

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

In the Matter of Interest Arbitration Between:

---

**PASSAIC COUNTY AND PASSIC COUNTY  
PROSECUTOR'S OFFICE,  
"PCPO" or Employer"**

- and -

**INTEREST ARBITRATION  
DECISION AND AWARD**

Docket No. IA-2022-008

**PBA LOCAL 265 AND PASSIAC COUNTY  
PROSECUTOR'S SUPERIOR OFFICERS'  
ASSOCIATION,**

**"PBA 265 or Association"**

---

**Before:** Brian W. Kronick, Esq.  
Interest Arbitrator

**Appearances:**

**For the Employer:**

Lester Taylor, Esq. & David Kass, Esq.  
Florio, Perrucci, Stenhardt, Capelli, Tipton & Taylor, LLC

**For PBA 265:**

Lauren Sandy, Esq.  
Law Offices of Lauren Sandy LLC

## **PROCEDURAL HISTORY**

The County of Passaic (the “County”) and Passaic County Prosecutor’s Office (collectively the “PCPO” or “Employer”) and PBA Local 265 and the Passaic County Prosecutor’s Superior Officers’ Association (collectively “PBA 265” or “Association”) are parties to a Collective Negotiations Agreement with an effective term of January 1, 2015 through December 31, 2018 (the “Agreement”). PBA 265 represents the Detectives, Investigators, Senior Investigators in the PCPO and the Prosecutor Superior Officers’ Association represents the Sergeants, Lieutenants, Captains, Deputy Chief and Chief in the PCPO.

The parties met on numerous occasions and engaged in good faith negotiations for a successor collective negotiations agreement that reached an impasse. On February 2, 2022, the Employer filed a Petition to Initiate Compulsory Interest Arbitration. On February 10, 2022, the Employer filed the instant Amended Petition to Initiate Compulsory Interest Arbitration (the “Petition”) with the Public Employment Relations Commission (“PERC”) pursuant to the Police and Fire Interest Arbitration Reform Act, N.J.S.A. 34:13A-16 (the “Act”). On February 14, 2022, PERC randomly appointed me as Interest Arbitrator. On March 22, 2022, a mediation session was held as required by the Act. Since a settlement was not achieved through mediation, Interest Arbitration hearings were held on April 7, 8, and 25, 2022, in-person at the Passaic County Administration Building.

The parties were directed to submit Final Offers by Friday, April 1, 2022, and could amend their Final Offers up to the close of hearing. At the hearing, both parties were represented by competent and professional counsel, and each had an opportunity to present evidence and offer testimony. The Employer submitted presented eight (8) joint exhibits and nine (9) Employer exhibits. The Employer presented the testimony of Joseph Graham (“Graham”), health insurance consultant from the Fairview Insurance Agency; Marc Seemon (“Seemon”), Deputy County Administrator; and Jason Mitchell (“Mitchell”), County Finance Division Manager. PBA 265 submitted sixteen (16) exhibits and offered testimony from Domenick Fanuele (“Fanuele”), health benefits expert of Fanuele Financial Group; Dr. Raphael Caprio (“Dr. Caprio”) financial expert from Rutgers University; and PCPO Sergeant David Ware (“Ware”). The testimony from all of the witnesses was credible and the financial exhibits were detailed in outlining the Employer’s budget, finances, and each parties Final Offers. The parties were given until May 6, 2022, to submit post-hearing briefs that were mutually exchanged by me.

This proceeding is governed by the Police and Fire Interest Arbitration Reform Act as set forth in N.J.S.A. 34:13A-16 through N.J.S.A. 34:13A-16.9 as amended on June 24, 2014, by P.L. 2014, c.11 (the “Act”). The Act requires the use of conventional arbitration. The strict limits on the amount of base salary increases have sunset and this agreement is not subject to those limitations. Still, any Interest Arbitration Award must be in compliance with the Act, the appropriations and tax levy limitations in P.L. 1976, c. 68 (C. 40A:4-45, *et. seq.*) and Section 10 of P.L. 2007, c. 62 (C. 40A:4-45:45) and, most importantly, must be in the interest and welfare of the public. This Interest Arbitration Award is issued in accordance with the 16g interest arbitration criteria to the extent deemed relevant. *See* N.J.S.A. 34:13A-16.7(b) and N.J.S.A. 34:13A-16(g).

## THE FINAL OFFERS

In accordance with the Act, each party submitted a Final Offer (the “Final Offer”). These Final Offers are set forth as follows:

### EMPLOYER’S FINAL OFFER

The Employer presented the following Final Offer with deletions noted by strikethroughs and changes in **bold**:

#### Article I – Management Rights

- e. Determine the methods, means and personnel by which such operations are to be conducted, **including but not limited to the institution of emergent shift changes.**

#### Article II – Recognition

Delete current language

**NEW:**

**The Employer recognizes the PASSAIC COUNTY PROSECUTOR’S SUPERIOR OFFICERS ASSOCIATION as the sole and exclusive authorized bargaining representative for all superior officers, employed by the Passaic County Prosecutor, but excluding the chief of investigators, deputy chief of investigators, all other police officers and employees including craft workers, professionals, confidential employees, managerial executives and supervisors within the meaning of the Act.**

#### Article IV – Bereavement Leave

**Align list of family members for whom bereavement leave is available to current County policy.**

#### Article VII – Vacations

- G. An employee may request of the Prosecutor or his designee, the right to carry over into the next calendar year unused vacation days. Approval of such requests shall be in writing and shall not be unreasonably denied. The carry over may not exceed one calendar year value. **Upon retirement, an employee is entitled to receive no more than one (1) years’ worth of unused vacation time, regardless of how many days they have carried over.**

**NEW:**

- H. Probation shall consist of a ninety (90) calendar day period prior to beginning the employee's first year of full-time employment.

**Article VIII – Health and Insurance Benefits**

All Employees shall no longer be allowed to enroll in the County's Traditional Health Care Plan. All employees shall exit the Traditional Health Care Plan, effective thirty (30) days from the ratification date of this agreement.

Delete Article VIII(B) and replace with:

All Employees shall contribute to the cost of their medical benefits in accordance with Chapter 78 and Chapter 44 of the laws of New Jersey, whichever is applicable.

**Article XVI – Salaries**

- A. Effective and retroactive to July 1, ~~2015~~ **2019** all employees shall receive a ~~4.5%~~ **zero percent (0%)** Cost of Living Raise with movement on the salary guide. ~~Those employees who are at maximum will receive \$1,500 on their base salary.~~ The salary guide for all law enforcement titles in the Prosecutor's Office is shown in Schedule B.
- B. Effective July 1, ~~2016~~ **2020**, all employees shall receive a **zero percent (0%)** Cost of Living Raise with movement on the salary guide. ~~Those employees who are at maximum will receive \$1,800 on their base salary.~~
- C. Effective July 1, ~~2017~~ **2021**, all employees shall receive a **zero percent (0%)** Cost of Living Raise with movement on the salary guide. ~~Those employees who are at maximum will receive \$2,400 on their base salary.~~
- D. Effective July 1, ~~2018~~ **2022**, all employees shall receive a **zero percent (0%)** Cost of Living Raise with movement on the salary guide. ~~Those employees who are at maximum will receive \$2,400 on their base salary.~~
- E. Effective July 1, 2023, all employees shall receive a zero percent (0%) Cost of Living Raise with movement on the salary guide.

**Re-number remaining paragraphs.**

## Article XXV – Dues Deduction and Agency Shop

Delete entire Article, per Janus decision.

## Article XXVII – Usage of Automobiles

The Employer agrees that it is the sole and exclusive obligation of the Employer to provide and pay for all vehicles it deems necessary for the effective performance of the duties required by the Employer, with no cost of any kind whatsoever to the employee.

~~At no time shall an employee be required to use a personal vehicle for office business.~~  
**Should an employee be required to utilize a personal vehicle to attend an officer-approved training, their mileage shall be reimbursed at the rate established by the New Jersey Office of Management and Budget.**

## Article XXVI – Overtime

- B. The Association recognizes the absolute right of the Employer to alter work schedules **and institute shift changes** of employees on an emergent basis as the needs of the office efficiency and public safety require. In no event, however, may a work schedule be altered solely for the purpose of avoiding overtime. If an employee is requested to perform an assignment outside of normal duty hours, the employee shall work a regular tour of duty, and shall report back on duty at the requested time.

## Article XXXIII – Off Duty Work [renamed]

NEW:

Passaic PCPO Prosecutor's Office vehicles are not authorized for use during off duty work, unless authorized by the prosecutor. Said authorization or denial of request(s) shall be final and binding and shall not be subject to the grievance procedure.

- All references to "part time PBA work" in this article shall be replaced with "off duty work."

## Article XXXV – Term and Renewal

- A. This Agreement shall remain in effect until December 31, 2023, or until a successor agreement is reached. In the event such a successor agreement is not reached by December 31, 2023, both parties expressly intend and agree to continue to remain bound by the terms of this agreement in all respects during any interim period until a successor agreement is reached.

## **PBA 265 FINAL OFFER**

1. The Association proposes a 6-year contract, from 2019 through 2024.
2.
  - A. Effective January 1, 2019, all steps shall be renumbered Step 1 through Step 16/17.
  - B. Effective January 1, 2019, the discretionary steps shall be incorporated into all salary guides as non-discretionary going forward.
  - C. The Association proposes the following across the board wage increases at all positions and ranks on the dates set forth below:
    1. Effective January 1, 2019 – 1.75%
    2. Effective January 1, 2020 – 1.75%
    3. Effective January 1, 2021 – 2.75%
    4. Effective January 1, 2022 – 2.75%
    5. Effective January 1, 2023 – 0%
    6. Effective January 1, 2024 – 2.75%
  - D. A previously off-guide member shall go back on the guide only if the step with the across-the-board increase is greater than the across-the-board increase.
  - E. Effective January 1, 2020, Step 1 [formerly Step A] shall be removed from the ranks of Investigator and Senior Investigator going forward.
  - F. Effective January 1, 2020, Steps 1 and 2 [formerly Steps A and B] shall be removed from the ranks of Sergeant, Lieutenant, and Captain going forward.
  - G. Effective January 1, 2023, the Length of Workweek shall be increased from 38.75 hours a week to 40-hour work week with salary adjustments to account for the additional hours starting 2023.
  - H. All step movement and promotional progressions shall continue.
  - I. Effective January 1, 2022, all supervisors will receive an additional stipend of \$5,000.00 per year for on call compensation.
  - J. Remove all references to any cap on a member's base salary.
3. All PBA members not on Schedule A will pay a percentage of their pensionable salary as the contribution towards retiree health benefits based on the plan they are enrolled in as set forth below:
  - A. If enrolled in Traditional health benefits plan in retirement, employees not on Schedule A shall contribute:
    1. Single: 8% of pensionable salary
    2. Parent/Child: 9% of pensionable salary
    3. Husband/Wife: 14% of pensionable salary
    4. Family: 15% of pensionable salary

B. If enrolled in the EPO health benefits plan in retirement, employees not on Schedule A shall contribute:

1. Single: 4.5% of pensionable salary
2. Parent/Child: 5% of pensionable salary
3. Husband/Wife: 7.5% of pensionable salary
4. Family: 8.5% of pensionable salary

4. Convert Vacation days to hours.
5. Remove Chief and Deputy Chief from Contract in the Recognition Clause.
6. PBA will use the PCPO Automobiles for trainings and all office related work.
7. Retiree health benefits will be provided for PBA members with 15 years of service in PCPO.

## **BACKGROUND**

### **Background and Demographics**

Passaic County is a county in northern New Jersey that is part of the New York metropolitan area. As of the 2020 United States Census, the population of Passaic County was 524,118, an increase of 22,892 (4.6%) from the 501,226 counted at the 2010 U.S. Census, and an increase of 12,177 (+2.5%) from the 489,049 counted in the 2000 Census. The County is comprised of sixteen (16) municipalities, with the most populous being Paterson, with 159,732 residents at the 2020 Census, more than 29% of the county's population, while West Milford covered 80.32 square miles, the largest total area of any municipality and more than 40% of the county's area.

As of the Census of 2020, the County had 168,059 households, and 120,593 families. The population density was 2,817.8 inhabitants per square mile. There were 185,367 housing units at an average density of 996.59 per square mile. The County's racial makeup was 38.8% White, 9.9% African American, 0.13% Native American, 5.76% Asian, and 1.95% from two or more races. Hispanic or Latino of any race were 42.74% of the population.

Of the 168,059 households, 30.4% had children under the age of 18 living with them, 48.6% were married couples living together, 30.0% had a female householder with no husband present, 15.2% had a male householder with no wife present and 28.2% were non-families. 47.5% of all households were made up of individuals, and 11.4% had someone living alone who was 65 years of age or older. The average household size was 2.93 and the average family size was 3.49.

About 23.7% of the County's population was under age 18, 9.6% was from age 18 to 24, 39.6% was from age 25 to 44, and 15.0% was age 45 or older. The median age was 37.7 years. The gender makeup of the County was 48.8% male and 51.2% female. For every 100 females, there were 95.3 males.

The County's median household income was \$77,040.00, and the median family income was \$81,873.00. About 13.4% of the population were below the poverty line, including 24.7% of those under age 18 and 11.6% of those age 65 or over.

