and two (5 & 2) workweek and working Monday through Friday** as defined herein shall be compensated as follows:

1. Recognized holidays that fall on a Saturday shall be celebrated on the preceding Friday.

2. Recognized holidays that fall on a Sunday shall be celebrated on the succeeding Monday.

**E.** In the event that **D1** or **D2** is countermanded by the Sheriff and/or order of the courts requiring the services of Employees, the affected Employees shall be granted equal compensatory time off in recognition of the holiday.

### 13. Article 14(A) – Medical Benefits

Replace with language from the October 11, 2016 MOA:

#### A. Medical

~~1. The level of Employee contribution of 1.5% of base salary shall be as set forth in P.L. 010, ch.2, effective May 22, 2010. This level of Employee contribution shall be inclusive of, rather than in addition to, any statutory obligation towards an Employee's requirement to make contributions toward the payment of health insurance.~~

~~2. Effective upon execution of this Agreement, the co-pay under this plan shall be Five Dollars (\$5.00) for generic drugs and Ten Dollars (\$10.00) for brand name drugs. Mail order generic drugs shall have a co-pay of Ten Dollars (&10.00) per prescription (for a three (3) month supply). Mail order brand name drugs shall have a co-pay of Twenty Dollars (\$20.00) per prescription (for a three (3) month supply). The coverage shall include family members.~~

~~3. Any Employee hired after the ratification of this Agreement shall contribute towards the cost of medical benefits as follows:~~

~~i. Two Percent (2%) of Base Salary for single Coverage:~~

~~ii. Two and One Half Percent (2.5%) of Base Salary for Husband/wife; One Parent and One (1) Child, Employee/Domestic Partner.~~

~~iii. Three Percent (3%) of Base Salary for Family Coverage.~~

~~4. Co-Pays for doctor's visits shall be Fifteen Dollars (\$15.00). The deductible for health insurance shall be Two Hundred and Fifty Dollars (\$250.00) for the Employee and Five Hundred Dollars (\$500.00) for family members. Out of pocket maximum contributions for in-network providers shall be Two Hundred Dollars (\$200.00) for Employees and Four Hundred Dollars (\$400.00) for family members and for out-of-network providers, Six Hundred Dollars (\$600.00) for Employees and One Thousand Dollars (\$1,000.00) for family members.~~

~~5. Upon retirement, the Employer will continue to provide and pay for the above programs. The Employer reserves the right to select the insurance carrier who shall provide such benefits, as long as the benefits are equivalent to or better than those provided by the policies in effect on the date of this agreement.~~

**All employees hired on or after October 11, 2016 shall not be entitled to enroll in the County's Traditional Health Care Plan.**

**All Employees in P.B.A. Local #197 shall be subject to the contributions outlined in Chapter 78 of Public Law 2011.**

**All Employees hired on or after October 11, 2016 shall, upon retirement and twenty five years of service to Passaic County, be entitled to enroll only in the HBCBS Advantage EPO DESIGN 4 plan or an equivalent plan that may be offered.**

**Effective October 11, 2016, all out of network charges will be paid at 180% of the rate established by the Center for Medicare and Medicaid services ("CMS") in 2017 and 150% of the rate established by CMS in 2018. [MOA language]**

#### **14. Article 15(M) – Miscellaneous**

~~M. The PBA President shall have full time off from regular duty assignment without loss of regular compensation.~~

~~The PBA Delegate shall be excused from working on days of any meetings (State PBA, County Conference and Local PBA). In the event a meeting is scheduled on the Delegate's day off, the Delegate shall receive another day off. The Delegate shall suffer no loss of compensation because of his/her title as Delegate.~~

#### **15. Article 16 – Ceremonial Activities**

Whenever an sworn law enforcement Officer, as defined by N.J.S.A. 43:15A-97, is killed in the line of duty in the State of New Jersey the County agrees to send a minimum of ~~six (6)~~ **two (2)** uniformed Officers (~~2 from Courthouse, 2 from Patrol and 2 from Corrections~~) to participate in funeral services for the said deceased law enforcement Officer, so long as the funeral services take place within the State of New Jersey, or, if outside the State of New Jersey, within a fifty (50) mile radius of the Passaic County Jail.

Subject to the availability of same, Employer will permit ~~two (2)~~ **one (1)** County vehicles to be utilized by the members in the funeral service.

#### **16. Period of Agreement**

This Agreement shall become effective and retroactive to January 1, **2019** and shall remain in full force and effect until December 31, **2022** or until a successor Agreement is negotiated and executed, whichever shall last occur.

### **III. STIPULATIONS OF THE PARTIES**

At the close of the interest arbitration proceedings, Local 197 and the County executed a written stipulation agreeing upon the award of certain proposals sought by the parties in their respective final offers. The proposals agreed upon by the parties are as follows:

## **1. Duration**

The parties agree that the term of the agreement shall be for a period of five (5) years commencing on January 1, 2019 and expiring on December 31, 2023

## **2. Article 3 – Grievances**

The Employee shall present the grievance in written form to the Employee's immediate Shift Commander within ten (10) days of its occurrence. The Shift Commander shall then attempt to adjust the matter and shall respond ~~verbally~~ in writing to the Employee within ten (10) working days.

## **3. Article 5(B) – Work Week-Hours of Work**

~~For those Employees assigned to the Courthouse, the basic workweek shall consist of Monday through Friday from 8:15 AM to 4:15 PM, inclusive of a one (1) hour lunch period. The Employer shall have the right to limit lunch periods of Court House personal to thirty (30) minutes.~~

## **4. Article 7(B) – Salaries/Compensation**

B. All E.M.T.'s will be paid an additional One Thousand (\$1,000.00) Dollars per year incorporated in the base salary. This additional One Thousand (\$1,000.00) Dollars will cease immediately if the Employee fails re-certification. ~~No new E.M.T.s shall be added after January 1, 2004. In addition, EMT compensation shall permanently cease for any employee hired before January 1, 2004 that fails re-certification at any time, regardless of whether such employee later becomes re-certified. All costs in obtaining an initial EMT certification will be paid by the employee. However, an employee who seeks to obtain an EMT certification may, with the Sheriff's approval, receive their certification from the Passaic County Community College at the employer's expense.~~

## **5. Article 8 – Increments and Longevity**

During the term of this Agreement, increments to which the Employees are entitled shall be awarded as follows:

- A. All Employees whose anniversary date falls between January 1 and June 30 shall receive the increment to which they would have been entitled on their anniversary date, retroactive to January 1 of the contract year.
- B. All Employees whose anniversary date falls between July 1 and December 31 shall receive the increment to which they would have been entitled on their anniversary date, retroactive to July 1 of the contract year.

- C. An Employee's anniversary date shall be determined based upon the employee's initial date of hire as an officer within their title, as defined by the Civil Service Commission.
- D. Longevity pay shall be determined by length of employment as follows:
- A. 2% of base pay at the beginning of seven (7) years;
  - B. 4% of base pay at the beginning of ten (10) years;
  - C. 6% of base pay at the beginning of fifteen (15) years;
  - D. 8% of base pay at the beginning of twenty (20) years;
  - E. 10% of base pay at the beginning of twenty-five years.
- E. ~~\* As of January 1, 1992,~~ Length of employment for all new Employees will be determined by length of service with the County of Passaic.
- F. All employees hired subsequent to January 1, 2017 shall be entitled to "senior officer pay" in lieu of longevity pursuant to the following schedule:
- a. Twenty-five hundred (\$2,500) added to the base pay of employees after fifteen (15) years of service;
  - b. Thirty-five hundred dollars (\$3,500) added to the base pay of employees after twenty (20) years of service;
  - c. Five thousand dollars (\$5,000) added to the base pay of employees after twenty-four (24) years of service;

(Per MOA)

## **6. Article 10(D) – Vacation, Sick, Personal, and Death Leaves**

The Paragraph shall be revised to read as follows:

### **D. Death Bereavement Leave**

Employees are entitled to three (3) consecutive calendar days leave of absence for the death of an employee's immediate relative.

Bereavement Leave shall not extend beyond three (3) consecutive calendar days immediately following the death or funeral of a family member unless approved by the County Administrator. "Immediate Relative" includes spouse, civil union partner, child, parent, stepchild, stepparent, sibling, grandparents, mother-in-law, father-in-law, daughter-in-law, son-in-law, grandchildren, niece, nephew, uncle, aunt, or any person related by blood or marriage residing in an



employee's household. Employees are paid for all working days during the Bereavement Leave. Employees may be asked for proof at the discretion of the Personnel Department or Administration.

An additional day shall be given in the event of the Employee's spouse or children's death.