The County operates under a commission form of government. The Board of County Commissioners discharge both executive and legislative responsibilities. The County operates through standing committees of the Board of County Commissioners. The Commissioners select a County Administrator who, in the role of chief administrative officer, supervises the day-to-day operation of county government and its departments.

The Passaic County Prosecutor was nominated in 2009 and renominated in 2015. The mission of the PCPO is to investigate and prosecute all crimes that take place within its jurisdiction while promoting the security of its residents and respecting the rights afforded to all crime victims. The PCPO's commitment is to maintain the highest law enforcement standards and utilize available resources to:

- Fulfill our statutory requirements.
- Hold offenders accountable for their crimes.
- Maintain and improve the quality of case presentation in Passaic County's Criminal Courts.
- Foster partnerships with community leaders and law enforcement within Passaic County.
- Advance outreach events for the betterment of the community.
- Collaborate with all judicial partners to improve the efficiency of case management.
- Seek and sustain the administration of justice.



The PCPO has four separate divisions between its locations at 401 Grand Street, Paterson and 30 King Road, Totowa. The Divisions are the Trial Unit, Major Crimes Unit, Narcotics Task Force and White-Collar Crimes Division. Each Division has legal and investigative supervisory staff with chain of command in charge of operations within the respective divisions.

### **PBA 265 and Prosecutor's Superior Officers' Association**

The members of PBA 265 are the lead law enforcement agency in Passaic County. PBA 265 represents the law enforcement officers that work directly with the County Prosecutors to investigate and convict the most serious criminals. PBA 265 also works alongside all other local municipal and county law enforcement as the lead detectives for investigation of indictable offenses. PBA 265 is comprised of several specialized units which operate throughout the County, including but not limited to, the trial unit, narcotics unit, homicide unit, arson, child abuse, fatal accident, and the extradition unit.

PBA 265 represents the Detectives, Investigators, and Senior Investigators and the Prosecutor's Superior Officers' Association represents the Sergeants, Lieutenants, Captains, Deputy Chief and Chief in the PCPO. PBA 265 members work 38.75 hours per week from 8:45 a.m. to 4:30 p.m. Based on the Employer scattergram, as of January 1, 2019, PBA 265 consisted of seventy-six (76) members. Forty-six (46) Detectives, thirteen (13) Detectives 1<sup>st</sup> grade, eight (8) Sergeants, five (5) Lieutenants, three (3) Captains, and a Chief. The salary guide for the Detectives/Investigators is comprised of fifteen (15) steps plus a discretionary step. The salary guide for the Superior Officers' is comprised of sixteen (16) steps plus a discretionary step. Based on the Employer scattergram, the total salary for the unit as of January 1, 2019 was \$7,635,727.50. PBA 265 scattergram shows the total salary of the unit as of December 31, 2018 as \$7,963,393.00. PBA 265 receives senior officer pay based on years of service (\$2,500.00-15 years; \$3,500.00-20 years; \$5,000.00-24 years). PBA 265 also receives educational stipends based on degree level: \$1,500.00 for an Associate's Degree (16 members); \$2,000.00 for a Bachelors (2 members); \$2,500.00 for a Masters (4 members). Only two members of the unit continue to receive longevity.

The Employer and PBA 265 and the Prosecutor Superior Officers' Association are parties to a Collective Negotiations Agreement with an effective term of January 1, 2015 through December 31, 2018 (the "Agreement"). The primary issues in dispute are salaries and health benefits. The Employer seeks the elimination of the Traditional Plan, which PBA 265 rejects. The parties also differ significantly on their salary proposals.

## **STATUTORY CRITERIA AND PARTIES' POSITIONS**

### **A. The Arbitrator's Authority**

Public employers and Public Safety Associations are statutorily mandated to resolve their labor disputes pursuant to the Police and Fire Interest Arbitration Reform Act, N.J.S.A. 34:13A-16 (the "Act"). By enacting the Act, the Legislature recognized the unique and essential duties police officers and firefighters perform and the life-threatening dangers they face. The purpose of the interest arbitration procedure is to promote and protect the well-being of New Jersey citizens, the efficient operation of police and fire departments as well as the high morale of employees that perform this important work.

### **B. Statutory Criteria**

In rendering an award, the Arbitrator must consider the following nine (9) factors:

1. The interest and welfare of the public.
2. Comparison of wages, salaries, hours and conditions of employment of the employees involved in the arbitration proceedings with wages, hours and conditions of employment of other employees performing same or similar services and with other employees generally:
  - a. In private employment in general;
  - b. In public employment in general;
  - c. In public employment in the same or similar comparable jurisdictions as determined in accordance with section 5 of P.L. 1995, c. 425 (C. 34:13A-16.2)
3. The overall compensation presently received by the employees inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received;
4. The stipulation of the parties;
5. The lawful authority of the employer;
6. The financial impact on the governing unit, its residents and taxpayers;
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 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).

The Arbitrator must render an award based on the evidence on the record considering the statutory criteria set forth above. The opinion and award must clearly address the criteria. It must include a discussion of the evidence as it relates to the statutory criteria, the weight accorded to each criterion and the reason for the decision. The opinion and award must also explain whether any of the criteria were deemed to be irrelevant and why.

This Award will be issued under concept of “conventional authority” pursuant to N.J.S.A. 34:13A-16(d); and N.J.A.C. 19:16-5.7(e). Under conventional authority, an arbitrator’s award is not limited by either party’s final offer. Rather, the arbitrator has the power to select from either party’s last offer or, alternatively, the arbitrator may use his or her judgment and grant an award that he or she feels is more reasonable than any offers made by the parties. *See, e.g., I/M/O Hudson County Prosecutor and PBA Local 232*, IA-96-178 (1997) (Arbitrator did not err by establishing third year salary for County prosecutor investigators which was lower than the employer’s offer).

N.J.S.A. 34:13A-16(g)(8) requires consideration of those factors ordinarily or traditionally considered in the determination of wages, benefits, and employment conditions. One such consideration is that the party proposing a change in an employment condition bears the burden of justifying the proposed change. The burden to justify a change or proposal must be met by sufficient evidentiary support. No proposed issue can be deemed presumptively valid in the absence of sufficient justification that is supported by credible evidence. Indeed, labor stability is partly conditioned upon the parties’ consistency in the application and implementation of terms and conditions of employment as set forth in the parties’ agreement. For this reason, changes in terms and condition of employment should not be awarded lightly. Moreover, any decision to award or deny any individual issue in dispute, especially those having economic impact, will include consideration as to the reasonableness of that individual issue in relation to the terms of the entire award. A decision on an individual issue will include consideration of the reasonableness of awarding that issue in relation to the overall terms of the award. Indeed, while there may be merit to awarding or denying a single issue if it were to stand alone; a different conclusion is reached when considered within the context of the entire award. I am also required by statute to determine the total net annual economic cost of the terms required by the award.

### **The Interest and Welfare of the Public, N.J.S.A. 34:13A-16(g)(1)**

The Interest and Welfare of the Public criterion is the most significant of all statutory factors to be considered and an Arbitrator must give due weight to the interest and welfare of the public when issuing an award. It is a criterion that includes the financial impact of the awarded increases and the need to maintain employee morale for the Investigators, Detectives and Superior Officers employed in the PCPO. The criterion recognizes the interest of the public in knowing that its Prosecutor’s Office is staffed by competent, dedicated personnel with good working morale, while avoiding higher taxes and/or diminished services in order to fund the award.

As Arbitrator Mastriani recognized in I/M/O Point Pleasant and PBA Local 106, IA-2012-001 (2011): “The interest and welfare of the public is entitled to the most weight because it is a criterion that embraces many other factors and recognizes their interrelationships, including the financial impact of an award on the governing body and taxpayers.” *See also I/M/O Seaside Park and PBA Local 182*, IA-2012-022 (2012) (“The interest and welfare of the public is not only a factor to be considered, it is the factor to

which the most weight must be given.”). “Arbitrators have reviewed the public interest as encompassing the need for both fiscal responsibility and the compensation package required to maintain an effective public safety department with high morale.” See I/M/O Sayreville and PBA Local 98, IA 2006-047 (2008).

The New Jersey Supreme Court emphasized that “the public is a silent party” to the interest arbitration process, and that “an award runs the risk of being found deficient if it does not expressly consider” the public interest. PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71 (1994), at 82-83. “Indeed, the Arbitration Act expressly requires the arbitrator to consider the public interest and public welfare.” *Id.* “An award that ignores the interests and welfare of the public or subordinates these interests to other considerations would tend to undermine the intent and purpose of the Act itself.” Township of West Windsor, IA-2019-014 (2019). In the Appellate Division’s decision in Hillsdale, the Court found that the public interest factor “focuses in part on the priority to be given to the wages and monetary benefits of public employees within a municipality’s budget and plans.” Hillsdale, 263 N.J. Super. at 188. “It is not enough to simply assert that the public entity involved should merely raise taxes to cover the costs of a public interest arbitration award. That would also conflict with other enumerated factors and render them hollow.” *Id.* Arbitrators historically understood this criterion as requiring that public safety employees be well compensated. However, the Appellate Division directed that this criterion be interpreted differently, holding that it “focuses in part on the priority to be given to wages and monetary benefits of public employees within a public employer’s budget and plans.” Hillsdale, 263 N.J. Super. at 188. In other words, an interest arbitrator is required to balance the expense borne by the taxpaying public with the need to ensure that the necessary services are provided.

The Employer submits that the public’s interest is always relevant and significant in deciding the outcome of an interest arbitration proceeding. They submit the public interest criterion must include consideration of the financial impact of the cost of an award on the governing unit, its residents, and its taxpayers. They submit arbitrators must consider, among other things, “the priority to be given to the wages and monetary benefits of public employees within the municipality’s budget and plans.” Local 207 v. Borough of Hillsdale, 263 N.J. Super. 163, 188 (App. Div. 1993), *aff’d in part, rev’d in part*, 137 N.J. 71 (1994). The Employer notes that the governing unit’s ability to pay the award is not a proper consideration. *Id.* at 188, n.16 (reasoning “[i]t is not enough to simply assert that the public entity involved should merely raise taxes to cover the costs of a public interest arbitration award”), which they submit contradicts the PBA 265’s position that its proposal could be paid by raising taxes for Passaic County residents. The Employer submits that Dr. Caprio made identical arguments in the prior interest arbitrations and, as Arbitrator Winters determined in the PBA Local 286 Interest Arbitration Decision and Award, “the rate of taxation in Passaic is one of the highest in the State of New Jersey.” The Employer argues that despite PBA 265’s position that the County is sufficiently well-run to maintain a surplus, the County’s position remains that PBA 265 is not entitled to any surplus funds and its attempt to hold the County hostage should not be rewarded.

The Employer argues this criterion includes consideration of other criteria in recognition of the interrelationships among all of the statutory criteria. They note that three of the statutory criteria, N.J.S.A. 34:12A-16(g)(1), (5), and (9) refer to the lawful authority of the employer. Among the factors that require the greatest consideration with respect to the interest and welfare of the public are the financial impact of an award on the governing body and taxpayers, statutory budgetary limitations, and statutory limitations imposed on the governing unit’s ability to tax.

The Employer maintains that it is well established that arbitrators must recognize and adhere to the statutory limits placed on public employers by the New Jersey Legislature. As the Supreme Court observed, “three of the statutory factors, (1) the ‘interests and welfare of the public’; (5) the ‘lawful authority of the employer’; and (6) the ‘financial impact [of an award] on the governing unit, its residents, . . . and taxpayers[,]’ [citation omitted] ‘were so phrased as to insure that budgetary constraints were ‘give[en] due weight’ prior to the rendition of an award.” International Firefighters, Local 788, *supra*, 429 N.J. Super. at 327 (quoting N.J. State Policemen’s Benevolent Ass’n v. Irvington, 80 N.J. 271, 291 (1979)). The terms

of N.J.S.A. 34:13a-16(g)(6) “pertaining to ‘[t]he financial impact on the governing unit, its residents and taxpayers’ . . . [does] not equate with the [governing unit’s] ability to pay.” PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71, 85 (1994). “Given the existence of financial constraints and budget caps, . . . an award to police or fire departments necessarily affects other [county] employees and the entire [county] budget.” *Id.* at 86 (citation omitted).

The Employer notes that the County, State, Nation, and world are still in the midst of the COVID-19 pandemic. The Employer acknowledges the County received approximately \$87 million in the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) funding to supplement the inevitable negative impact that COVID-19 would have upon the County. This funding was made available until December 31, 2020, at which point any excess had to be returned. The purpose for such expenditures must first be that it is a necessary expenditure incurred due to the public health emergency with respect to COVID-19. Further, the Guidance says that funding can be used to meet payroll expenses for public safety, public health, health care, human services, and similar employees whose services are substantially dedicated to mitigating or responding to the COVID-19 public health emergency. The Employer submits that while some County employees may have taken on different roles and responsibilities during the ongoing pandemic, customarily when performing their duties, the members of PBA 265 do not perform such services which are substantially dedicated to mitigating or responding to the COVID-19 public health emergency. They note PBA 265 has not made such an argument, and even if PBA 265 proffered an argument that its members are entitled to any compensation from the CARES Act, there is simply no justification for same as PBA 265 employees were not assigned to such responsibilities. They submit that there is no remaining CARES Act funding which could be paid to the members, and no argument has been made that PBA 265 has any claim to either ARPA or ARRA funds. Therefore, if the pay sought by PBA 265 was awarded under the guise of additional funds provided by the CARES Act, it would be put into place for an indefinite period of time, or until it could be renegotiated. It is the Employer’s position that a one-time influx of federal aid does not justify wage increases to be incurred by the County over the next several years.