## **7. Article 14(A) – Medical Benefits**

### **A. Medical**

- ~~1. The level of Employee contribution of 1.5% of base salary shall be as set forth in P.L. 010, ch.2, effective May 22, 2010. This level of Employee contribution shall be inclusive of, rather than in addition to, any statutory obligation towards an Employee's requirement to make contributions toward the payment of health insurance.~~
- ~~3. Any Employee hired after the ratification of this Agreement shall contribute towards the cost of medical benefits as follows:~~
  - ~~i. Two Percent (2%) of Base Salary for single Coverage:~~
  - ~~ii. Two and One Half Percent (2.5%) of Base Salary for Husband/wife; One Parent and One (1) Child, Employee/Domestic Partner.~~
  - ~~iii. Three Percent (3%) of Base Salary for Family Coverage.~~
4. Co-Pays for doctor's visits shall be ~~Fifteen Dollars (\$15.00)~~. The deductible for health insurance shall be ~~Two Hundred and Fifty Dollars (\$250.00)~~ for the Employee and ~~Five Hundred Dollars (\$500.00)~~ for family members. Out of pocket maximum contributions for in-network providers shall be ~~Two Hundred Dollars (\$200.00)~~ for Employees and ~~Four Hundred Dollars (\$400.00)~~ for family members and for out-of-network providers, ~~Six Hundred Dollars (\$600.00)~~ for Employees and ~~One Thousand Dollars (\$1,000.00)~~ for family members.

**[The Parties agree that the stricken language must be replaced with language that reflects the current copays, deductibles and maximum out of pocket amounts for the EPO, POS and High Deductible Healthcare Plans].**

Add New Paragraph

All Employees shall no longer be permitted to enroll in the County's Traditional Health Care Plan. All Employees still enrolled in the Traditional Healthcare Plan shall exit the Traditional Healthcare Plan no later than thirty (30) days following the issuance of the arbitrator's award or the execution of a Memorandum of Agreement.

## **8. Article 16 – Ceremonial Activities**

Whenever an sworn law enforcement Officer, as defined by N.J.S.A. 43:15A-97, is killed in the line of duty in the State of New Jersey the County agrees to send a minimum of two (2) ~~six (6)~~ uniformed Officers (~~2 from Courthouse, 2 from Patrol and 2 from Corrections~~) to participate in funeral services for the said deceased law enforcement Officer, so long as the funeral services take place within the State of New Jersey, or, if outside the State of New Jersey, within a fifty (50) mile radius of the Passaic County Jail.

Subject to the availability of same, Employer will permit ~~two (2)~~ one (1) County vehicles to be utilized by the members in the funeral service.

### **9. Period of Agreement**

This Agreement shall become effective and retroactive to January 1, 2019 and shall remain in full force and effect until December 31, 2023 or until a successor Agreement is negotiated and executed, whichever shall last occur.

## **IV. STATUTORY CRITERIA**

In rendering my award, I am bound to apply the criteria set forth at *N.J.S.A. 34:13-16(g)* which provides:

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 shall assess when considering this factor are the limitations imposed upon the employer by P.L.1976, c.68 (C. 40A:4-45.1 et seq.).
- (2) Comparison of the wages, salaries, hours and conditions of employment of the employees involved in the arbitration proceedings with the wages,

hours, and conditions of employment of other employees performing the same or similar services and with other employees generally:

- (a) In private employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.
  - (b) In public employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.
  - (c) In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L. 1995, c.425 (C. 34:13A-16.2); provided, however, that each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.
  - (d) In comparative private employment.
  - (e) In public and private employment in general.
- (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 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 employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award

for each income sector of the property taxpayers of the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in 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**

PBA Local 197 at one time represented a single bargaining unit consisting of correctional officers and their superior officers employed at the Passaic County Jail as well as Sheriff's officers who are given traditional police functions and responsibility for operating the County Courthouse. Subsequently PERC certified four separate bargaining units as follows: Local 197 the correctional officers who operate the County Jail and who are subject to this Award; PBA Local 197A the Superior Officers who supervise correctional officers in the County jail; PBA Local 286 the Sheriff Officers and PBA Local 286A ("286A") the Sheriff Officer supervisors.

Traditionally, all four bargaining units negotiated in tandem, and the terms and conditions of their respective CNAs were similar if not identical. In 2007, all four units

petitioned for an interest arbitration award in the same proceeding. The contract that resulted from that proceeding expired on December 31, 2014. For the period January 1, 2015 to December 31, 2018, all four bargaining units bargained separately, but each reached similar contracts. The most recent CNA for all four bargaining units expired on December 31, 2019. However, of the four bargaining units only Local 286A was able to reach a voluntary agreement with the County. The CNA between Local 286A and the County was ratified on or about January 30, 2020. This agreement was reached before the effects of the COVID-19 Pandemic arrived in the United States. Subsequently, the remaining three bargaining units petitioned PERC and requested interest arbitration.

This Award concerns Local 197 representing County Correctional Police Officers and Recruits. The approximately 274<sup>3</sup> active members of the bargaining unit working in these titles operate the Passaic County Jail ("Jail"). The members of the Local 197 bargaining unit supervise inmates, maintain care custody and control of inmates, supervise and conduct searches of inmate cells/living quarters; and investigate inmate related incidents.

As a result of bail reform *N.J.S.A. 2A:162-15*, the inmate population in the Passaic County Jail has been reduced from approximately 800 to 500. Although there are fewer inmates, the inmates who remain tend to be more prone to violence. In addition, members of the Local 197 bargaining unit face heightened exposure to COVID-19.

The primary issues in this negotiation concern wages and health insurance coverage. The County is self-insured and pays for most claims directly by utilizing a third-party administrator. For many years, the County provided a Traditional Healthcare Plan

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<sup>3</sup> Derived from the scattergram.

which was very expensive, and because of the requirements of Chapter 78 of the Pension and Health Benefits Reform Law, the members of the bargaining were required to pay a significant portion of the premiums to secure their health insurance. Both the Union and the County are proposing to move from the Traditional Healthcare Plan to one of three alternatives: Exclusive Provider Organization Plan (“EPO”), Point of Service Plan (“POS”) or a High Deductible Plan. As will be discussed, the Union contends that the savings generated by terminating coverage in the Traditional Plan would pay for the Union’s proposed wage increases for its proposed five-year CNA. On the other hand, the County contends that the move from the Traditional Healthcare Plan would result in reduced premium contributions from members of the bargaining unit as required by Chapter 78.

## **V. THE PARTIES’ DISCUSSION OF THEIR RESPECTIVE PROPOSALS**

### **A. Union Proposals Regarding Wages Hours and Term of the Agreement and the LOCAL 197’s Response to the County’s Proposals**

The Union is seeking a five-year agreement, where each member of the bargaining unit will be permitted to move annually one step on the ten step Salary Guide. Step movement would occur either on January 1 or July 1 depending on the officer’s anniversary date. Local 197 contends that because of the 2% Hard Cap in the 2015 negotiations it was forced to agree to alter the salary guide from seven steps to the present ten step guide. Local 197 asserts that the wages set forth on the salary guide have remained stagnant and it now takes three additional years for a correctional officer to reach the top step of the salary guide. The Union is not proposing to revert to the previous salary guide.

In addition to step movement, the Union is proposing that officers at the top step of the guide receive the following wage increases: 3.25% retroactive to January 1, 2019; 3.25% retroactive to January 1, 2020; 3.25% effective January 2021; 3.25% effective January 2022; and 3.25% effective January 2023. The Union notes that because of adjustments made in prior negotiations, certain members of the bargaining unit are off guide – or beyond the top step. Local 197 is seeking annual increases of 3.25% for each year of the five-year agreement for off guide officers as well.

Accordingly, Local 197 is proposing the following salary guide with adjustments made only to the top step:

<b>STEP</b>	<b>2018 BASE YEAR</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>2023</b>
<b>1</b>	<b>\$38,301</b>	<b>\$38,301</b>	<b>\$38,301</b>	<b>\$38,301</b>	<b>\$38,301</b>	<b>\$38,301</b>
<b>2</b>	<b>\$41,397</b>	<b>\$41,397</b>	<b>\$41,397</b>	<b>\$41,397</b>	<b>\$41,397</b>	<b>\$41,397</b>
<b>3</b>	<b>\$47,420</b>	<b>\$47,420</b>	<b>\$47,420</b>	<b>\$47,420</b>	<b>\$47,420</b>	<b>\$47,420</b>
<b>4</b>	<b>\$53,443</b>	<b>\$53,443</b>	<b>\$53,443</b>	<b>\$53,443</b>	<b>\$53,443</b>	<b>\$53,443</b>
<b>5</b>	<b>\$60,807</b>	<b>\$60,807</b>	<b>\$60,807</b>	<b>\$60,807</b>	<b>\$60,807</b>	<b>\$60,807</b>
<b>6</b>	<b>\$67,708</b>	<b>\$67,708</b>	<b>\$67,708</b>	<b>\$67,708</b>	<b>\$67,708</b>	<b>\$67,708</b>
<b>7</b>	<b>\$75,607</b>	<b>\$75,607</b>	<b>\$75,607</b>	<b>\$75,607</b>	<b>\$75,607</b>	<b>\$75,607</b>
<b>8</b>	<b>\$84,735</b>	<b>\$84,735</b>	<b>\$84,735</b>	<b>\$84,735</b>	<b>\$84,735</b>	<b>\$84,735</b>
<b>9</b>	<b>\$92,513</b>	<b>\$92,513</b>	<b>\$92,513</b>	<b>\$92,513</b>	<b>\$92,513</b>	<b>\$92,513</b>
<b>10</b>	<b>\$98,175</b>	<b>\$101,365</b>	<b>\$104,660</b>	<b>\$108,061</b>	<b>\$111,573</b>	<b>\$115,199</b>

Local 197 analyzes the history of negotiations with the County and asserts that members of the bargaining unit, because it was compelled to agree to a ten-step salary cap significantly truncated raises that members of the bargaining unit received. Local 197 contends that members of the bargaining unit were forced to endure significant economic concessions that resulted in continued savings to the County.