PBA 265 argues the interest and welfare of the public criterion has been deemed to consist of two competing factors: (1) the employer’s ability to increase appropriations for a police or fire salary award without deleteriously affecting the amounts budgeted for other programs and without exceeding the CAP on municipal/county expenditures; and (2) the need to provide a salary and benefit package sufficient to ensure the good working morale of public safety employees. PBA 265 maintains this criterion recognizes the public’s interest in competent and dedicated personnel staffing the Prosecutor’s Office and the public’s interest in preventing the diminution of service. PBA 265 also argues this criterion “focuses in part on the priority to be given to the wages and monetary benefits of public employees within a municipality’s budget and plans.” Hillsdale PBA Local 207 v. Borough of Hillsdale, 263 N.J. Super. 163, 188 (Super. Ct. App. Div. 1993). The public interest mandates that the PBA receive competitive salaries and benefits in order to prevent the deterioration of public safety. *Id.*

PBA 265 notes the Employer is not contesting its ability to pay. PBA 265 submits that Dr. Caprio concluded that the Employer would not be required to increase appropriations to pay for the PBA 265’s salary proposal. PBA 265 also notes that in the previous interest arbitration proceedings between the County and PBA Local 197 and PBA Local 286, the County “projected” revenue shortfalls in light of the COVID-19 pandemic. Those interest arbitration proceedings took place in September/October of 2020 for PBA Local 197 and November 2020 for PBA Local 286. PBA 265 notes that in those proceedings, the County alleged uncertainty in revenue due to the pandemic. PBA 265 argues that this uncertainty played a significant role in those arbitrators’ determination. however, that period of uncertainty has since ended, and the fiscal health of the County continues to prosper.

PBA 265 submits that in addition to its typical revenue stream, Dr. Caprio testified that the County has also received funds from the federal government through the CARES Act and the American Recovery

Plan (“ARPA”). Dr. Caprio testified that the County is receiving \$49 million per year for two years, or \$97,473,818.00 from ARP to offset issues in 2020 and 2021. Dr. Caprio testified that the ARPA money awarded is still available and can be used in 2021 and 2022. ARPA funds and CARES Act funds can be used for one-time payments, for example, retroactive salary payments. PBA 265 submits the testimony of Dr. Caprio was clear that the County is in a better financial position post-pandemic than they were prior to the pandemic. The County currently has over \$88 million in its fund balance, which is projected to reach \$92.5 million at the end of this fiscal year. Therefore, there are no CAP or budgetary concerns.

PBA 265 argues there are several components that an arbitrator can consider in order to provide a salary and benefit package sufficient to ensure the good working morale of public safety employees. PBA 265 submits that most notable to the within matter is the need to attract and retain qualified detectives, which includes an analysis of the level of attrition to the bargaining unit. PBA 265 submits Ware testified that he previously worked for Leonia Police Department before transferring to the PCPO. He testified that due to the fact that the salary guide has remained unchanged for over eight (8) years, many officers have left to return to local police departments or transferred to higher paying County Prosecutor’s offices. PBA 265 submits the PCPO is losing invaluable experienced officers to uniformed positions or higher paying County Prosecutor’s offices.

Ware testified that over the last ten years at least ten (10) officers have left short of retirement for other employment. Of these ten (10) people, at least nine (9) have left to return to local law enforcement agencies to work in uniformed positions and pitman or road schedules. PBA 265 submits this level of attrition is high considering the department’s size of approximately seventy-five detectives. They submit that the Prosecutor’s Office was a sought-after position attracting experienced officers from local departments, and due to the Employer’s failure to provide a competitive salary and benefits package there has been a consistent reverse migration. Ware also testified that the enticement into public service was a decent salary, good health benefits, and a pension - all of which have been eviscerated over the last decade. PBA 265 asserts that should this Arbitrator fail to award the PBA’s proposal, the very little benefits PBA 265 currently enjoys will be removed and even further reverse migration can be expected to occur.

PBA 265 submits that when considering the excessive size of the County’s fund balance, the Employer’s Final Offer is both demoralizing and insulting. PBA 265 submits its proposal is fair and affordable and would serve the public’s interest and welfare and should therefore be awarded.

#### **Comparability N.J.S.A. 34:13A-16(g)(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 C.34:13A-16.; provided, however, that each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.

The comparability criterion warrants great weight in deciding the terms and conditions of employment that form the most reasonable resolution of the issues in dispute in an interest arbitration. As such, this criterion requires a thorough, comparative examination of the compensation package previously received by members of this negotiations unit with that received by other employees in comparable public and private positions of employment. Again, in assessing this criterion, an arbitrator must consider the duties required of unit members, training, job-related hazards, and overall working conditions.

Consideration is usually given to the following employee comparisons: (1) with employees in the private sector generally; (2) with employees in the public sector generally; (3) with employees having the same employer; and (4) with employees who perform the same or similar functions with comparable employers.

#### Employment in General

The County's median household income was \$77,040, and the median family income was \$81,873, with approximately 13.4% of the population below the poverty line. It is estimated that the unemployment rate in Passaic County was 4.9% compared to 6.60% in New Jersey.

#### Private Employment in General

Since 2011, the national increase in salary and wages in private employment was only a total of 16.30%. In New Jersey specifically, the private sector increases from 2011 to 2017 was 13.6%, which is an average of 1.9% per year. Furthermore, real average hourly and weekly earnings were only up 1.1% from November 2018 to November 2019, and 0.7% from March 2019 to March 2020. Finally, the real average weekly earnings decreased 1.4 percent for year ended April 2021 and were down 2.2% from May 2020 to May 2021.

On July 9, 2021, PERC published its most recent report of private sector wage changes based on data compiled by the New Jersey Department of Labor and Workforce Development. For the fiscal year period July 1, 2019 through June 30, 2020, according to PERC's reporting, private sector wages increased 10.5%; government wages increased 5.7%; and total average annual wages increased 9.8%. The government wage increases were .5% for the federal government, 2.9% for state government, and 7.2% for local government.

The Employer submits that while public sector employees often attempt to distinguish themselves from private sector employees by arguing that they do not realize the same high salaries that exist in the private sector, it is difficult to imagine where in the private sector, an employee in a position that does not require a college degree can expect to see the types of compensation levels in employment that provides top quality health insurance benefits, even in the EPO and POS plans, and allows the employee to retire with a full pension after just twenty-five (25) years of service and earn a six (6) figure salary. The Employer notes PBA 265 asks for even more. The Employer suggests the demands not only are beyond the realm of reasonability but exceed both what other comparable non-law enforcement and law enforcement units received over the same period.

PBA 265 notes that comparisons to private sector employees are not relevant to this proceeding since PBA 265 members have more difficult and dangerous jobs than do most private sector employees and there is no direct job comparison in the private sector.

Although an arbitrator must consider the general level of wage increases in the private sector, an arbitrator is not required to accord such statistics any weight. Indeed, unless a party presents credible evidence comparing a private sector classification to a public sector classification, the private sector comparison will be considered but not given much weight. Accordingly, I do not consider or give any weight to private sector wage data.

### Public Employment in General

#### Internal Comparisons

Internal comparability can be broken down into two general categories consisting of uniformed and non-uniformed employees within the same jurisdiction. An internal pattern of settlement in the same jurisdiction involving both uniform and non-uniform employees is a significant factor in the determination of an award because it usually corresponds to a public employer's budgetary capabilities and connotes uniform treatment.

The Employer argues that, while PBA 265 falls within the law enforcement and public safety domain of County employees, PBA 265 members have different roles than employees of either the Rank-and-File or Superior Officers of either PBA Local 197 (Corrections Police Officer's), PBA Local 197A (Corrections Police Superior Officers), PBA Local 286 (Sheriff Officers) or PBA Local 286A (Sheriff Superior Officers). The Employer submitted the Interest Arbitration Awards between the Passaic County Sheriff and PBA Local 197 (Corrections Police Officers) IA-2021-002 (December 21, 2020); Passaic County Sheriff and PBA Local 286 (Sheriff Officers) IA-2021-004 (April 27, 2021); Passaic County Sheriff and PBA Local 197A (Corrections Police Superior Officers) IA-2021-002 (December 21, 2020) (collectively, the "Interest Arbitration Awards") and Memorandum of Agreement with the Passaic County Sheriff and PBA Local 286A (Sheriff Superior Officers) dated January 30, 2020 ("MOA") as internal comparables.

The Employer argues that while the Interest Arbitration Awards and MOA provide general salary comparability limits for law enforcement and public safety bargaining units, the substantially different role of PBA 265 employees warrants lessened salary increases. The Employer notes that in contrast to members of those other units, PBA 265 members work consistent shifts from approximately 8:45 AM to 4:30 PM, Monday through Friday. The other law enforcement units are often subjected to more variable schedules such that there are employees working 24/7. In addition, the Employer argues in the event PBA 265 members are required to work outside normal business hours, they are satisfactorily compensated by existing overtime provisions in the Agreement.

The Employer also argues that unlike law enforcement employees in those other units, Ware testified that the members here, while having "arrest powers," rarely do so. The Employer notes that PBA 265 employees are responsible for after-the-fact investigations, i.e., they are not normally involved in potentially dangerous situations. The Employer asserts that though PBA 265 members may have certain law enforcement "powers" such as the ability to arrest civilians, the hours requirement and general day-to-day responsibilities of their occupation is more akin to non-law enforcement, or administrative-type bargaining units. The Employer submits that to the extent that PBA 265 seeks meaningful comparison with any of the other law enforcement bargaining units, PBA 265 employees' job responsibilities are more comparable with the Rank-and-File units, and not the Superior Officers' units. The Employer asserts the Superior Officers' units represent the upper limit of salary increases for law enforcement employees in the County. The Employer maintains that given the significant disparity in responsibilities, which include less erratic schedules and effectively zero dangerous situations, any salary increases approaching this upper limit would be inequitable.

The Employer notes that PBA 265 is proposing that, for a six-year contract, its members are compensated with both step movement on the salary guide each year, in addition to yearly cost of living



adjustments for all employees. The Employer notes that none of the other law enforcement bargaining units received steps and a yearly cost of living adjustment across the board, which is sought here. Based on comparability, the Employer submits PBA 265's salary demand is untenable.

The Interest Arbitration Awards and MOA provided as follows: PBA Local 197 received a five-year contract consisting of step movement and a 1% increase for those off-guide; PBA Local 197A received a five-year contract with step movement and a 4% increase for those off-guide in the first two years, then 3% for the remainder of the contract; PBA Local 286 received a five-year contract with step movement and a 2% increase for those off-guide in each year; and PBA Local 286A received a five-year contract with step movement and a 4% increase for those off-guide in the first two years, then 3% for the remainder of the contract.

The Employer emphasizes that none of these units received an across-the-board cost of living adjustment in any year of their contracts. They also assert that none of these units retained the benefit of enrolling in the Traditional Plan at the County's expense for the first three and a half years of their new agreement. The Employer maintains that PBA 265 is sufficiently dissimilar from these law enforcement bargaining units to warrant lesser increases, and PBA 265's ability to maintain the Traditional Plan for such a long duration merits mitigation of their salary demands in addition to elimination of the Traditional Plan. The Employer emphasizes that PBA 265 should not be rewarded for their delay of negotiations. They assert the Petition was filed after it became clear that PBA 265 was no longer willing to promptly resolve these negotiations. The Employer suggests this reasoning should be similarly applied to PBA 265's appeal for breakage to factor into additional compensation. The Employer notes that although in the Winters Arbitration Award, breakage was used in calculating a salary determination, it must be noted that, in that matter, the decision was issued in much closer temporal proximity than exists in the instant matter. In other words, the Employer suggests PBA 265's unfair delay in resolving a new Agreement has necessarily increased the amount of "breakage" available. They note that in contrast to the Winters Arbitration Award, Arbitrator Cure, who issued the decisions for both PBA Local 197 and PBA Local 286, declined to factor in breakage because, quite simply, the unions have no entitlement to same. The Employer submits an award which exceeds comparability to the Rank-and-File bargaining units of PBA Local 197 and PBA Local 286, and which incorporates this inflated breakage, would only encourage such stalling behavior in the future.

The Employer also submitted the County's collective negotiations agreements with its civilian units and submits PBA 265's Final Offer deviates far from the County's internal pattern of settlement. The Employer cited its agreements with IBT Local 125, CWA Local 1032, District 15 IAMAW, OPEIU Local 153, IBT Local 11, AFSCME Local 2273, OPEIU Local 32, AFSCME District 1199J, and AFSCME Local 2252 for internal comparability. Teamsters Local 125 settled their contract with the County for step movement and 1.25% increases for four years with a 1.5% being earned in the fifth year; CWA, AFL-CIO 1032 settled for a three year deal, earning \$1,500 on base with no step movement at all; District 15 IAMAW were frozen in their first year but received step or 2% each year for the subsequent four years; CWA AFL-CIO Local 1032 (Security Officers) received one step and 1% or \$1,000 at max for a period of four years; OPEIU Local 153 received one step or 2% at max in 2020 and 2021, and one step or 1.75% at max in 2022; Teamsters Local 11 received one step or \$1,250 at max; AFSCME 2273 received a 2.075% COLA and no step movement for four years; OPEIU Local 32 were frozen in year one and received one step or 2% for those at max for the remaining three years of their agreement; CWA 1032 (Nutrition Unit) only received a 1.25% COLA for four years; AFSCME AFL-CIO District 1199J (Nurse Supervisors) and AFSCME AFL-CIO District 1199J (RN & LPN) received four year agreements consisting of no step movement and 2.25% COLA increases; IBT Local 11 (Blue Collar) reached a five year agreement with step movement or \$1,500 at max; and lastly, AFSCME 2522 (Supervisors) received a four year agreement consisting of no step movement and 2.25% COLA increases. The Employer submits the demands by PBA 265 deviate far from the County's internal pattern of settlement.