In addition to the effects of the 2% Hard Cap, the Union also notes that members of the bargaining unit were obligated to contribute to their health insurance pursuant to Chapter 78 of Public Law 2011 and are now making contributions at the maximum or Tier 4 level. The Union notes that both it and the County are proposing to eliminate the County's Traditional Healthcare Plan, which the Union asserts will result in additional savings to the County.

In reviewing the County's proposal, the Union notes that the County is proposing a four-year term of agreement and asserts that this would depart from the historical pattern where Local 197's CNA ran concurrently with the CNA's of Local 197A, Local 286A and Local 286<sup>4</sup>. The Union also rejects the County's proposal to pay \$3,000 non-pensionable payments on top of the base salaries of members of the bargaining unit. The Union maintains that providing off-guide payments would result in a decline in morale and in the stability of the bargaining unit.

The Union asserts that the County's wage proposal is unreasonable and fails to consider the restrictions placed on members of the bargaining unit stemming from the step freeze and Chapter 78. Local 197 asserts that the County is in a healthier fiscal condition than it was in the last round of negotiations. The Union contends that the County is creating disincentives for prospective employees.

Local 197 contends that its wage proposals can in large part be funded by the elimination of the Traditional Healthcare Plan. Local 197 points to the Local 286A CNA and asserts that Local 286A's wage increases were generated after Local 286A agreed to eliminate the Traditional Healthcare Plan and the County was able to count on

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<sup>4</sup> I would note that after Local 197's brief was submitted the County has modified its proposal and is also seeking a five-year term.



significant cost savings. Local 197 relies upon the testimony of its expert Dominick Fanuele (“Fanuele”). Mr. Fanuele described the Traditional Healthcare Plan as an “indemnity plan.” (1Tr. 95-96). He noted that the Plan permitted participants to use any provider, and that there were low co-pays and very limited out of pocket costs. Mr. Fanuele stated that such plans are extremely expensive. Mr. Fanuele compared the monthly cost of coverage for each proffered plan. As an example, for a family the Traditional Healthcare Plan’s monthly premium is \$3,694, the EPO plan premium is \$1873.35, the POS premium plan is \$1697.12, and the high deductible plan premium is \$1542.67<sup>5</sup>. (Union Ex. 9 internal Ex. B).

Mr. Fanuele concluded that, over a year’s time, the EPO family coverage is \$21,848 cheaper than family coverage under the Traditional Healthcare Plan, and the POS Plan is \$23,963 less per year. Under Chapter 78, many members of the Local 197 bargaining unit are at Tier 4 and are required to contribute up to 35% of their health insurance premium costs, depending upon where they are on the salary guide. Mr. Fanuele concluded that, overall if the members of the Local 197 bargaining unit switched to the EPO Plan it would result in a savings of \$1,506,607.68 in total premiums. The members of the Local 197 bargaining unit would contribute \$424,771.99, netting the County an annual savings of \$1,081,835.69. Similarly, if members of the SOA bargaining unit switched to the POS Plan the County would save \$1,196,608. (1T 103-106). The precise amount of savings cannot be determined because members of the Local 197

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<sup>5</sup> Although the County is self-insured it is still obligated to create an equivalent premium as if it were purchasing insurance from an insurance company instead of being self-insured. This requirement is necessary to comply with the Consolidated Omnibus Budget Reconciliation Act (“COBRA”). (1T 100).

bargaining unit would have the option of choosing between the POS and EPO plans and each have different costs.<sup>6</sup>

Considering the purported savings attributable to the elimination of the Traditional Healthcare Plan and based on the report of its expert Dr. Caprio, Local 197 contends that the cost to the County of adopting the Union's wage proposal is an increase of \$87,003.61 in 2019; a decrease of \$42,398.97 in 2020; a decrease of \$91,284.07 in 2021; an increase of \$226,356.40 in 2022; and an increase of \$237,108.54 in 2023. (Union Ex. 4 internal Ex. A).

Local 197 calculated the baseline salary of its bargaining unit to be \$24,420,356.00 in 2018 and contends that if its proposal were adopted this would represent a 15.59% increase over the life of the five-year agreement or an average of 3.12% per year. The Union, in part, includes verified breakage - that is, the known retirement or separations of higher paid members of the Local 197 bargaining unit - in its calculations. The SOA contends that its proposal is cost neutral. The Union posits that the total cost of its salary proposal is: (1) in 2019: \$410,315.67; (2) in 2020: \$839,231.07; (3) in 2021: a decrease of (\$894,674.54); (4) in 2022: \$1,537,660.59; and (5) in 2023: \$2,055,944.02 (P.B.A. #197 at Exhibit 4). Local 197 notes that its wage proposal results in a salary decrease for the third year of the agreement.

Local 197 contends that because of the elimination of the Traditional Healthcare Plan, the county will realize a savings of \$1,081,835.69 from 2021 through the end of the agreement for a total of \$3,948,476.81. Accordingly, Local 197 contends that the

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<sup>6</sup> Unlike the proceeding governing Local 197A, initially the County had not offered to terminate the Traditional Healthcare Plan, however, both parties have now stipulated to this provision.

elimination of the Traditional Healthcare Plan significantly mitigates the effects of its wage proposal.

Local 197 points to Dr. Caprio's analysis of the County's ability to pay for its proposal. Local 197 contends that the County has unused revenue capacity which could easily fund the wage increase it is seeking. Based on Dr. Caprio's analysis, the Union notes that property tax increases in the County have been modest, the tax levy has been unchanged, the fund balance in 2020 is 70% larger than the fund balance in 2016, and that debt service has decreased by an annual average of \$6.5 million dollars from 2016 to 2020. The SOA asserts that its proposed wage increase would not have any impact on the average residential property owner. The Union notes that the County has significant unused revenue capacity under the 2% Levy Cap. Dr. Caprio concluded that the cost of Local 197's proposal would cost the average Passaic County taxpayer \$4.96 annually.

Dr. Caprio also analyzed the cost savings that the County will receive because of the elimination of the Traditional Healthcare Plan. Dr. Caprio concluded that the savings would reduce the anticipated cost of the Local 197 wage proposal to \$1.00 per year for the average residential property owner.

Local 197 also provided a cost of the County's wage proposal<sup>7</sup>. The Union contends that the cost to the County would be: 1) in 2019: an increase of \$78,536.65; (2) in 2020: an increase of \$439,400.18; (3) in 2021: a decrease of (\$934,302.00); (4) and in 2022: an increase of \$1,115,567.92. For a total of \$699,202.75 over the life of the proposed five (5) year agreement. Local 197 contends that the County's wage proposal would represent a 3.02% increase over the proposed duration of the agreement with

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<sup>7</sup> Which has since been modified.

annual percentage increases averaging 0.32% in 2019, 1.79% in 2020, (-3.75%) in 2021, and 4.65% in 2022.

Local 197 asserts that the awarding the County's proposal is untenable and would destroy morale.

Local 197 acknowledges that the County may raise other issues in favor of its proposal, and Local 197 contends that these issues should not stand in the way of my awarding Local 197's proposal. Initially, Local 197 points to the Constitutional Officer's Cap, *N.J.S.A. 40a:4-45.45b*, which limits increases to County Officer's – such as the Sheriff – to 2% over the previous year's budget. Local 197 states that the County did not submit any evidence showing how the Constitutional Officer's Cap would be impacted by the wage increase requested by Local 197. The Union also contends that the County has not come forward with evidence to establish that the Constitutional Officer's Cap should be applied in this proceeding. Moreover, Local 197 also notes that the County apparently exceeded the Constitutional Officer's Cap when it voluntarily agreed to the Local 286A CNA.

Local 197 acknowledges that the County might argue that based on P.E.R.C.'s decision in *In the Matter of Borough of New Milford and P.B.A. LOCAL 83*, P.E.R.C. No. 2012-53, I am precluded from taking breakage into account in issuing my award. Local 197 contends that the breakage restriction is only applicable to interest arbitration awards restricted by the 2% Hard Cap which has now sunset. (Union brief at 113-114 *citing, I/MO Hopewell Township and Hopewell P.B.A. Local 342*, Docket No. IA-2019-016, P.E.R.C. NO. 2020-10 (August 15, 2019) (A breakage analysis is discretionary with the arbitrator)).

The SOA also notes that it can point to actual breakage and is able to point to the real costs of its wage proposal.

#### **a-1. Local 197 Discussion of the Statutory Requirements**

##### ***i. Interest and Welfare of the Public***

Local 197 recognizes that the interest and welfare of the public is a major criterion required in analyzing an interest arbitration dispute. In support of its contention that its wage proposal be granted, Local 197 describes the difficulties and dangers faced by its members and their contributions to public safety. Local 197 points out that its members are exposed to numerous health risks which have only been exacerbated by the COVID-19 Pandemic. Local 197 reasons that because of its vital role in preserving public safety and in ensuring the effectiveness of the correctional system that it should be awarded its wage demand. In addition, Local 197 asserts that awarding its demand would enhance morale within the bargaining unit.

In urging rejection of the County's offer, Local 197 contends that the County's offer does not take into consideration the importance of the work performed by members of the bargaining unit, does not adequately compensate members of the bargaining unit; does not consider the significant economic concessions made by members of the bargaining unit because of the 2% Hard Cap and Chapter 78; and would harm morale. Local 197 posits that the County's ability to attract and retain qualified officers would be negatively impacted if the County's offer were granted. The SOA also notes that because of the requirements of Chapter 78, those members of the bargaining unit progressing along the salary guide will then be contributing proportionally more for their health insurance coverage.

***ia. The SOA's Hazard Pay Proposal and the Public Interest***

Local 197 also argues that, consistent with the public interest, its hazard pay proposal of in which it seeks payment of \$80 per/shift plus \$10/hour pay in overtime made in response to the COVID-19 Pandemic should also be awarded. Local 197 notes that employees in the Preakness Healthcare Facility have provided with hazardous duty pay. Local 197 points to Morris County which has authorized its administrator to offer hazard pay to certain employees. Local 197 states that from the onset of the COVID-19 Pandemic, the members of the bargaining unit have worked under anxiety inducing conditions. Local 197 also asserts that this proposal could be funded through the Federal CARES Act.

***ii. Comparison of Wages and Benefits with Similarly Situated Employees in Comparable Jurisdictions***

Local 197 notes that, in making their awards, Interest Arbitrators are required to give substantial weight to the comparability criterion. Comparisons are made to employees in the private sector; employees in the public sector; employees with the same employer and employees who perform the same or similar functions with comparable employers.

Local 197 states that recent interest arbitration awards have hovered around 2%, and Local 197 attributes this to the effects of the Hard Cap. Local 197 maintains that with the removal of the salary cap its wage proposal is more in line with recent PERC decisions concerning wage increases and step movement.

Local 197 compares the salaries of members of the bargaining unit with those of the municipal police forces in Passaic County and asserts that comparable officers, are

better paid than the members of the Local 197 bargaining unit. Local 197 relies on the following table to make its comparison:

<b>UNIT</b>	<b>FINAL CONTRACT YEAR</b>	<b>TOP SALARY PATROL OFFICER</b>
North Haledon	2022	\$142,077
Little Falls	2019	\$132,391
Hawthorne	2022	\$128,164
Wayne	2014	\$127,405
Totowa	2020	\$127,364
Prospect Park	2022	\$126,666
Bloomingtondale	2023	\$125,082
Pompton Lakes	2019	\$121,757
Wanaque	2019	\$116,761
Clifton	2016	\$116,477
Ringwood	2014	\$116,411
Woodland Park	2019	\$114,365
West Milford	2018	\$111,735
Haledon	2015	\$105,179
<b>P.B.A. #197</b>	<b>2018</b>	<b>\$98,175</b>
Paterson	2019	\$95,901
Passaic City	2011	\$95,386

Local 197 notes that its proposal does not affect the salary guide, and that even if its proposal were granted in full, members of the bargaining unit who have not reached the top step would still lag similarly ranked officers employed by municipalities in the County. Local 197 states that its top salary step is the 15<sup>th</sup> highest of the 17 Passaic County municipalities. Local 197 maintains that this analysis shows that awarding its wage increase would permit the members of the bargaining unit to keep pace with their Passaic County peers. Local 197 contends that its proposal would only reduce the disparity between it and other law enforcement agencies.

Local 197 also compares the salaries of the bargaining unit members to the salaries of other correctional units in the state, and notes that the members of the bargaining unit had formerly been in the top 5 in compensation, but that this is no longer true. Local 197 attributes this disparity to the effects of the 2% Hard Cap. The following table compares Local 197 to correction officers in other counties:

<b>UNIT</b>	<b>TOP SALARY RANK &amp; FILE</b>
Bergen	\$131,759
Gloucester	\$116,409
Monmouth	\$106,000
Middlesex	\$102,866
Somerset	\$102,131
<b>P.B.A. #197</b>	\$98,175
Morris	\$95,241
Ocean	\$95,000
Mercer	\$93,206



Camden	\$90,444
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Local 197 does not think that comparison with the County's other bargaining units is warranted. Local 197 notes that unlike the civilian bargaining units, Local 197 bargaining unit was subject to the 2% Hard Cap, and that this affected the compensation of its members. Local 197 also concedes that the salaries of members of its bargaining unit are higher than the salaries of the civilian bargaining units but contends that such a comparison is not appropriate because, Local 197 bargaining unit members have more difficult and dangerous jobs. Local 197 urges me to reject a comparison of its bargaining unit to the civilian bargaining units. (Union brief at 153-152 *citing, Township of Woodbridge and P.B.A. LOCAL 81*, PERC No. IA-96-119 (1998)).

The Union also reiterates its contention that the most appropriate comparison is to the recent CNA negotiated between the County and Local 286A. Local 197 points to the historical relationship between its contract's wages and benefits and those provided in the Local 286A CNA. Local 197 states that there must be a justification for issuing an award containing such a departure from an internal pattern of settlement history. Local 197 concedes that its wage proposal as percentage is higher than the wage proposal recently agreed to with Local 286A. Local 197 notes that it is seeking a 15.59% wage increase over a five-year agreement representing an average increase of 2.73% compared to the Local 286A agreement which provided for 13.66% wage increase over the life of a five-year agreement for an increase of 2.73%. Local 197 contends that the difference is not significant and notes that its members must navigate a significant salary

guide which will by necessity impose greater costs than a superior officers contract with few salary steps.

***iii. Lawful Authority of the Employer***

The SOA asserts that the County has not presented any evidence that the County cannot lawfully agree to the Union's proposals.

***iv. Financial Impact Upon the Governing Unit***

In reliance on the testimony of its expert, Dr. Ralph Caprio, Local 197 contends that the County could pay for the Union's economic proposals. Local 197 also contends that the County has not presented evidence that it is unable to pay. Local 197 posits that its proposals are fiscally responsible and would not have a detrimental impact on the County or its residents. In addition, Local 197 concedes that revenues are down by \$8 million dollars because of the COVID-19 Pandemic, however Local 197 notes that the County has received \$87 million dollars in CARES Act funding to mitigate the effects of the COVID-19 Pandemic. Local 197 also cites to the testimony of the County's Chief Financial Officer, Richard Cahill ("Cahill") who testified that the County will be able to collect revenues to satisfy any budgetary demands. (Union brief at 216-217, citing 4T116-117)).

Local 197 asserts that the County is in excellent financial condition, and could regenerate surplus, and has excess budget appropriations which, when unspent, go into its reserves. The County's fund balance has more than doubled in the last four years, and there have been only de minimis tax increases.

Local 197 also asserts that the Property Tax Levy Caps would not interfere with the ability of the County's ability to raise income. Dr. Caprio also determined that the

County's cost of borrowing has gone down, and the County has received an upgraded bond rating.

***v. Cost of Living***

Local 197 also seeks support for its economic position by pointing to statistical evidence that the cost of living in the County and in the surrounding areas has steadily increased. Local 197 states that over the past five years, the Consumer Price Index ("CPI") has increased 7.5% while the wages of those at the top step of the Salary Guide only increased by 2.0%. Therefore, Local 197 posits that the wages of members of the bargaining unit have not kept pace with inflation.

The Union also reiterates its argument that in addition to the increased cost of living, members of the bargaining unit are required to pay up to \$14,185 toward the premium for family coverage under the Traditional Healthcare Plan pursuant to Chapter 78. The Union contends that the County wage proposal is simply too low and would not keep up with the expected increases in the cost of living.

***vi. Continuity and Stability of Employment***

Local 197 argues that if its salary proposal is granted, it would contribute to the continuity and stability of employment among members of the bargaining unit and would encourage the retention of competent and qualified superior officers. Local 197 contends that if the County's proposal is granted there would be an incentive for members of the bargaining unit to leave the County's employ and this would impose a cost on the taxpayers who will have to pay for training replacement officers. Local 197 asserts that if its proposal is granted it would have a beneficial effect on morale.

### ***vii. Statutory Restrictions***

The Union points to Chapter 78 and the now expired 2% Hard Cap as having restricted the ability of members of the bargaining unit to negotiate an adequate wage package. The Union contends that, since these restrictions are no longer in place, I am no longer confined to a particular mandate.

The Union argues that the award of its economic proposals would alleviate the statutory restrictions resulting from the 2% Hard Cap previously applied to members of the bargaining unit.