PBA 265 suggests it has no parity with PBA Local 197, 197A, 286 and 286A and cited the discussion of the parity between Local 286 and Local 197 as addressed by Arbitrator Cure in the PBA Local 197 and Local 197A Interest Arbitration Awards. They note that Arbitrator Cure commented that “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: SOA the Superior Officers who supervise correctional officers in the County jail and who are subject to this Award; Local 197 the correctional officers themselves; Local 286 the Sheriff’s Officers and Local 286A the Sheriff Officer supervisors.” PBA 265 notes that Arbitrator Cure further acknowledged that those four bargaining unit contracts were “similar if not identical” and that previously they negotiated “in tandem” and “each received identical wage increases.” Most importantly to the within matter, PBA 265 notes that there was absolutely no reference to PBA 265 in either of Arbitrator Cure’s Awards with Local 197 and Local 197A.

PBA 265 notes Arbitrator Winters also addressed the parity between Local 286 and Local 197 in Local 286’s Interest Arbitration Award. Arbitrator Winters noted with respect to “internal comparison and/or pattern bargaining” that “Passaic County Locals 197A, Local 286A, and Local 286 and Local 197 contracts in the past have been similar.” Again, most notable to the within matter, the Winters’ Award contains no mention of PBA 265. As such, PBA 265 argues while there is arguably parity between Local 197 and Local 286 due to their shared origin and history of bargaining – neither has parity with PBA 265. PBA 265 asserts the members of PBA 265 have never been a part of Local 197, they have never negotiated in tandem with the other bargaining units, nor have they received the same salary increases. PBA 265 additionally notes a cursory review of the collective bargaining agreements between Local 286 and Local 197 reveals that they are essentially identical. PBA 265 argues that when comparing those agreements to PBA 265’s Agreement there are very few, if any, similarities.

PBA 265 asserts that further review of the Interest Arbitration Awards and MOA shows no pattern of similar offers, no pattern of similar settlements, and no pattern of similar awards to other Passaic County law enforcement units. Local 286A entered into an MOA amicably resolving their contract with the County which granted salary increases of 4%, 4%, 3%, 3%, 3%. Local 197A received a similar award in the interest arbitration proceeding before Arbitrator Cure. Local 197 proceeded to Interest Arbitration and received an award of step movement and 1% at top and off guide. Local 286 proceeded to Interest Arbitration and received an award of step movement and 2% at top step and off guide from Arbitrator Winters.

PBA 265 argues it’s Agreement differs vastly from the other County PBA’s because it covers both Rank-and-File and Superior Officers. Local 286 and Local 286A are separate bargaining units, as is Local 197 and 197A. PBA 265’s Agreement also has fifteen steps, while the Rank-and-File contracts for Local 286 and Local 197 have ten steps. The contracts for Local 286 Superiors and Local 197A only have two or three steps per rank, while the Superior Officer ranks in PBA 265 have sixteen steps. PBA 265 also asserts its Agreement does not contain any unique add-ons or fringe benefits like longevity, night differential, and no ability to work PBA Road Jobs, also referred to as side jobs, for overtime compensation. PBA 265 submits that all other local and county law enforcement agencies have the availability to substantially increase in their annual compensation through the ability to work overtime on road jobs that PBA 265 does not have the ability to work.

PBA 265 also notes it currently has “discretionary steps” which it proposed in its Final Offer be incorporated into the Agreement’s salary guide as non-discretionary. The discretionary steps contained in the PBA 265’s Agreement awards the current top steps to employees solely at the discretion of the County Prosecutor. Ware testified that in his experience he has never seen another collective bargaining agreement that contained a discretionary step. The discretionary step is something not present in any other contract within the County or throughout the State. PBA 265 submits the existence of a discretionary step is not equitable,

fair, or just. Ware testified that no employees have recently been “awarded” the discretionary step, making it an entirely futile contract provision. PBA 265’s proposal to incorporate these discretionary steps as mandatory would further assist in bringing PBA 265 some type of competitive compensation package it maintains.

Ware further testified regarding the compensation received by the Passaic County Administrator and the Passaic County Finance Director as compared to other Counties throughout the State. Ware testified that these comparisons were relevant to illustrate Passaic County’s rank amongst other Counties as it relates to compensation for administrative positions as a point of reference to establish where PBA 265 should be ranked on a state level.

#### External Comparisons

External comparability consists of comparisons between the group subject to the petition and other public safety employees in similar jurisdictions, other public employees, generally, and private sector comparisons. In weighing salary statistics introduced by a party, PERC has promulgated guidelines that may be broken down into the following five general categories:

1. Geographic comparability, contiguous jurisdiction or nearby, size of jurisdiction, and nature of employing entity;
2. Socioeconomic considerations, basically a comparison of the type of statistics found in the New Jersey Municipal Data Book and the UCR, such as population density, cost of living, crime rate, violent crime rate, fire incident and crime rate, etc.;
3. Financial considerations, such as the tax collection rate, state aid, budget surplus, surplus history, ratios of tax revenue to total revenue, etc.;
4. Compensation/benefits provided to employees of the comparison group; and
5. Any other comparability considerations deemed relevant by the arbitrator.

#### Salary comparisons

Since 2011, comparability of percentage increases for interest arbitration has been considered but has been less relevant due to the 2% salary cap. Now that the 2% salary cap has sunset, comparability has once again become a significant criterion to address.

According to the 2018 Biennial Report on the Police and Fire Interest Arbitration Reform Act issued by PERC, the number of interest arbitration petitions decreased since the implementation of the 2% hard cap. After enactment of the law, there were twenty (20) petitions in 2015, nine (9) in 2016, and twenty-nine (29) in 2017. The number of interest arbitration awards issued has remained low with two (2) issued in 2018; six (6) in 2019; six (6) issued in 2020; and six (6) issued in 2021. For the years 2012 through 2019, the average annual salary increases for all interest arbitration awards were: 2012-1.82%; 2013-1.85%; 2014-1.71%; 2015-1.71%; 2016-2.65%; 2017-1.74%; 2018-2.01%; 2019-3.36%.

Like other interest arbitration proceedings, I note the parties can find “comparable” data from “comparable jurisdictions” that support their Final Offers. The analysis includes the numbers they seek comparing salaries in different jurisdictions, salary guides, work schedules, longevity, fringe benefits, and

other terms of employment. The percentage and number comparisons of various salaries alone are problematic when the only item cited is “salary.” What makes up “salary” and salary guides significantly vary. Also, collective negotiations by definition involve a “give and take” with the goal of structuring an overall package that includes health benefits, sick leave, vacation leave, longevity, work schedules, tuition reimbursement, uniform allowance, retiree health benefits, among other items.

The Employer cited external salary comparables from law enforcement units in Bloomingdale, Clifton, Haledon, Hawthorne, Little Falls, North Haledon, Passaic, Pompton Lakes, Paterson, Prospect Park, Ringwood, Totowa, West Milford, Wanaque, Wayne, Woodland Park, and the Union County Sheriff. PBA 265 cited similar external comparables from municipal law enforcement units and also submitted salary comparables from New Jersey County Prosecutor Offices.

PBA 265 notes that a key element of their case was the establishment of an appropriate universe of comparison upon which meaningful evaluations may be made. While PBA 265 is a unique law enforcement organization, the sworn members work with certain agencies on a regular basis. The members of PBA 265 respond to and assist other law enforcement agencies throughout the County. The PBA also investigates and aids in the prosecution of the most serious crimes, all indictable offenses, throughout the County.

PBA 265 cites to its comparisons to all law enforcement agencies within Passaic County, as well as an analysis of other County bargaining units. PBA 265 also provided comparisons to other County Prosecutor’s law enforcement groups performing similar functions throughout the State. The PBA also provided comparisons between County administrative positions throughout the State.

PBA 265 argues it sits at the bottom of the salary comparisons as compared to other law enforcement agencies within Passaic County. PBA 265 also notes it has a 15-17 step salary guide, where the average number of steps on the salary guides throughout Passaic County is ten steps. PBA 265 notes that the greater the number of steps, the smaller the salary increases per year. PBA 265 notes that a salary guide with ten steps, like PBA Local 286, is equivalent to approximately an \$8,000.00 increase per year compared to PBA 285’s in-guide salary increases of approximately \$4,000.00 per year, per step.

PBA 265 also provided an analysis of the top step comparison of other in-County law enforcement as compared to the compensation PBA 265 receives at the same step. PBA 265 notes there are only two other contracts in Passaic County with fifteen step salary guides, Little Falls and Totowa. They note that at Step 15, Little Falls receives \$147,565.00, Totowa receives \$137,856.00, and currently PBA 265 receives \$108,377.00. After 15 years of service, PBA 265 is paid \$39,188 less than Little Falls Police officers and \$29,116.00 less than Totowa Police officers at top step. PBA 265 submits that in jurisdictions like Wayne, Ringwood, and North Haledon, PBA 265’s step to top step comparison further demonstrates a huge disparity in compensation. In 8 years, a Wayne police officer will reach top step at \$140,740.00; while 8 years with the County Prosecutor’s office, PBA 265 members will receive \$95,783.00, a difference of \$44,957.00. PBA 265 argues its salary proposal does not seek to have the PBA 265 members paid at the top of the County salaries. It merely seeks to bring them from the 16th lowest to the 8th lowest paid in Passaic County. Also, PBA 265 submits that although the other County law enforcement units rank below PBA 265 in salary, they currently achieve a near equal top step in five less years.

PBA 265 also submitted a comparison of in-County Sergeant’s compensation. Ware testified that other PBA salary guides have significantly smaller guides for their Superior Officers, with most guides having 2 or 3 steps. Ware also testified that in those other departments Superior Officers at their lowest rate are paid more than the Rank-and-File officers at their highest compensation rate. PBA 265 suggests the lowest paid Sergeants make more than the highest paid officers; even internally for Local 197A and 286A, whose lowest paid Sergeant’s step is \$106,879.00 on a three-step guide.

PBA 265 submits that is not the case for them. PBA 265 submits it has an extensive salary guide for its Superior Officers that has more steps than the Rank-and-File Detectives/Investigators. PBA 265 submits Sergeants are placed on the guide based on their years of service, not compensated based on their elevated rank or additional supervisory duties. They submit a comparison of the Sergeant's top step illustrates the disparity in compensation between PBA 265 and other in-County law enforcement. PBA 265's Sergeants' top step are among the lowest paid in the County. As compared to Little Falls and Totowa, Sergeants in the PBA receive \$36,214.00 and \$28,892.00 less, respectively, at top step. They emphatically note that this comparison is the top step of the PBA's guide, which takes Sergeants' years to achieve, as compared to local departments that achieve top step typically in three years.

PBA 265 also provided a salary comparison between PBA 265 and other County Prosecutor Offices throughout the State. They maintain a review of PBA 265's top salary as compared to other County Prosecutor's Offices further demonstrates the lack of competitive compensation being provided to PBA 265 with far more steps and a lower top salary than most jurisdictions. They cite to Bergen County Prosecutor's Detectives that reach top step in 9 years and receive \$51,817.00 more at top step than PBA 265. As compared to Monmouth County, PBA 265 notes both guides have fifteen steps, however, Monmouth County's top step is \$145,615.00 and PBA 265's currently receives only \$108,377.00 - a difference of \$37,238.00 per year at top salary.

PBA 265 argues the Sergeant's salary comparison shows the same disparity in compensation. Ware testified that with regard to Sergeant's salary guides other Counties have much smaller guides, with significantly less steps. Ware testified that typically superior officers' guides in other County Prosecutor's agencies have two or three steps. He further testified that in other Counties the lowest paid superior officers are paid more than their Rank-and-File members. Sergeants in PBA 265 receive a salary that is \$41,282 less than their Bergen County counterparts at top step.

When examining both internal and external comparability, PBA 265 submits that the members of PBA 265 are severely under compensated. PBA 265 submits its proposal does not seek an unreasonable increase in salaries or an unreasonable comparative rank amongst its peers. It only seeks to provide a more competitive and fair salary for its members.

### **Overall Terms and Conditions of Employment. N.J.S.A. 34:13A-16(g)(3)**

Overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received.

The evidence considered by the Arbitrator encompasses the *status quo* terms and conditions of employment. PBA 265 members work 38.75 hours a week from 8:45 a.m. to 4:30 p.m. The salary guide for the Detectives/Investigators is comprised of fifteen (15) steps plus a discretionary step. The salary guide for the Superior Officers is comprised of sixteen (16) steps plus a discretionary step. PBA 265 members receive senior officer pay based on years of service (\$2,500.00-15 years; \$3,500.00-20 years; \$5,000.00-24 years). PBA 265 members also receives educational stipends based on degree level: \$1,500.00 for an Associate's Degree (16 members); \$2,000.00 for a Bachelors (2 members); \$2,500.00 for a Masters (4 members). The unit also receives the following: holiday pay, uniform allowance, personal leave, sick leave, vacation leave, on-call pay, overtime, pension, and health insurance. I note only two members of this unit continue to unit receive longevity. The unit does not receive night differential or compensation related to off-duty work. The County provides health insurance to employees of the PCPO. The County is self-insured

and pays for most claims directly by utilizing a Third-Party Administrator (“TPA”). The County provides a Traditional Plan, Point of Service (POS) plan, EPO Plan, and high-deductible plan.