### **a-2 SOA Discussion of County Proposals**

#### ***i. County Proposals Governing Shifts and Hours of Work***

Local 197 notes that the County is seeking to change the provisions of Article 5(A) of the CNA governing the workweek. The first provision that the County seeks to modify concerns the following language: “All Employees employed in the continuous operation of the Passaic County Jail Corrections Unit shall have a workweek, **inclusive of two weekends**, consisting of four (4) consecutive days on and two (2) consecutive days off.” (Emphasis supplied). The County seeks to eliminate the highlighted phrase “inclusive of two weekends.” Local 197 contends that were I to grant this proposal, it would be disruptive to the bargaining unit’s quality of life and would interfere with the family stability of the members of Local 197 bargaining unit.

In addition, the County has proposed that it be given the discretion to stagger work shifts by two-hours. At present, members of Local 197 bargaining unit work four days on followed by two days off and work from: 7:00 AM to 3:00 PM, 3:00 PM to 11:00 PM, or 11:00 PM to 7:00 AM. While certain some Officers work five (5) days on and then two (2)

days off with a shift of 8:00 AM to 4:00 P.M., Local 197 contends that this would wreak havoc with its members' homelives. Many Local 197 members have childcare responsibilities, and the proposal as written would give unfettered discretion to allow the County to change shifts without notice<sup>8</sup>. Local 197 is also concerned that such discretion would be used to discipline members of the bargaining unit.

***ii. Night Differential***

Members of Local 197 bargaining unit who work night shifts are entitled to a differential. The County is seeking to add a provision to the CNA that states that if a member of Local 197 bargaining unit is on medical leave or is otherwise absent for forty-five days, that officer will no longer be entitled to the differential. Local 197 rejects this proposed change and contends that members should be entitled to their regular salary even if they are forced to take an extended leave or utilize accrued sick time. Local 197 contends that this proposal is unjust and would be financially detrimental to the bargaining unit members and their families.

***iii. Overtime for the K-9 Unit***

At present, the officers assigned to the K-9 Unit are provided with one half-hour before their shift and one half-hour after their shift to care for their dogs. The County has proposed that officers assigned to the K-9 Unit be given five compensatory days off together with a take-home vehicle. Local 197 notes that some of the K-9 Unit are also on-call.

Local 197 rejects this change, because it contends that the members of the K-9 Unit would not be adequately compensated for the time expended caring for their dogs, and for their on-call status.

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<sup>8</sup> Undersheriff Dennis denied this was the intent.

**iv.     *Holiday Compensation***

Local 197 rejects the County's proposal to modify various subsections of Article 11 of the CNA concerning holiday compensation. The Article currently provides for payment "at the rate of double their base salary whenever their regularly scheduled workday falls on a recognized holiday, providing they did not call in sick the day before or the day after the holiday." (P.B.A. #197 Exhibit 7 at Exhibit B at Article 11(B)). In its proposal, the County seeks to strike this subsection in its current form and replace it with language providing that, "Any employee covered under this CBA, working on a holiday, will be paid at a rate not to exceed double their regular base salary." The County then seeks to insert a subsection (C) providing that employees "on a 4 & 2 schedule will only be entitled to double their base salary provided they did not call in sick on the recognized holiday, the day before or the day after said holiday."

Local 197 characterizes this as an uncalled-for benefit reduction and opposes it.

**v.     *Medical Benefits***

The County is seeking to make some changes to the medical benefits provision set forth at Article 14A of the CNA. That provision currently places limits on employee deductibles and co-pays for prescription drugs and doctors' visits. Local 197 opposes this proposal because it would remove the certainty that members of the bargaining unit can expect to receive when they incur costs for the Doctor or pharmacist services.

The County seeks to eliminate retiree health insurance benefits. Local 197 rejects this proposal and contends that this will discourage qualified individuals from applying for employment with the Sheriff's department.

## **B. County Proposals Regarding Wages Hours and the Term of the Agreement and its Response to the Union's Proposals**

### ***i. The Lawful Authority***

The County points to the Constitutional Officers' Cap which requires that constitutional officers such as the Sheriff, shall limit their budget request to 2% of the previous year's budget. The County notes the Sheriff's budget in 2020 was \$2,102,506 and that 2% of that amount would equal \$42,050.12. In addition, the County asserts that because of the COVID-19 Pandemic, the Sheriff's department has only collected \$1,139,264 of its usual revenue and is therefore running at a deficit.

### ***ii. The Cost of Health Insurance***

The County notes that both it and Local 197 have made proposals to eliminate the Traditional Healthcare Plan. The County also acknowledges that Mr. Fanuele, the Union's expert, testified that when the Traditional Healthcare Plan is eliminated, the savings resulting from the members of the bargaining unit switching plans would result in savings to the County of between \$1,000,000 and \$1,600,000 per year. However, the County asserts, that since it is self-insured, these purported savings are only speculative, and it is unclear what claims the County would face at any given time. The County notes, that while its savings cannot be quantified, the members of the bargaining unit will receive savings because of the reduction in their Chapter 78 contributions.

### ***iii. Compensation of the Bargaining Unit***

The County points out that members of the SOA bargaining unit have a median income of \$64,804.00, and that, when differentials and longevity payments are considered, the average wage is \$89,524.30. County Chief Financial Officer Richard Cahill testified that the average income in the County is \$60,681, which means that

members of the Local 197 bargaining unit on average earn significantly more than the average County resident.

The County stresses that members of the bargaining unit have numerous opportunities to earn overtime, receive generous longevity pay, and generous vacation entitlements.

**iv. Comparisons to Similarly Situated Employees**

In comparing the salaries of members of the bargaining unit to private sector employees, the County notes that there are few private sector occupations that pay as well as positions in the bargaining unit that do not require a college education. The County characterizes Local 197's demands as unreasonable.

In comparing Local 197 to other County bargaining units, the County cites the following contract settlements:

Union	Term	Increase
IBT 125	Years 1-4 5 <sup>th</sup> year	1.25% 1.5%
CWA 1032	3 years	\$1500 no step movement
District 15, IAMAW	1 <sup>st</sup> year Years 2-5	0 2%
CWA 1032 (security)	Four years	1% or \$1000 at max
OPEIU Local 153	2 years 3 <sup>rd</sup> year	2% 1.75%
IBT 11	[UNCLEAR]	Step movement or \$1250 at max
AFSCME 2273	4 years	2.075% no step movement
OPEIU LOCAL 32	1 <sup>ST</sup> year Years 2-4	Frozen One step or 2% at max
CWA 1032 (nutrition)	4 years	1.25% COLA
IBT 11 (blue collar)	5 years	Step movement; \$1500 at max



1199J (Supervisors an RNs and LPNsO	4 years	No step movement 2.25% COLA
AFSCME 2252 (Supervisors)	4 years	No step movement 2.25% COLA

Based on these comparisons, the County contends that the SOA's demands are not reasonable and would deviate from the internal pattern of settlement.

**v. Comparisons to other New Jersey Counties**

The County notes that Passaic County ranked 13<sup>th</sup> out of twenty-one counties with respect to total county income, and when considering average income alone, Passaic County is the fourth lowest. The County also points out that, in 2019, the County had an unemployment rate of 4.3%, and in September 2020 the unemployment rate was 8.6%.

**vi. Comparison to other County Correction Contract Settlements**

The County has reviewed some of the recent settlements concerning corrections officers and argues that the SOA's demands deviate from the statewide pattern. The County points to the following:

County and Union	Term	Wage increase
Middlesex County Superior Corrections Officers	4 years	2%
Camden County Correction Superior Officers	3 years	1% to base
Camden County Rank & File	5 years	2%
Morris County Superior Officers	3 years	\$3,205 added to base no step year 1; 3% no step year 2; and frozen year 3
Union County Superior Officers	3 years	2.75% year 1; 2.5% year 2; .75% year 3

**vii.    *The Cost of Living***

The County suggests that the appropriate metric for measuring changes in the cost of living is the C-CPI-U, because the traditional Consumer Price Index does not reflect changes by consumers in their buying patterns or consumption habits<sup>9</sup>. The County posits that its wage proposal made prior to the hearing in this proceeding offered the Local 197 bargaining unit provides average increases of 1% in each year of the agreement coupled with step movement meant that the wage increase was 3.665% in year one, 3.302% in year two, 2.311% in year three and 1.979% in year four, for a total average package of 2.814%. Therefore, the County's offer would provide the Passaic County Correction Officers and Supervisors salary increases in excess of the increased costs of living of the County throughout the duration of the agreement.

**viii.    *The Interests and Welfare of the Public and Statutory Limitations***

The County notes that I must consider the public's interest in fashioning my award, and that this analysis must balance the interrelationships considering all the statutory criteria. The County stresses that the COVID-19 Pandemic has had a deleterious impact on the County's finances. Although it concedes that it has received funding under the CARES Act, the County posits that I must reject Local 197's hazard pay proposal because CARES Act money is to be used for salaries of those whose job duties include working to mitigate the effects of the COVID-19 Pandemic. The County states that members of Local 197 bargaining unit do not fall into that category

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<sup>9</sup> In its discussion of the cost-of-living factor, the County has not provided the actual change it contends is reflected in the C-CPI-U. (County brief at 36).

In support of its economic position, the County urges me to note that unemployment is now 8.6% in Passaic County. The County also points out that, at the time of the hearing in this proceeding, revenues in this fiscal year were down by approximately eight million dollars, and that awarding the increases sought by Local 197 would impinge on the Sheriff's ability to increase his budget under the Constitutional Officer's Cap.

***ix. Stability of Employment***

The County contends that its bargaining proposal should be adopted because it will not have an impact on the continuity and stability of employment. The County asserts that the members of Local 197 bargaining unit have well-paying jobs with good health insurance and pension benefits, and it is confident that members of Local 197 bargaining unit will not leave their positions.

***x. Local 197's Hazard Pay Proposal***

The County rejects Local 197's hazard pay proposal. The County concedes that it has provided hazard pay to the employees of the Preakness Healthcare Center because of the COVID-19 Pandemic. The County notes that employees of the Preakness Healthcare Center are on the frontlines of combatting the COVID-19 Pandemic. The County reiterates its contention that because the members of Local 197 bargaining unit do not have direct responsibility for mitigating the COVID-19 Pandemic, the hazard pay proposal should be rejected. The County also posits that hazard pay is beyond the scope of an interest arbitration proceeding.

## **VI. DISCUSSION**

### **a. Salaries and Term of the Agreement**

As noted above after the conclusion of this hearing to resolve this proceeding without an Award, the parties properly tried to resolve this issue and continued communicating and copied me on some of their email correspondence. On November 19, 2020, counsel for the County sent an email to counsel for Local 197 recounting some significant modifications in the County's proposals. At some point on or before November 6, 2020, the County accepted Local 197's proposal for a five-year term, and made the following salary proposal:

- 2019: step movement or 1% increase for those at max/off guide;
- 2020: step movement or 1% increase for those at max/off guide;
- 2021: step movement or 1% increase for those at max/off guide;
- 2022: step movement or 1% increase for those at max/off guide; and
- 2023: step movement or 1% increase for those at max/off guide

Subsequently because of further communication with Local 197, the County further modified its salary proposal to:

- 2019: step movement or 2% increase for those at max/off guide;
- 2020: step movement or 2% increase for those at max/off guide;
- 2021: step movement or 1% increase for those at max/off guide;
- 2022: step movement or 1% increase for those at max/off guide; and
- 2023: step movement or 1% increase for those at max/off guide

I was not made privy to any change in the Union's proposal, which as I understand remains:

- Effective and retroactive to January 1, 2019, employees will move one (1) step on the Salary Guide and the top step of the salary guide shall be increased by three and one quarter percent (3.25%). For all employees that are currently "off guide", each employee shall receive a three and one quarter percent (3.25%) cost of living increase in his/her salaries.

- Effective and retroactive to January 1, 2020, employees will move one (1) step on the Salary Guide and the top step of the salary guide shall be increased by three and one quarter percent (3.25%). For all employees that are currently “off guide”, each employee shall receive a three and one quarter percent (3.25%) cost of living increase in his/her salaries.
- Effective and retroactive to January 1, 2021, employees will move one (1) step on the Salary Guide and the top step of the salary guide shall be increased by three and one quarter percent (3.25%). For all employees that are currently “off guide”, each employee shall receive a three and one quarter percent (3.25%) cost of living increase in his/her salaries.
- Effective and retroactive to January 1, 2022, employees will move one (1) step on the Salary Guide and the top step of the salary guide shall be increased by three and one quarter percent (3.25%). For all employees that are currently “off guide”, each employee shall receive a three and one quarter percent (3.25%) cost of living increase in his/her salaries.
- Effective and retroactive to January 1, 2023, employees will move one (1) step on the Salary Guide and the top step of the salary guide shall be increased by three and one quarter percent (3.25%). For all employees that are currently “off guide”, each employee shall receive a three and one quarter percent (3.25%) cost of living increase in his/her salaries.

Local 197 points to the history of collective bargaining in the County and notes that its contracts have always been closely tied to the wage increases of the other collective bargaining units: Local 197A, Local 286A and Local 286. Local 197 also asks me to recognize that because of the 2% Hard Cap coupled with the required health insurance payments mandated by Chapter 78, the members of the bargaining unit have seen their net wages reduced. In addition, Local 197 asks me to take note that the elimination of the Traditional Healthcare Plan will generate significant savings for the County.

On the other hand, the County asks me to take arbitral notice of the fact that since the Local 286A agreement was reached in January 2020, the County’s economy has been harmed by the COVID-19 Pandemic, resulting in a shortfall in revenues, and an increase in county-wide unemployment.

Among the statutory criteria that I am obligated to examine, is the question of comparability. *N.J.S.A. 34:13-16(g)(2)* provides:

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

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

As Arbitrator Mastriani stated:

the first step is to determine whether there is a presence of internal settlements that either follow strict terms or terms that are so reasonably consistent with one another that an award must fall within that reasonable consistency. If a "pattern" is not found, the arbitrator is nevertheless required to consider evidence of internal prior settlements under the criterion of internal comparability. [*N.J.S.A. 34:13A-16(g)(2)*]. If a pattern is found, the arbitrator must either find that there should be adherence or explain why a deviation from the pattern is justified.

I/M/O Township of West Windsor and P.B.A. Local Number 271, Docket No.: IA-2019-014 (2019).

Unlike the 197A bargaining unit, Local 197 is not directly comparable to the Local 286A bargaining unit. This is because both Local 197A and Local 286A represent superior officers, who work in smaller units, and whose contracts provide for only limited step movement. So, while I will award<sup>10</sup> the identical wage increases to Local 197A that the County voluntarily agreed to with Local 286A, there are too many differences between Local 197 and Local 286A which make comparison difficult. Local 197 recognizes the differences and has adjusted its proposal accordingly.

I conclude that comparisons to private sector employees in Passaic County are not relevant to this proceeding since the members of the Local 197 bargaining unit have more difficult and dangerous jobs than do the majority of private sector employees and there is no direct comparison. I also accept, Local 197's argument that there is only limited utility in comparing the members of the Local 197 bargaining unit with Passaic County civilian employees. As Local 197 noted the civilian employee bargaining units were not governed by the 2% Hard Cap, and the circumstances governing the negotiation of the various CNAs are difficult to parse. Each bargaining unit makes its own tradeoffs. As will be discussed below, while I will not be awarding Local 197's Hazard Pay proposal, I do recognize that the members of the Local 197 bargaining unit are facing additional stresses because of the COVID-19 Pandemic. I would also note that, members of the Local 197 bargaining unit, in comparison to other rank and file correction officers working in county

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<sup>10</sup> As noted above there is a companion proceeding bearing index #: IA-2021-002. The Award in that proceeding is intended to be issued simultaneously with this Award.

jails in New Jersey, rank sixth from the top when it comes to the top salary step, and that there are only four counties where the top step is less than Passaic County.

I also take notice of the fact that both the County and Local 197 have proposed eliminating the Traditional Healthcare Plan which will engender significant savings for both the County and the members of Local 197 bargaining unit. However, while the savings that will be experienced by the members of the Local 197 bargaining unit are quantifiable because their Chapter 78 contributions will be reduced, the County's savings because it is self-insured, are more speculative.

In addition, I am compelled to consider the revenue shortfalls projected by the County. Dr. Caprio's testimony is convincing that the County is in relatively good financial shape and can raise funds under the tax levy cap, but there is no doubt that in the short-term revenue collections will be reduced, and the County can experience a shortfall in collections.

In balancing the various issues, I conclude that the County's final offer with significant modifications is more reasonable. The County's final proposal agreed to a five-year term with either step movement or 1 or 2% wage increases for those at the top step or off guide. Whereas the Local 197's final proposal sought a five-year term with step movement and a 3.25% increase for each year of the contract. I conclude that step movement is important to the continuity and stability of employment. I also conclude that those at the top step and those who are off guide are entitled to a raise. Accordingly, I award the following:

- Effective and retroactive to January 1, 2019 or July 1, 2019<sup>11</sup>, employees will move one (1) step on the Salary Guide and the top step of the salary guide shall be

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<sup>11</sup> Under the terms of the CNA, step movement occurs twice a year depending on the anniversary date of the employee.



increased by one percent (1%). For all employees that are currently “off guide”, each employee shall receive a one percent (1%) cost of living increase in his/her salaries.

- Effective and retroactive to January 1, 2020 or July 1, 2020, employees will move one (1) step on the Salary Guide and the top step of the salary guide shall be increased by one percent (1%). For all employees that are currently “off guide”, each employee shall receive a one percent (1%) cost of living increase in his/her salaries.
- Effective and retroactive to January 1, 2021 or July 1, 2021, employees will move one (1) step on the Salary Guide and the top step of the salary guide shall be increased by one percent (1%). For all employees that are currently “off guide”, each employee shall receive a one percent (1%) cost of living increase in his/her salaries.
- Effective and retroactive to January 1, 2022 or July 1, 2022, employees will move one (1) step on the Salary Guide and the top step of the salary guide shall be increased by one percent (1%). For all employees that are currently “off guide”, each employee shall receive a one percent (1%) cost of living increase in his/her salaries.
- Effective and retroactive to January 1, 2023 or July 1, 2023, employees will move one (1) step on the Salary Guide and the top step of the salary guide shall be increased by one percent (1%). For all employees that are currently “off guide”, each employee shall receive a one percent (1%) cost of living increase in his/her salaries.