The Employer argues the cost of health benefits for public employees constitute an enormous financial burden for counties and municipalities. They note that in an effort to continue to gain control over excessive costs associated with public employment, the Legislature and Governor passed legislation on or about May 21, 2010, requiring public employees to make a contribution to health care costs calculated at one and one-half percent (1.5%) of their salary to offset a portion of the premium costs for health care benefits. Subsequently, the law was amended again on or about June 28, 2011, under Chapter 78, P.L. 2011. The amendment imposed a four-year phase-in of an employee premium sharing schedule based on an employee’s salary.

The Employer’s Final Offer included the elimination of the Traditional Plan currently utilized by members in PBA 265. They submit the proposal was discussed at length during negotiations between the parties prior to interest arbitration, but the parties were unable to come to an agreement. As was testified to by the County’s health insurance expert, the County has been attempting to phase out the Traditional Plan among all bargaining units in the County, and there have been three (3) interest arbitration awards rendered in the last two (2) years removing the Traditional Plan from PBA Local 286, PBA Local 197, and PBA Local 197A. Additionally, the County and PBA Local 286A entered a voluntary MOA whereby the Traditional Plan was eliminated.

The Employer submits that as testified to by the Employer’s health insurance expert there is no guaranteed saving to the County by eliminating the Traditional Plan. They submit the County remains self-insured, meaning it bears the burden for paying the claims made by its employees. Additionally, they note the County is not required and/or responsible for making payments to any carrier. They submit that if the County were fully insured by an outside entity, the County would be required to make these premium payments and would thereby actualize the savings alleged by PBA 265, as the rates would be assessed by the carrier, and the carrier would assume the burden of the risk. They submit that since the County is self-insured, there is no guarantee for how many claims may be made and any savings for the County is not quantifiable. The Employer notes that the Arbitrator Winters and Cure Interest Arbitration Awards with Locals 197, 197A and 286 came to identical conclusions: “However, while the savings that will be experienced by 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. . . [A]s the County is self-insured, there is no guarantee for how [sic] claims may be made. Therefore, any savings for the County is not quantifiable.”

The Employer also notes the saving amounts that PBA 265 alleges are speculative, based solely upon premium levels designed by actuaries, for purposes of the premium equivalent rate, and are not guaranteed. In other words, the County may realize a cost savings, however, it may also incur a greater cost based upon the claims that are made by the members and benefits/services paid for by the County. The Employer submits that by leaving the Traditional Plan and entering into the EPO or POS plan, the members will be receiving a true cost savings. They submit that by leaving the Traditional Plan, the members will automatically begin to make a lower Chapter 78 contribution to their medical premiums, as their total cost in premium would decrease into a more affordable plan. While the County seeks all PBA 265 members leave the Traditional Plan, the County does not agree with PBA 265’s assessment regarding a potential cost savings upon their departure. They also maintain the remaining plans offered by the County, namely the HSA and POS plans do provide members with the opportunity and ability to seek out-of-network benefits, similar to the Traditional Plan.

PBA 265 argues its members are currently among the lowest paid law enforcement officers as compared to other law enforcement officers within Passaic County as well as across the State as compared to other County Prosecutor’s PBAs. In addition to salary, an analysis of the overall compensation also

includes an examination of benefits received, including vacation, holidays, medical benefits and hospitalization, and any other economic benefits.

PBA 265 notes the Employer has proposed to alter the language of the contract to no longer be required to provide automobiles to employees. The Agreement currently states that “at no time shall an employee be required to use a personal vehicle for office business.” The Employer seeks to remove the benefit of providing vehicles for office use, forcing employees to use their personal vehicles. When questioned on direct examination about whether the Employer had enough vehicles, Seemon testified the Employer does have enough vehicles. PBA 265 argues the Employer has not sustained their burden to alter the language as it currently exists, and this proposal should be rejected, and the language should remain unchanged.

PBA 265 notes the Employer also proposed to alter the language in the Overtime section of the Agreement. The proposal requests the addition of language giving the Employer an “absolute right” to alter work schedules and institute shift changes. PBA 265 argues that such an unfettered proposal to alter employees shift times would conflict with the language in the contract establishing the members work schedules. PBA 265 submits the Employer has put forth no testimony or evidence as to why this proposal is being sought, the reason for the requested change, or any evidence to support altering the language. As such, PBA 265 argues this proposal should also be rejected and the contractual language should remain unchanged.

The most important consideration under criteria (g)(3) of the Act as it relates to PBA 265 is medical and hospitalization presently provided by the Employer. The County currently maintains four health benefits plans: Traditional Plan, EPO, POS, and HSA. The Employer has proposed to remove the Traditional Plan within 30 days. PBA 265 has vehemently opposed the removal of this benefit.

PBA 265 notes that the Employer relies entirely on the Interest Arbitration Awards with Local 197 and Local 286 to support their Final Offer that the Traditional Plan should be removed in this Interest Arbitration proceeding. PBA 265 notes the Employer ignores the fact that those other units proposed to give up the Traditional Plan in exchange for greater raises proposed in their Final Offers, but not awarded. Seemon admitted that the other units negotiated to remove the Traditional Plan, which removing the Traditional Plan would result in a large cost savings to the County, and that the County wants to get rid of Traditional Plan because it is very expensive. Mitchell testified that the goal for the County was to remove the Traditional Plan from all law enforcement units. Mitchell testified that the County’s goal was to get the law enforcement unions to opt out of the Traditional Plan, whether voluntarily or through the interest arbitration process, because of the expense to the County. Local 286A offered to give up the Traditional Plan and the County agreed to compensate them with incremental increases amounting to 4%, 4%, 3%, 3%, and 3% over five years in exchange for same. Local 286, Local 197, and Local 197A followed suit and offered to remove the Traditional Plan in their Final Offers during interest arbitration proceedings. Because the County offered its removal as well, the parties stipulated to remove the Traditional Plan.

PBA 265 has made no such offer and there has been no such stipulation. PBA 265 contests the removal of the Traditional Plan. PBA 265 argues it’s wage and salary offer were based on their available health benefit plans remaining intact, as well as maintaining their Chapter 78 contributions at the highest level. PBA 265 members electing Traditional Plan coverage pay accordingly to have that coverage and share the cost with the County. PBA 265 argues its salary proposal is reasonable and equitable without taking into consideration any alteration to health benefits.

PBA 265 notes that the Employer presented testimony regarding the health benefits plans. They noted that the Employer’s witness testified the rates are ascertained by an actuarial analysis of the census and demographic information and previous claims to calculate the projected rate and that this is the “defined way to calculate the money paid [for the plans] by the County.” They note he testified that all of the in-network coverage is identical across plans as all plans avail themselves to the Aetena network. He also

testified that there are no referrals needed to see a specialist, and that not requiring referrals saves the employee the cost of the co-payment from the referring doctor. He also admitted that not requiring a referral actually saves the Employer more money than the employee, because the Employer does not have to pay for the referring doctor's appointment. PBA 265 notes he also testified about the comparison between the available health benefits plans offered by the County. He testified that only four people in the County are enrolled in the HSA Plan and acknowledged that the EPO Plan covers only in-network doctors. He further testified that the POS plan is substantially similar to the Traditional Plan, admitting that the costs to the employee for out of network coverage in the POS Plan are far greater than in Traditional Plan. He acknowledged that Traditional Plan costs employees less out of pocket, and therefore costs the employer more. For example, the deductible for an individual out of network in the Traditional Plan is \$200 verses \$2,000 under the POS Plan, or ten times more.

PBA 265's health insurance expert analyzed the County's Health Benefits Plan Comparison Chart provided during open enrollment for 2022. Fanuele testified that the County is self-insured, and therefore pays out its own claims. Fanuele also testified that despite being self-insured the County is still subjected to guidelines established by COBRA. The rates used to determine Chapter 78 contributions based on the premium equivalent monetary cost are established based on COBRA rates. PBA 265 asserts the cost of the different health benefits plans provided by the Employer in the Employer's Health Plan Comparison are not speculative. The Employer's Health Plan Comparison articulates the cost of the plans, and those amounts are used to calculate the Chapter 78 deductions charged to PBA 265 members. Any argument that a cost savings to the Employer for removing traditional health benefits is speculative is completely meritless argues PBA 265. The Employer's own documents demonstrate that the Traditional Health Plan costs \$44,432 for family coverage annually, or \$3,694.05 monthly. The EPO Plan costs \$22,480 for family coverage annually, or \$1,873.35 monthly. The difference in cost between the Traditional Family Plan and the EPO Family Plan is therefore \$21,848 per member, per year. They submit this number is not abstract, hypothetical, or speculative - it is based on the actual cost for the plans and therefore the actual savings if PBA 265 members are no longer entitled to enroll in the Traditional Plan.

PBA 265 also notes that Fanuele gathered data regarding medical inflation rates over the last fifteen (15) years citing annual medical inflation rates consistently over 5%. PBA 265 suggests Fanuele used a conservative 5% to establish a cost analysis to the Employer over the next twenty (20) years. They submit that while all of the plan rates will increase, because the Traditional Plan costs more, the cost to maintain the Traditional Plan will grow greater over time than that of the EPO Plan. Fanuele testified about the difference between the available plans provided by the County. Specifically, Fanuele testified about the differences between Traditional and the EPO Plan. The greatest difference between Traditional Plan and EPO is the Traditional Plan provides out of network benefits, while the EPO Plan provides no out of network benefits. The employee must pay 100% of any medical services out of network under the EPO Plan. Fanuele also testified about the difference between the Traditional Plan and the POS Plan. The Maximum Out of Pocket cost to the employee for the POS Plan is much greater than in Traditional Plan; for an individual under Traditional Plan is \$400 and \$800 for a family; in contrast, under the POS Plan is \$5,000 for an individual and \$10,000 for a family.

Ware testified that PBA 265 had filed a lawsuit against the County regarding the health benefits contribution rates in retirement. Ware testified that this lawsuit resulted in a settlement with the County that specified members of PBA 265 would pay 1.5% of their pensionable salary towards medical benefits in retirement. This agreement fully vests the rights of the members contained on Schedule A and cannot be modified without express written consent of every member on Schedule A. Both parties acknowledged that this settlement does not reference the Traditional coverage. However, PBA 265 submits this settlement further illustrates (1) the difference between the PBA and Locals 197 and 286 (who have no such contractual language or legal settlement) and (2) the cost savings to the Employer if the Traditional Plan is removed. PBA 265 submits that because of this settlement agreement, the cost savings for removing the Traditional Plan for PBA 265 is far greater than any other County bargaining unit.



Ware testified extensively about the cost of Traditional Plan in retirement for PBA 265 members and the County, per the lawsuit and settlement. Ware explained that employees are eligible to enroll in the health benefits plan in retirement that they enrolled in their last year of employment selected during open enrollment. Ware testified about the difference between the various healthcare costs for a PBA 265 member in retirement and the annual savings. PBA 265 argues if this arbitrator were to strip away the Traditional Plan, future retirees could not retire with the Traditional Plan. PBA 265 argues the overall compensation package currently includes the Traditional Plan and the removal of the Traditional Plan would greatly decrease PBA 265's overall compensation package. PBA 265 argues that should this arbitrator make a determination that the Traditional Plan is removed, then the PBA's wage and salary proposal should be increased over and above the PBA's proposal based on the cost savings the Employer would recover.

#### **The Stipulation of the Parties, N.J.S.A. 34:13A-16(g)(4)**

The Parties did not provide any stipulations. That said, I note that the Employer Final Offer and PBA 265 Final Offer each seeks removal of the Chief and Deputy Chief from the Recognition Clause. Based on the mutual agreement in the Final Offers regarding the removal of the Chief and Deputy Chief, I find the Chief and Deputy Chief are removed from the unit and Award same.

#### **The Lawful Authority of the Employer, N.J.S.A. 34:13A-16(g)(5)**

While the 2% salary cap has sunset, statutory limitations are specifically referenced in other criteria, including the lawful authority of the employer, the tax cap levy, and other statutory restrictions upon the employer. N.J.S.A. 34:13A-16(g)(5) requires the arbitrator to consider the "lawful authority of the employer," and specifically references P.L. 1976, c. 68, which is codified at N.J.S.A. 40A:4-45.1 et seq. The aforementioned statute is commonly known as the "Local Government Cap Law" and states "it is hereby declared to be the policy of the Legislature that the spiraling cost of local government must be controlled to protect the homeowners of the state and enable them to maintain their homesteads." N.J.S.A. 40A:4-45.1. The New Jersey Legislature established a second tax levy cap established by section 10 of P.L. 2007, c. 62, which is now codified at N.J.S.A. 4-45.45. Section 10 of P.L. 2007, c.62 originally established a tax levy cap of four percent (4.0%) above the previous year's tax levy. On July 13, 2010, P.L. 2010, c. 44 was enacted and cut the allowable tax levy increase to two percent (2.0%). As part of this legislation, the Interest Arbitration Act was also amended to include a ninth and final criteria for the arbitrator's consideration, "the statutory restrictions imposed upon the employer," which specifically includes "the limitations imposed upon the employer by section 10 of P.L. 2007, c.62." N.J.S.A. 34:13A-16(g)(9).

The Appellate Division in Hillsdale interpreted the "lawful authority of the employer" criterion to refer to the Local Government Cap Law. Hillsdale, 263 N.J. Super. at 193. The Supreme Court agreed, stating, "Given the existence of financial constraints and budget caps... an award to police or fire departments necessarily affects other municipal employees and the entire municipal budget." Hillsdale, 137 N.J. at 86. In Hillsdale, the Appellate Division required the arbitrator to consider the impact of the award on other budget items. Hillsdale, 263 N.J. Super. at 194. When applying the lawful authority of the employer criterion, the Arbitrator must address the Employer's budget cap situation, as well as the statutory requirement that the Employer prepare a balanced budget each year.

Here, the Employer does not argue its “ability to pay.” The Employer submits that N.J.S.A. 34:13A-16(g) requires the Arbitrator to consider the “lawful authority” of the Employer and the impact on the parties of the Arbitrator's Award.

PBA 265 submits that an evaluation of this case consistent with the criteria in (g)(5) under the Act provides no prohibition to an award of PBA 265’s package as presented. PBA 265 argues the 2% Hard Cap has sunset and the Employer has not presented any evidence that the it cannot lawfully agree to PBA 265’s proposal.

PBA 265 submits that should the Employer attempt to claim in the first instance that the “Constitutional Officer Cap” is somehow restrictive, it is clear that it is not. PBA 265 notes the County has already attempted to raise this claim in other proceedings against other PBAs, and Interest Arbitrators have consistently held that it does not restrict an Award. PBA 265 argues the “Constitutional Officer Cap” does not restrict the Arbitrator from awarding the PBA’s proposal. Arbitrator Cure addressed this issue in the Interest Arbitration Award with Local 197A where he stated:

Regarding the lawful authority imposed on the Employer, as noted above the County has stressed that the “Constitutional Officer Cap” P.L. 2015 c.249. restricts the ability of the Sheriff to increase his budget by more than two percent per annum. However, constitutional officers such as the Sherriff [sic], have broad range of discretion in setting their budgets and in reallocating funds to operate and manage their offices under the Constitutional Officer Cap. I would also note that unlike the 2% Hard Cap which imposed rigid conditions upon an Interest Arbitrator’s ability to award an increase, the Constitutional Officer Cap is a more fluid concept. Both the Constitutional Officer and the arbitrator have more discretion under this cap. I accept the testimony of Dr. Caprio, that the County is in good fiscal condition, and has a healthy fund balance and that the County had excess statutory levy capacity. Dr. Caprio testified that under the Union’s proposal the increase in wages to the bargaining unit, and the affect on the average Passaic County residential property owner would be *de minimus*. Since the County has already voluntarily agreed to an identical proposal with Local 286A, I conclude that the County has determined that the Constitutional Officer Cap is not a barrier to its operations. I conclude that the County will be able to afford the increased costs emanating from this award, and that there is no statutory impediment to this Award.

PBA 265 argues the same is applicable to the within matter. They submit the County is in better financial condition than when Arbitrator Cure made the above determination noting the County’s fund balance has grown even further and the County has excess statutory levy capacity. They maintain the Constitutional Officer Cap is therefore not a barrier to its operations, as the County has conceded its ability to pay, and there is no statutory impediment to awarding PBA 265’s proposal.

**The Financial Impact on the Governing Unit, Its Residence, The Limitations Imposed Upon the Local Unit’s Property Tax Levy, and Taxpayers, N.J.S.A. 34:13A-16(g)(6)**

N.J.S.A. 34:13A-16(g)(6) also requires the Arbitrator to consider the financial impact of the parties’ offers on the governing unit, its residents and taxpayers. In Hillsdale, 137 N.J. 71 (1994), the court noted

that the financial impact requirement in the statute does not equate with the municipalities' ability to pay. *Id.* at 88. The Supreme Court stated in Hillsdale that a municipality should not have to prove that it is not financially able to afford the PBA's final offer. 137 N.J. at 86. This criterion encompasses a far more searching and critical analysis than simply whether a local government has the ability to pay an award. It does not require the local government to prove that it would suffer financial difficulties as a result of an award. *Id.* Put differently, a local government "should not have to demonstrate it would be financially crippled before its arguments could be found to be sufficient." *Id.* at 94. Arbitrators have recognized this fact as well. Arbitrator Barbara Tener analyzed this issue in I/M/O Borough of Oakland and Oakland PBA Local 164, IA-93-069 (1994) noting that "[T]he affordability of the respective packages is not, in my view, a very weighty factor unless the more reasonable package is also the more expensive. The question of whether the Borough can afford the PBA's offer is not dispositive in this case."

The New Jersey Supreme Court emphasized that "it is not enough to simply assert that the public entity involved should merely raise taxes to cover the costs of the public interest arbitration award." *Id.* (quoting Hillsdale, 263 N.J. Super. at 88). Moreover, the municipality does not carry the burden of proving its financial inability to meet the Association's final offer. *Id.* In addition, the correct application of this criteria does not require an employer to provide that it would suffer a "substantially detrimental result," or that the financial difficulties would be created or worsened. Hillsdale, 263 N.J. Super. at 94. Rather, the effect that the award will have on other employees and the employer's overall budget must be considered by the Arbitrator. Hillsdale, 137 N.J. at 86.

The financial impact criterion is a very important component of the interest arbitration process. When considering this factor, an arbitrator must take into account the extent of how the award will affect the County's statutory purpose, the impact of the award for each economic sector, and the impact on the governing body to: (1) maintain existing programs and services; (2) expand existing programs and services for which public monies have been designated by the governing body; and (3) initiate any new programs and services. As such, this criterion has a strong overlap with the fiscal component of the public interest criterion and consideration of the legal limits of a County's taxation authority.

The Employer submits that in order to ascertain the financial impact of an interest arbitration award, it is important to consider the relative strength of the economy over the life of the award. The County's fiscal condition, and that of other public sector entities, is affected by national and state economies, as well as other fiscal pressures, and must be viewed in the context of the overall economy. Cost pressures on the County taxpayers must also be considered as a result of the fiscal impact the national and state economies have on the County.

The Employer argues every interest arbitration proceeding involves service to the public and how much it will cost the governing unit to provide that service. The public is both the recipient and payor for those services. Thus, the public's interest must be a dominant factor in resolving this dispute. To meet the public's interest, the Employer must provide a reasonable compensation package for its employees providing public services. The County residents and taxpayers do not expect a "business as usual approach" to awarding compensation to public employees within the County who already earn a generous salary.

The Employer maintains the record demonstrates that its Final Offer provides a reasonable compensation package for PBA 265 in a weakened economy undergoing a public health crisis and given the nature of fiscal constraints that have been imposed upon the County by the State of New Jersey. By virtue of the Employer's Final Offer, the Employer has offered its employees a reasonable compensation package over the course of a five (5) year contract that also provides for reasonable cost containment that is necessary to meet immediate and long term needs for the County's taxpayers.

PBA 265 submits that the impact of this criterion on the parties' economic positions is within the domain of the financial expert. When considering this factor, an arbitrator can consider how the award will

affect the County purposes element of the local property tax; a comparison of the percentage of 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. PBA 265 submits it is up to the parties to introduce evidence on the above items. PBA 265 submits the County has failed to introduce any evidence that the difference between the Employer's proposal and the PBA 265's proposal cannot be absorbed by the exceedingly high fund balance.

PBA 265 submits it has presented extensive evidence through testimony of expert witness Dr. Caprio and documentary evidence via Dr. Caprio's expert report that the Employer will have no issue absorbing this cost. Dr. Caprio testified that the Employer has consistently overestimated its budget and continues to transfer the excess proceeds back into the fund balance. These excess funds were addressed in Dr. Caprio's testimony where he testified each year the County has, on average, over \$11.5 million in unexpended funds. The County also consistently has well over \$20 million in excess of operations. Dr. Caprio testified that the Employer is in a substantially better position than it was in 2020. He based this determination on the fact that the Employer's fund balance increased from \$50 million in 2018 to \$88 million in 2021. Dr. Caprio testified and his report reflects that since the start of the 2016 fiscal year, the County fund balance "has increased by \$54 million, or a staggering 158%." By way of comparison, Dr. Caprio testified about the fund balance in Bergen County, which is 1/3rd larger in size, has \$23 million less in its fund balance than Passaic County. In Dr. Caprio's 40 years of experience, he testified he has never seen a fund balance as high as Passaic County.

With regard to the Employer's cost out, PBA 265 argues that the Employer cost out is actually greater than PBA 265's Final Offer. Mitchell testified that he is instructed to stay within a 2-2.5% parameter to "keep both parties happy." Mitchell prepared the Employer's cost out and testified that these amounts contained in the Employer's cost out are "sustainable" for the Employer. The Employer's cost out amounts per year must be utilized to show what the Employer is willing to spend on the PBA's contract, as they were the only information provided by the Employer. The Employer's cost out shows a higher cost to the Employer than PBA 265's cost out.

PBA 265's cost out provided an analysis of the difference between the increase year to year, as well as the difference between each year and the last year of the prior contract (2018). When examining PBA 265's cost out against the Employer's cost out, PBA 265's proposal is less than the Employer's anticipated spending. In the first year, PBA 265's proposal is slightly more, but in the following years PBA 265's proposal is hundreds of thousands of dollars less. In 2020, the PBA's proposed salary and wage increase is \$428,231.00 less than the Employer's. In 2021, PBA 265's proposed salary and wage increase is \$524,098.00 less. And again in 2022, PBA 265's proposed wage and salary increase is \$521,628.00 less than the Employer's cost out. The cumulative cost of PBA 265's six (6) year proposal is \$456,403.00.

PBA 265's cost out includes "breakage," or the cost out based on employees resigning or retiring and the hiring of new employees. PBA 265 submits that breakage is the most accurate way to compute the cost of the proposed salary increases. They cite to Arbitrator Winters who discussed the usage of breakage in Local 286's Interest Arbitration Award:

As both parties use different methods when costing out salary proposals, this Arbitrator wanted to see which of the two methods would be more in line with what this Arbitrator was thinking and awarding.

Basically, the difference is that the PBA uses the savings attributed to employee breakage and the County does not.

The PBA's cost out of the above awarded salary, using employee breakage is a more accurate portrayal of the cost.

Although this Arbitrator understands that the use of employee breakage for cost out purposes was no[t] permitted under the 2% hard cap era, once the 2% hard cap ceased that restriction was now removed.

The use of employee breakage shows the true actual salary data that is available removing all speculation. Even the County's Director of Payroll testified that a cost out of a scattergram containing actual known employee breakage for a particular unit is more accurate than a cost out of a scattergram that does not.

At any rate, the cost outs, by the PBA, which utilized verified, known, and up-to-date employee salary data which benefits both the Local and the County yield a much more accurate accounting of the two different methods used.

PBA 265 argues breakage is a proper consideration when calculating a cost out of a salary proposal and provides a more accurate accounting of the financial cost. PBA 265 argues the Employer has conceded this fact in other Interest Arbitration proceedings.

PBA 265 also argues the impact on the taxpayers is *de minimis*. Dr. Caprio testified that he analyzed the cost to the taxpayers based on a one-million-dollar proposal noting that PBA 265's proposal is less than half a million dollars. Dr. Caprio's noted the cost per homeowner based on a million-dollar proposal and PBA 265's proposal would cost the average taxpayer \$3.30 a year, or 0.27 cents a month, if the entire guide were funded in one year and if it were funded solely by property taxes, neither of which is the case.

PBA 265 submits the Employer has not demonstrated through empirical evidence that the award of the PBA 265 salary increases will detrimentally affect other line items in the budget or the Employer's level of operational surplus. PBA 265 argues there exists sufficient room within the budget to absorb PBA 265's economic demands without significantly impacting other areas of the budget or adding significantly to the tax burden already absorbed by the jurisdiction's constituency. PBA 265's proposal would have little effect, if any, on the County's extremely healthy financial condition it submits.

#### **Cost-of-Living Criterion, N.J.S.A.34:13A-16(g)(7)**

The Consumer Price Index ("CPI") is a measure of the average change, over time, in the prices paid by consumers for a market basket of consumer goods and services. Goods and services measured by the CPI include food and beverages, housing, apparel, transportation, recreation, education and communication, and all other goods and services. The CPI is the most widely used measure of inflation.

The cost of living has increased since the expiration of the parties' agreement. In the New York/Newark area, the CPI increased 1.7% during the twelve (12) months ending June 31, 2019, and 1.3% during

the twelve (12) months ending June 30, 2020. The CPI for all urban consumers in the United States was 4.1 percent in June 2021 based on CPI data with the CPI in the Northeast reported at 4.6%. The March 2022 Consumer Price Index for All Urban Consumers rose 1.2 percent, seasonally adjusted, and rose 8.5 percent over the last 12 months, not seasonally adjusted. The index for all items less food and energy increased 0.3 percent in March, seasonally adjusted; up 6.5 percent over the year, not seasonally adjusted.