Under this Award with step movement in each year of the agreement and the modest increase of 1% for those at the top step and off-guide for each year of the CNA, the base salary of the bargaining unit will increase from \$23,186,793 to \$27,000,483 for an average annual increase of 3.106%.

Although I have discussed some of the salient statutory criteria, I will now summarize the requirements of *N.J.S.A. 34:13-16(g)*. The primary statutory requirement is that the Award comports with the interests and welfare of the public. *N.J.S.A. 34:13-16(g)(1)*. This requirement must be read in conjunction with the remaining subsections of *N.J.S.A. 34:13-16(g)*.

As noted, in making this award, I have considered the financial difficulties that the County is projected to face because of the COVID-19 Pandemic.

I have also discussed the comparative financial impact of this award, and I recognize that members of the Local 197 bargaining unit will no longer have salaries directly comparable to the members of the Local 286A bargaining unit. Nonetheless, the members of the bargaining unit compare favorably with other correction officers employed in other Counties in the State of New Jersey.

In addition, the members of the Local 197 bargaining unit are receiving significantly higher wage increases than Passaic County's civilian employees covered by collective negotiations agreements.

Regarding the lawful authority, since I am largely adopting the County's proposal, there does not seem to be any lawful impediment to implementing this proposal. This Award is based on the County's final proposal, and I would note that the County has voluntarily agreed to a more generous package for the members of the Local 286A bargaining unit. I am also cognizant that Local 197 has vigorously argued that the sunset of the 2% Hard Cap and the effects of Chapter 78 have freed arbitrators from the restrictions previously placed on their awards. However, the elimination of the Hard Cap and the effects of Chapter 78 do not eliminate the need to apply the statutory criteria, nor does the elimination of the Hard Cap require an interest arbitrator to enhance wage improvements to make up for the smaller wage increases applied during the period when the Hard Cap was in effect or because members of the Local 197 bargaining unit had to make significant contributions for their health insurance.

Regarding the cost-of-living criteria, in 2018-2019, the cost-of-living in Northern New Jersey, increased 1.7%, and for the twelve months ending November 2020, the cost-of-living increased 1.4% - a difference that can be attributed to the COVID-19 Pandemic.

I conclude that this Award will allow the members of the Local 197 bargaining unit to keep pace with cost-of living changes.

The cost of step movement plus the 1% increase for those at the top step and those off-guide for the five years of the agreement will be \$1,677,336.73 or 6.98%.

Finally, I conclude that this Award, while not providing all that Local 197 asked for, will not have a deleterious impact on the stability and continuity of employment. There is no evidence in the record showing that employees in the Local 197 bargaining unit are seeking employment elsewhere or that they are retiring in larger numbers than usual.

#### **b. Other Union Proposals**

##### ***i. The Term of the Agreement***

Both Local 197 and the County requested a five-year term for the period January 1, 2019 to December 31, 2020, and that is awarded.

##### ***ii. Hazardous Duty Pay***

As a result of the COVID-19 Pandemic, Local 197 is seeking hazardous duty pay of \$80.00 per shift for members of Local 197 bargaining unit. Local 197 notes that employees of Preakness Healthcare Facility have received such pay because of the Federal CARES Act funds paid to the County. I recognize that under the best of circumstances, the members of Local 197 bargaining unit engage in difficult and dangerous work, and that as result of the COVID-19 Pandemic, their jobs have gotten immeasurably more difficult. However, the CARES Act funding is not a stable source of income for the County and any further receipt of such funding is dependent on the whims of Congress. I do not have the power to direct the County to allocate these funds in the manner suggested by Local 197. I do not award this proposal.

***iii. Traditional Health Plan***

Both the County and Local 197 have proposed eliminating enrollment in the Traditional Healthcare Plan and requiring members of the Local 197 bargaining unit to exit the Traditional Healthcare Plan as of January 1, 2021. I award this proposal, with the caveat that if the parties are unable to effectuate this proposal by January 1, 2021, it shall take place within thirty days of this Award or as soon thereafter as practicable.

**c. Other County Proposals**

***i. Work Week and Hours of Work***

Presently, some members of the Local 197 bargaining unit work a schedule which is inclusive of weekends and consists of four consecutive days on and two consecutive days off. The County proposes to eliminate the language regarding weekends. The County has not come forward with sufficient evidence justifying such a change in the schedule. I find that, the change in schedule proposed by the County would have a deleterious effect on the domestic arrangements of the members of the SOA bargaining unit. Therefore, I do not award this proposal.

In addition, the members of the SOA bargaining unit work set 8-hour shifts. The County has proposed that it be empowered to stagger these shifts by as much as two hours without notice to the members of the SOA bargaining unit. This would interfere with the domestic arrangements of the members of the SOA bargaining unit and would undermine the provisions setting shift schedules. I do not award this proposal.

***ii. Overtime***

The County presently pays members of the K-9 Unit one hour per day to care for and feed the dogs in their charge. The County seeks to eliminate this provision, and

instead provide the members of the K-9 Unit with five compensatory days. The County has not come forward with sufficient evidence to justify this change, and I do not award this proposal.

**iii. Holiday Compensation**

The members of the SOA are provided with 15 compensatory days in lieu of holidays. The County is seeking to reduce the number of compensatory days to 14 in lieu of holidays. The County has not come forward with sufficient evidence to justify this change, and I do not award this proposal.

**VII. AWARD**

**Pursuant to my discussion set forth above the CNA shall be amended as follows:**

**Duration**

The parties agree that the term of the agreement shall be for a period of five (5) years commencing on January 1, 2019 and expiring on December 31, 2023

**Article 3 – Grievances**

The Employee shall present the grievance in written form to the Employee's immediate Shift Commander within ten (10) days of its occurrence. The Shift Commander shall then attempt to adjust the matter and shall respond ~~verbally~~ in writing to the Employee within ten (10) working days.

**Article 5(B) – Work Week-Hours of Work**

~~For those Employees assigned to the Courthouse, the basic workweek shall consist of Monday through Friday from 8:15 AM to 4:15 PM, inclusive of a one (1) hour lunch period. The Employer shall have the right to limit lunch periods of Court House personal to thirty (30) minutes.~~

**Article 7 – Salaries:**

A. Base annual wages for Employees covered by this Agreement shall be as set forth in **Schedule A** annexed. The salary schedules shall be modified at each step and

rank by the following percentages on each effective date and retroactive to each effective date as applicable.

- Effective and retroactive to January 1, 2019 or July 1, 2019<sup>12</sup>, employees will move one (1) step on the Salary Guide and the top step of the salary guide shall be increased by one percent (1%). For all employees that are currently “off guide”, each employee shall receive a one percent (1%) cost of living increase in his/her salaries.
- Effective and retroactive to January 1, 2020 or July 1, 2020, employees will move one (1) step on the Salary Guide and the top step of the salary guide shall be increased by one percent (1%). For all employees that are currently “off guide”, each employee shall receive a one percent (1%) cost of living increase in his/her salaries.
- Effective and retroactive to January 1, 2021 or July 1, 2021, employees will move one (1) step on the Salary Guide and the top step of the salary guide shall be increased by one percent (1%). For all employees that are currently “off guide”, each employee shall receive a one percent (1%) cost of living increase in his/her salaries.
- Effective and retroactive to January 1, 2022 or July 1, 2022, employees will move one (1) step on the Salary Guide and the top step of the salary guide shall be increased by one percent (1%). For all employees that are currently “off guide”, each employee shall receive a one percent (1%) cost of living increase in his/her salaries.
- Effective and retroactive to January 1, 2023 or July 1, 2023, employees will move one (1) step on the Salary Guide and the top step of the salary guide shall be increased by one percent (1%). For all employees that are currently “off guide”, each employee shall receive a one percent (1%) cost of living increase in his/her salaries.

## **SCHEDULE A**

<b>STEP</b>	<b>2018 BASE YEAR</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>2023</b>
<b>1</b>	<b>\$38,301</b>	<b>\$38,301</b>	<b>\$38,301</b>	<b>\$38,301</b>	<b>\$38,301</b>	<b>\$38,301</b>
<b>2</b>	<b>\$41,397</b>	<b>\$41,397</b>	<b>\$41,397</b>	<b>\$41,397</b>	<b>\$41,397</b>	<b>\$41,397</b>
<b>3</b>	<b>\$47,420</b>	<b>\$47,420</b>	<b>\$47,420</b>	<b>\$47,420</b>	<b>\$47,420</b>	<b>\$47,420</b>
<b>4</b>	<b>\$53,443</b>	<b>\$53,443</b>	<b>\$53,443</b>	<b>\$53,443</b>	<b>\$53,443</b>	<b>\$53,443</b>
<b>5</b>	<b>\$60,807</b>	<b>\$60,807</b>	<b>\$60,807</b>	<b>\$60,807</b>	<b>\$60,807</b>	<b>\$60,807</b>
<b>6</b>	<b>\$67,708</b>	<b>\$67,708</b>	<b>\$67,708</b>	<b>\$67,708</b>	<b>\$67,708</b>	<b>\$67,708</b>
<b>7</b>	<b>\$75,607</b>	<b>\$75,607</b>	<b>\$75,607</b>	<b>\$75,607</b>	<b>\$75,607</b>	<b>\$75,607</b>

<sup>12</sup> Under the terms of the CNA, step movement occurs twice a year depending on the anniversary date of the employee.