An annual Cost-of-Living Adjustment (COLA) is authorized under the Budget Cap Law, N.J.S.A. 40A:4-45.1.a. Under the Budget Cap Law, the Department of Local Government Services (“DLGS”) announces the COLA. The DCA announced COLA for calendar year 2022 budgets is 2.5%. In addition, the CPI is often used to adjust consumer’s income payments, for example, Social Security, to adjust income eligibility levels for government assistance and to automatically provide cost of living wage adjustments to millions of American workers. The COLA for Social Security benefits in 2018 was 2.8%, in 2019 was 1.6%, in 2020 was 1.3%, in 2021 was 1.3%, and in 2022 is 6.9%.

PBA 265 submits a review of the positions of this case with respect to the criteria (g)(7) under the Act provides strong support for an award of PBA 265’s position. Dr. Caprio testified that the CPI has increased cumulatively 11.8% since 2018. CPI rates have increased well over 1% during the initial years of the contract. In 2022 alone, the annual change in the CPI from the year prior was 5.1%. PBA 265 submits that when taking into account the cost of living as a whole, it is important to also analyze inflation rates. Dr. Caprio testified that inflation is the highest it has been in 30 years. He further testified that inflation would continue to rise. In 2021, the inflation rate increased over 7%. In 2022, the inflation rate has reached 14.9%. Dr. Caprio testified that inflation is projected to increase an additional 5% in 2023, and an additional 4% in 2024.

The PBA submits such a large increase in the cost-of-living favors PBA 265’s modest salary proposal. They argue year after year, the CPI and inflation rates continue to rise at greater rates than we have seen since the 1980s. These increases have exceeded salary increases, as well as exceeded PBA 265’s proposed increases. They argue the greatly increasing cost of living therefore justifies awarding PBA 265’s proposal.

### **Continuity and Stability of Employment, N.J.S.A. 34:13A-16(g)(8)**

N.J.S.A. 34:13A-16g(8) provides for consideration of:

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 bargaining between the parties in the public service and in private employment.

The continuity and stability of employment criteria incorporates several concepts. The first providing a competitive compensation and benefits package that alleviates excessive turnover thus maintaining "continuity and stability in employment." The second is the concept of the "relative standing" of a negotiations unit with respect to other units of similar employees. Last, the continuity and stability of employment criteria incorporates the consideration of internal settlements and comparability, since deviation from such settlements can undermine morale, discourage future settlements, and affect labor relations stability.

The Employer submits that in these difficult economic times, it is hard to imagine PBA 265 members would leave the security of a well-paying job with extremely good healthcare and pension benefits for another job, whether in the private sector or public sector. The Employer notes that out of seventy-six (76) employees, Ware testified that only ten (10) employees left in the past ten (10) years prior to being eligible for retirement, and he was not able to testify why those ten (10) employees left. The Employer submits that by awarding its proposal, members of PBA 265 will collect a salary which is comparable to similarly situated unions throughout the County and will provide stability for both the members of PBA 265, as well as the residents of the County. The Employer submits the County will have the opportunity to provide for its employees, protect the welfare of its citizens, and mitigate/prepare for future financial hardship, which could occur at any moment during this ongoing public health crisis.

PBA 265 submits it has shown a high degree of continuous turnover due to the absence of a competitive salary and benefits package. In light of this, the arbitrator should fashion an award which establishes or enhances the compensation received by PBA 265, including step movement and cost of living adjustments. PBA 265 has introduced the testimony that officers have left employment for “greener pastures” that likely would not have exited employment had the Employer enhanced the step guide. They submit attrition increases the cost to the Employer by way of additional training costs for new employees, and creates operational problems associated with a high degree of employee turnover. PBA 265 submits this only further demonstrates the need for a more competitive salary and benefit package.

PBA 265 argues that in an environment where the sworn members of PBA 265 are at a lower number than they have been in many years and where that attrition is ongoing, the remaining sworn personnel are picking up significant additional responsibilities and duties and carrying all of those obligations out with the highest level of proficiency and expertise. They maintain the public is being extremely well-served by PBA 265 members that, while they rank at the top of their profession, rank in a very different position with respect to compensation. They submit local police are paid more than County Prosecutor’s detectives in almost all cases, and other County Prosecutor’s detectives are also paid more in many cases.

If the Employer’s proposal is awarded, PBA 265 argues it will adversely impact the continuity and stability of employment. Ware’s testimony was uncontroverted that at least ten (10) detectives have left short of retirement over the last ten years. Ware testified that of those ten, only one went to a private sector job. He testified that the remaining nine (9) went back to local police departments or higher paying County Prosecutor’s offices. Ware further testified that this attrition was and continues to be a direct result of the salary guide remaining unchanged since 2014. Ware testified that should PBA 265’s proposal not be adopted; he expects more PBA members to leave the department. The PBA’s proposal should be awarded to stop the detrimental effects to the continuity and stability of employment for this unit.

#### **Other Restrictions Imposed on the Employer, N.J.S.A. 34:13A-16(g)(9)**

The Legislature has codified the “cap consideration” requirements and statutory limitations on the employer set forth in section 10 of P.L. 2007, c.62 (C. 40A:4-45.45) in section 16(g)(9). Those restrictions are not applicable to the Award rendered herein.

PBA 265 submits the County has not been constrained by the tax levy cap, which limits budgetary increases from year to year 2% of the previous year’s budget. Dr. Caprio testified that since 2018 the tax levy has remained flat and there has been no increase in taxes to the residents in Passaic County. The taxpayers have not been burdened with a property tax increase. Dr. Caprio testified that the tax burden decreased for most and if there was any increase it was due to an increase in property value.

Dr. Caprio testified regarding the tax impact on each municipality. He noted that “80% of the towns have seen a decrease in taxes or are under the 2% cap since 2018.” Dr. Caprio also testified that the financials in the County are much better now than in 2020, and that the County continues to choose not to raise taxes. Dr. Caprio testified that PBA 265’s wage proposal is cumulatively less than 1% per year. More specifically, PBA 265’s proposal costs a total of \$456,403.00 over 6 years, equating to an increase of 0.96% cumulatively. PBA 265’s proposal is therefore not restricted by any statutory authority and Dr. Caprio testified that PBA 265’s proposal is also far less than a 2% increase.

Dr. Caprio analyzed the cost of a 2% per year increase and compared it to PBA 265’s proposed salary increases. Every year, PBA 265’s proposal is less than the 2% increment. They submit there are therefore no statutory restrictions that would prevent an award of PBA 265’s proposal.



## ANALYSIS AND AWARD

The Employer and PBA 265 have submitted extensive documentation, testimony and comprehensive position statements addressing the statutory criteria in support of their Final Offers. I have reviewed and analyzed the exhibits, testimony and Parties' submissions and application of the 16(g) criteria to same. The Parties were represented by extremely competent and zealous advocates. The exhibits were well organized, relevant and the testimony of the witnesses was credible. After review of the Final Offers, evidence and argument, the Award in this proceeding is analyzed and discussed below.

In applying the 16(g) criteria, the interest and welfare of the public has been given the most weight in this Award. Significant weight was also given to internal comparability; specifically, the Interest Arbitration Awards between the County, Sheriff, and PBA Locals 197, 197A, 286 and MOA with PBA Local 286A. Internal comparability with the County's other civilian bargaining units was given consideration as was the external comparability with other Passaic County municipal police departments and County Prosecutor Offices. No weight was given to private sector employment and wages. Great weight has also been applied to the consideration of the other terms and conditions of employment, the cost-of-living criterion and the continuity and stability of employment. The lawful authority of the employer, and the financial impact criteria was also given significant weight, though I note the Employer did not argue or dispute its "ability to pay."

As discussed above, the primary issues in this impasse are over salaries and health benefits. The Interest Arbitration Awards and MOA addressed these issues. In those proceedings, unlike here, the unions' final offers proposed step movement and percentage increases at top step or off-guide and agreed to the elimination of the Traditional Plan. Here, PBA 265's Final Offer incorporates the discretionary steps into the guide with step movement throughout the life of the Agreement. PBA 265 also proposed across the board cost of living increases in 2019, 2020, 2021 and 2022. As part of PBA 265's wage proposal, it proposed to increase the work week from 38.75 hours to 40 hours, effective January 1, 2023 with a zero percent raise in that year and only an adjustment to their wages based on increased number of work hours. In 2024, PBA 265 proposed an across-the-board cost of living increase of 2.75%. In addition, specific to the Superior Officers, in order to provide a more competitive salary, and to compensate supervisors for additional responsibilities, and balance an expansive salary guide, the PBA proposed an on-call stipend of \$5,000.00 per year for all supervisors. PBA 265 also rejects the elimination of the Traditional Plan arguing the savings realized by the County by its elimination are greater than the salary increases provided to PBA 265 members.

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. Township of West Windsor and PBA Local 271, IA-2019-014 (2019). PERC and judicial precedent have addressed the issue of pattern of settlement. Internal comparability is referenced in N.J.S.A. 34:13A-16(g)(2)(c), and internal patterns of settlement have been found to implicate this subsection as well under N.J.S.A. 34:13A-16(g)(8) and N.J.S.A. 34:13A-16(g)(1). See I/M/O City of Jersey City and Jersey City Police Benevolent Officers Association, IA 2017-012 (2017). PERC rules and regulations at N.J.A.C. 19:16-5.14(c)(5) also address identifying a "pattern of salary and benefit changes." Internal comparability has been deemed to be a persuasive factor when evaluating the merits of a disputed issue. However, if sufficient justification is established for deviation, a settlement pattern can be given lesser or no weight. The relevance of this subsection of the statutory criteria, N.J.S.A. 34:13A-16(g)(2)(c), and the rationale for examining this subsection are well established. It has been a criterion advanced in past interest arbitrations by both employers and unions when either party seeks to give meaning

to evidence on internal comparability or on an alleged pattern of settlement. N.J.S.A. 34:13A-16(g)(2)(c) requires arbitrators to compare the wages, salaries, hours, and conditions of employment of the employees in the proceeding with those of employees performing similar services in the same jurisdiction and with “other employees generally” in the same jurisdiction. Thus, this subfactor requires the arbitrator to consider evidence of settlements between the employer and its other negotiations units, as well as evidence that those settlements constitute a pattern. *See N.J.A.C. 19:16- 5.14(c)(5)* (identifying a “pattern of salary and benefit changes” as a consideration in comparing employees within the same jurisdiction). Pattern is an important labor relations concept that is relied upon by both labor and management.

In addition, a settlement pattern is encompassed in N.J.S.A. 34:13A-16(g)(8), as a factor bearing on the continuity and stability of employment and as one of the items traditionally considered in determining wages. *See I/M/O City of Jersey City and Jersey City Police Benevolent Officers Association*, IA 2017-012 (2017). Indeed, interest arbitrators have traditionally recognized that deviation from a settlement pattern can affect the continuity and stability of employment by discouraging future settlements and undermining employee morale in other units. *Fox v. Morris Cty.*, 266 N.J. Super. 501, 519 (App. Div. 1993), *certif. denied*, 137 N.J. 311 (1994) (in applying N.J.S.A. 34:13A-16(g)(8), arbitrator should have considered the effect of an award on employees in other units). Arbitrator Hundley noted PERC’s directive that arbitrators must consider evidence of settlements between the employer and other negotiations units, as well as claims that those settlements constitute a pattern. Further, arbitrators must fully articulate the rationale for any decisions to deviate from an internal settlement pattern. *Union Cty.*, P.E.R.C. No. 2003-33, 28 NJPER 459, (¶33169 2002) and *Union Cty.*, P.E.R.C. No. 2003-87, 29 NJPER 250 (¶75 2003). “If a pattern is not found, the arbitrator is nevertheless required to consider evidence of internal prior settlements under the criterion of internal comparability. 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.” *Township of West Windsor and PBA Local 271*, IA-2019-014 (2019). “The principle underlying these decisions is that maintaining an established pattern of settlement promotes harmonious labor relations, provides uniformity of benefits, maintains high morale, and fosters consistency in negotiations.” *Union Cty.*

The Employer submitted the Interest Arbitration Awards and MOA. The Employer maintains that PBA 265 is sufficiently dissimilar from these law enforcement bargaining units to warrant lesser increases, and their ability to maintain the Traditional Plan for such a long duration merits mitigation of their salary demands in addition to elimination of the Traditional Plan. The Employer also submitted the County’s collective negotiations agreements with its civilian units as establishing the County’s internal pattern of settlement.

PBA 265 argues there is no internal pattern of settlement involving both uniform and non-uniform employees. PBA 265 cited the discussion of the parity between Local 286 and Local 197 as addressed by Arbitrator Cure in the Interest Arbitration Award with Local 197 noting that those four bargaining unit contracts were “similar if not identical” and that previously they negotiated “in tandem” and “each received identical wage increases.” PBA 265 notes Arbitrator Winters also addressed the parity between Local 286 and 197 in Local 286’s Interest Arbitration Award. Arbitrator Winters noted with respect to “internal comparison and/or pattern bargaining” that “Passaic County Locals 197A, Local 286A, and Local 286. Local 197 contracts in the past have been similar.” PBA 265 argues while there is arguably parity between Local 197 and Local 286 due to their shared origin and history of bargaining – neither has parity with PBA 265. PBA 265 submits its members have never been a part of Local 197, have never negotiated in tandem with the other bargaining units, nor have they ever received the same salary increases. PBA 265 argues that further review of the Interest Arbitration Awards and MOA shows no pattern of similar offers, no pattern of similar settlements, and no pattern of similar awards to other Passaic County law enforcement units. PBA 265 also argues it’s Agreement differs vastly from the other County law enforcement units because it covers both Rank-and-File and Superior Officers. Local 286 and Local 286A are separate bargaining units, as is the case for Local 197 and 197A.