8	\$84,735	\$84,735	\$84,735	\$84,735	\$84,735	\$84,735
9	\$92,513	\$92,513	\$92,513	\$92,513	\$92,513	\$92,513
10	\$98,175	\$99,156.75	\$100,148.30	\$101,498.8	\$102,161.3	\$103,182.9

The wage increases for those at the top-step shall be applied as follows:

B. All E.M.T.'s will be paid an additional One Thousand (\$1,000.00) Dollars per year incorporated into their base salary. This additional one thousand (\$1,000.00) Dollars will cease immediately if the Employee fails re-certification. ~~No new E.M.T.s shall be added after January 1, 2004. In addition, EMT compensation shall permanently cease for any employee hired before January 1, 2004 that fails re-certification at any time, regardless of whether such employee becomes re-certified.~~ All costs in obtaining an initial EMT certification will be paid by the employee. However, an employee who seeks to obtain an EMT certification may, with the Sheriff's approval, receive their certification from the Passaic County Community College at the employer's expense.

#### **Article 8 – Increments and Longevity**

During the term of this Agreement, increments to which the Employees are entitled shall be awarded as follows:

- A. All Employees whose anniversary date falls between January 1 and June 30 shall receive the increment to which they would have been entitled on their anniversary date, retroactive to January 1 of the contract year.
- B. All Employees whose anniversary date falls between July 1 and December 31 shall receive the increment to which they would have been entitled on their anniversary date, retroactive to July 1 of the contract year.
- C. An Employee's anniversary date shall be determined based upon the employee's initial date of hire as an officer within their title, as defined by the Civil Service Commission.
- D. Longevity pay shall be determined by length of employment as follows:

2% of base pay at the beginning of seven (7) years;

4% of base pay at the beginning of ten (10) years;

6% of base pay at the beginning of fifteen (15) years;

8% of base pay at the beginning of twenty (20) years;

10% of base pay at the beginning of twenty-five years.

E. ~~\* As of January 1, 1992,~~ Length of employment for all new Employees will be determined by length of service with the County of Passaic.

F. All employees hired subsequent to January 1, 2017 shall be entitled to “senior officer pay” in lieu of longevity pursuant to the following schedule:

- a. Twenty-five hundred (\$2,500) added to the base pay of employees after fifteen (15) years of service;
- b. Thirty-five hundred dollars (\$3,500) added to the base pay of employees after twenty (20) years of service;
- c. Five thousand dollars (\$5,000) added to the base pay of employees after twenty-four (24) years of service;

(Per MOA)

#### **Article 10(D) – Vacation, Sick, Personal, and ~~Death~~ Bereavement Leaves**

The Paragraph shall be revised to read as follows:

##### **D. ~~Death~~ Bereavement Leave**

Employees are entitled to three (3) consecutive calendar days leave of absence for the death of an employee’s immediate relative.

Bereavement Leave shall not extend beyond three (3) consecutive calendar days immediately following the death or funeral of a family member unless approved by the County Administrator. “Immediate Relative” includes spouse, civil union partner, child, parent, stepchild, stepparent, sibling, grandparents, mother-in-law, father-in-law, daughter-in-law, son-in-law, grandchildren, niece, nephew, uncle, aunt, or any person related by blood or marriage residing in an employee’s household. Employees are paid for all working days during the Bereavement Leave. Employees may be asked for proof at the discretion of the Personnel Department or Administration.

An additional day shall be given in the event of the Employee’s spouse or children’s death.

#### **Article 14(A) – Medical Benefits**

##### **A. Medical**

~~2. The level of Employee contribution of 1.5% of base salary shall be as set forth in P.L. 010, ch.2, effective May 22, 2010. This level of Employee contribution shall be inclusive of, rather than in addition to, any statutory obligation towards an~~



~~Employee's requirement to make contributions toward the payment of health insurance.~~

5. ~~Any Employee hired after the ratification of this Agreement shall contribute towards the cost of medical benefits as follows:~~

- ~~i. Two Percent (2%) of Base Salary for single Coverage;~~
- ~~ii. Two and One Half Percent (2.5%) of Base Salary for Husband/wife; One Parent and One (1) Child, Employee/Domestic Partner.~~
- ~~iii. Three Percent (3%) of Base Salary for Family Coverage.~~

6. Co-Pays for doctor's visits shall be ~~Fifteen Dollars (\$15.00)~~. The deductible for health insurance shall be ~~Two Hundred and Fifty Dollars (\$250.00)~~ for the Employee and ~~Five Hundred Dollars (\$500.00)~~ for family members. Out of pocket maximum contributions for in-network providers shall be ~~Two Hundred Dollars (\$200.00)~~ for Employees and ~~Four Hundred Dollars (\$400.00)~~ for family members and for out-of-network providers, ~~Six Hundred Dollars (\$600.00)~~ for Employees and ~~One Thousand Dollars (\$1,000.00)~~ for family members.

**[The Parties agree that the stricken language must be replaced with language that reflects the current copays, deductibles and maximum out of pocket amounts for the EPO, POS and High Deductible Healthcare Plans].**

Add New Paragraph

All Employees shall no longer be permitted to enroll in the County's Traditional Health Care Plan. All Employees still enrolled in the Traditional Healthcare Plan shall exit the Traditional Healthcare Plan no later than thirty (30) days following the issuance of the arbitrator's award or the execution of a Memorandum of Agreement.

## **Article 16 – Ceremonial Activities**

Whenever an sworn law enforcement Officer, as defined by N.J.S.A. 43:15A-97, is killed in the line of duty in the State of New Jersey the County agrees to send a minimum of two (2) ~~six (6)~~ uniformed Officers (~~2 from Courthouse, 2 from Patrol and 2 from Corrections~~) to participate in funeral services for the said deceased law enforcement Officer, so long as the funeral services take place within the State of New Jersey, or, if outside the State of New Jersey, within a fifty (50) mile radius of the Passaic County Jail.

Subject to the availability of same, Employer will permit ~~two (2)~~ one (1) County vehicles to be utilized by the members in the funeral service.

## **Period of Agreement**





This Agreement shall become effective and retroactive to January 1, 2019 and shall remain in full force and effect until December 31, 2023 or until a successor Agreement is negotiated and executed, whichever shall last occur.


### **Other Proposals**

All proposals by the Policemen's Benevolent Association, Local 197 and Passaic County not awarded herein are denied and dismissed. All provisions of the existing Collectively Negotiated Agreements shall be carried forward except for those which have been modified by the terms of this Award and any prior agreements between the parties.

### **X. CERTIFICATION**

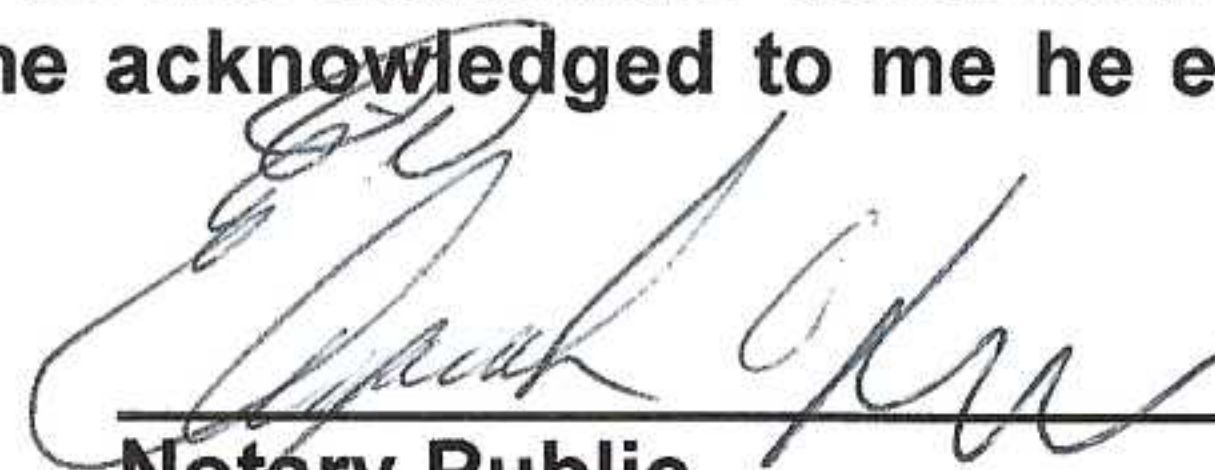
I have given due weight to the statutory criteria set forth in *N.J.S.A. 34:13A-16(g)*, and I conclude that the terms of this Award represent a reasonable determination of the issues.

Dated: December 21, 2020  
Brooklyn, New York

  
\_\_\_\_\_  
Ira Cure

State Of New York }  
County of Kings }

On this 21<sup>st</sup> day of December, 2020 before me personally came and appeared Ira Cure to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me he executed the same.

  
\_\_\_\_\_  
Notary Public