While PBA 265 may not have a shared historical bargaining relationship with Local 197, 197A, 286 and 286A, its members are the lead law enforcement agency with the same Employer, Passaic County. They represent the law enforcement officers that work directly with the County Prosecutors and literally work alongside these other County other law enforcement units. At the time of the Interest Arbitration Awards and MOA, PBA 265 was still in negotiations with the Employer with the elimination of the Traditional Plan and salaries as the main unresolved issues. Those issues remain in dispute in this impasse and are the same issues addressed in the Interest Arbitration Awards and MOA with Local 197, 197A, 286 and 286A.

Parity in economic benefits is one of the most basic tenets of sound labor relations. Parity and pattern of settlement prevents whipsawing by either the employer or union; eliminates controversy between bargaining units; and, most importantly, enhances the continuity of peaceful labor relations. It certainly is not in the public's interest to treat one group of employees differently than another. Arbitrator Weisblatt faced the issue of disparate treatment in In the Matter of Interest Arbitration between Township of Holmdel and PBA, Local 239, IA-93-163 (1993) and found that:

The Township presents a compelling argument with respect to the reasonableness of consistency among bargaining units under the public interest criterion. Consistency in treatment among bargaining units of the same employer is unquestionably a generally accepted element of good labor relations policy. Sound and consistent labor relations are certainly in the public interest. It prevents "whipsawing" in negotiations and it reduces the potential for the decline in morale, which often accompanies the perception of disparate treatment. The morale issue is a double-edged sword. Unreasonably favorable treatment of police units could likely cause the morale of the other public employees in the municipality to wane. Such a result would certainly not be in the public interest.

PERC has recognized the importance of maintaining a pattern of settlement among bargaining units of the same employer. In County of Union, IA-2001-46 (2002), the Commission emphasized that "[P]attern is an important labor relations concept that is relied on by both labor and management." The Commission noted that "[I]nterest arbitrators have traditionally recognized that deviation from a settlement pattern can affect the continuing and stability of employment by discouraging future settlements and undermining employee morale in other units." *Id.* Maintaining an established pattern of settlement promotes harmonious labor relations, provides uniformity of benefits, maintains high morale, and fosters consistency in negotiations. *Id.*

Here, I find the Interest Arbitration Awards and MOA with the County's other law enforcement units establish "terms that are reasonably consistent with one another" to establish a pattern of settlement. Township of West Windsor and PBA Local 271, IA-2019-014 (2019). Like here, in the Interest Arbitration Awards and MOA, salaries and health benefits, specifically the elimination of the Traditional Plan and savings engendered therefrom to fund salaries, were the primary issues in dispute. The Interest Arbitration Awards and MOA were for similar five-year terms and eliminated participation in the Traditional Plan. On salary, the Interest Arbitration Awards each awarded annual step movement and only differed by one percent (1%) in the top step salary awards for the Rank-and-File units. The Interest Arbitration Award with PBA Local 197 provided for a five-year term, elimination of the Traditional Plan and salary increases of movement on the guide and 1% at top step. The Interest Arbitration Award with PBA Local 286, decided during the appeal of the PBA Local 197 Award, provided for a five-year term, elimination of the Traditional Plan, and salary increases of movement on the guide and 2% at top step. The Interest Arbitration Award with PBA Local 197A provided for a five-year term, elimination of the Traditional Plan, and salary increases of movement on the guide and top step increases of 4%, 4%, 3%, 3%, and 3%. The Memorandum of Agreement between the Sheriff and PBA Local 286A provided for a five-year term, elimination of the

Traditional Plan, and salary increases of movement on the guide and top step increases of 4%, 4%, 3%, 3%, and 3%. In summary, the Interest Arbitration Awards with PBA Local 197, 197A, 286 and the MOA with PBA Local 286A are for like five-year terms, eliminated the Traditional Plan, and provided for similarly structured salary awards that are “reasonably consistent” with one another to establish a pattern of settlement to be followed here. *See Somerset County Sheriff’s Office*, P.E.R.C. No.007-33, 32 NJPER 372 (¶156 2006) *aff’d* 34 NJPER 21 (¶8 2008)(affirming PERC finding that arbitrator reasonably determined that the County’s own pattern of settlement with four other law enforcement units warranted a similar award for the fifth unit of law enforcement officers).

The Employer comparability and internal pattern with the County civilian contracts, while not extending beyond December 31, 2023, does not establish terms that are reasonably consistent with one another to suggest a common internal pattern on salary. The County’s collective negotiations agreements with its civilian units vary in terms of step movements, top step percentage increases, and across-the-board cost-of-living increases. As Arbitrator Cure noted in the Local 197 Interest Arbitration Award, there is limited utility in comparing the members to the civilian bargaining units. Indeed, it is well founded that arbitrators have consistently refused to sustain a “pattern of settlement” argument amongst civilian and law enforcement personnel. Township of Woodbridge and P.B.A. Local 81, IA-96-119 (1998).

While salaries and health insurance are the primary issues, the initial issue to address is the term of the Agreement.

#### **Article XXXV, Term and Renewal**

The Employer Final Offer is for a five (5) year term-January 1, 2019 through December 31, 2023. PBA 265’s Final Offer proposes a six (6) year term from January 1, 2019 through December 31, 2024.

PBA 265 has proposed a six (6) year term due to delays resulting from the COVID-19 pandemic. They submit the award of a six (6) year term would effectively have two ½ years left upon issuance of this award. PBA 265 notes that Employer’s suggestion of a lesser term would leave the parties with just over 12 months before the parties are required to commence efforts towards a successor Agreement. PBA 265’s proposal gives the parties the better part of two years without being required to commence negotiations again. PBA 265 submits awarding a longer contract would be consistent with the statutory public policy to stabilize and promote labor peace between the public employer and its employees which in turn preserves the general public interest and welfare.

As noted above, the Interest Arbitration Awards and MOA all are for five-year terms. The County civilian contracts do not go beyond December 31, 2023. While PBA 265 cites delays resulting from the COVID-19 pandemic for the additional year on the term, the Employer has cited the delays in negotiations are attributed to PBA 265.

Regardless, based on the internal comparability and pattern of settlement with respect to the term, the Employer has met its burden and I award a five-year term. PBA 265 has not shown sufficient justification to deviate from the pattern of settlement. A common expiration date would allow all bargaining units to negotiate successor agreements based upon the existing budgetary, financial, economic, and legal framework that will exist at that time. Labor relations stability would not be furthered by fragmenting expiration dates within public safety units. Based on the foregoing, the Employer has met its burden and I award a five-year agreement. The term of the Agreement shall be effective as of January 1, 2019 and shall remain in full force and effect through December 31, 2023.

## **Article XVI-Salaries**

A significant issue in this impasse is the wage proposals of the Employer and PBA 265. The Employer Final Offer has proposed movement on the step guide with no increase to those at top step or off guide for each year of the Agreement. PBA 265 has submitted a Final Offer that incorporates the discretionary steps into the guide with across-the-board cost-of-living increases in each year, and the movement to a forty (40) hour work week in 2023 with no increase. The PBA also seeks a \$5,000.00 on call stipend for all supervisors effective January 1, 2022. The PBA also seeks to remove all references to any cap on a member's base salary be removed.

The Agreement covers Investigators/Detectives, Senior Investigators/Detectives 1st Grade, Sergeants, Lieutenants, Captains, Deputy Chief and Chief in the PCPO. The Parties respective Final Offers each sought the removal of the Deputy Chief and Chief from the unit and the same is awarded based on the respective Final Offers. There are seventy (76) members of the unit as of January 1, 2019. The Agreement has a salary guide set forth at Exhibit B that provides for fifteen (15) steps and a discretionary step for Investigators/Detectives. As of January 1, 2019 there were forty-six (46) Detectives. The starting salary for an Investigator/Detective is \$48,298.00 and top step is \$108,377.00 with a discretionary step of \$112,678.00. As of January 1, 2019 there were thirteen (13) Detectives 1st Grade. The starting salary for a Detective 1st Grade is \$49,641.00 and top step is \$115,294.00 with a discretionary step of \$120,098.00. The dollar amount between most steps on the guide is \$4,293.00, with \$4,297.00 between the 14th and 15th steps with the amount between the 15th and discretionary step being \$4,301.00.

The Agreement also covers the Superior Officers including the Sergeants, Lieutenants, Captains, Deputy Chief and Chief. Again, the Parties respective Final Offers each sought the removal of the Deputy Chief and Chief from the unit and the same is awarded based on the respective Final Offers. The salary guide for the Superior Officers is comprised of sixteen (16) steps with a discretionary step. As of January 1, 2019 there were eight (8) Sergeants. The starting salary for a Sergeant is \$58,883.00 and sixteenth step is \$126,118.00 with a discretionary step of \$130,550.00. The amount between steps varies but approximates \$4,400-\$5,800. The Sergeants salaries here range from \$122,661.00 to \$134,543.00. As of January 1, 2019, there were five (5) Lieutenants. The starting salary for a Lieutenant is \$69,742.00 and sixteenth step is \$130,488.00 with a discretionary step of \$134,537.00. The amount between steps is \$4,000-\$4,500. The Lieutenants salaries here range from \$130,813.00 to \$139,226.00. As of January 1, 2019, there were three (3) Captains. The starting salary for a Captain is \$74,774.00 and sixteenth step is \$142,002.00 with a discretionary step of \$146,363.00. The amount between steps is \$4,354.00-\$6,227.00. The Captains salaries range from \$144,727.00 to \$147,127.00.

## **Cost-out of Salary Final Offers**

While it is undisputed the restrictions of the 2% salary cap no longer apply, N.J.A.C. 19:16-5.7(g)(2) demands that the parties submit written estimates of the financial impact of their respective final offers on the taxpayers. Moreover, N.J.A.C. 19:16-5.9(c) requires that an interest arbitrator's decision shall set forth the cost of all "base salary" items for each year of the award, to include the salary provided pursuant to a salary guide or table, any amount provided pursuant to a salary increment, and amount provided for longevity or length of service amongst other items. According to the express terms of N.J.A.C. 19:16-5.9(c), these cost out figures are necessary in order for an interest arbitrator to determine, pursuant to N.J.S.A. 34:13A-16(d), whether the total net annual economic changes for each year of the award are reasonable under the statutory criteria.

### Employer Cost Out

The Employer cost out shows a total base salary as of January 1, 2019 of \$7,635,727.50, which includes detective stipends, education stipends and longevity. The base pay without these additional items of compensation is \$7,598,360.00. The Employer did not provide a cost-out of its Final Offer of step movement and no increase to those at top step or off guide. Instead, the Employer provided a cost-out of step movement and a 1.5% increase to top step or those off guide through 2022. Under that analysis, in 2019, the Employer cost out of step movement and 1.5% increase at maximum or off guide shows a cost of \$8,000,960 or a 4.56% increase. In 2020, the Employer cost out of step movement and 1.5% increase at maximum or off guide shows a cost of \$8,243,796 or a 2.95% increase. In 2021, the Employer cost out of step movement and 1.5% at maximum or off guide shows a cost of \$8,469,068 or a 2.66% increase. In 2022, the Employer cost out of step movement and 1.5% at maximum or off guide shows a cost of \$8,698,245 or a 2.63% increase. The Employer cost out of step movement and 1.5% at maximum or off guide for a four-year term is 3.201%.

The salary guide under the Employer Final Offer remains unchanged. The starting salary for an Investigator/Detective is \$48,298.00 and top step is \$108,377.00 with a discretionary step of \$112,678.00. The starting salary for a Detective 1<sup>st</sup> Grade is \$49,641.00 and top step is \$115,294.00 with a discretionary step of \$120,098.00. The starting salary for a Sergeant is \$58,883.00 and sixteenth step is \$126,118.00 with a discretionary step of \$130,550.00. The starting salary for a Lieutenant is \$69,742.00 and sixteenth step is \$130,488.00 with a discretionary step of \$134,537.00. The starting salary for a Captain is \$74,774.00 and sixteenth step is \$142,002.00 with a discretionary step of \$146,363.00.

The Employer cost out of step movement and 1.5% increase at maximum or off guide is set forth in its scattergram. The Employer cost out scattergram shows an Investigator/Detective with a base salary of \$61,488.00 increases to \$65,780 in 2019, \$70,074.00 in 2020, \$74,369.00 in 2021, \$78,861.00 in 2022. The Employer cost out for a Detective 1<sup>st</sup> Grade shows a base salary of \$96,402.00 increases to \$101,208.00 in 2019, to \$106,011.00 in 2020, to \$110,815.00 in 2021, and \$115,619.00 in 2022. A 16.7% increase over four years or 4.75% per year. A Sergeant earning a salary of \$126,443.00 increases to \$128,335.00 in 2019, \$130,255.00 in 2020, \$132,204.00 in 2021, and \$134,182.00 in 2022. A Lieutenant with a base salary of \$135,613.00 increases to \$137,642.00 in 2019, \$139,702.00 in 2020, \$141,793.00 in 2021, and \$143,915.00 in 2022. A Captain earning a base salary of \$144,727.00 increases to \$146,893.00 in 2019, \$149,092.00 in 2020, \$151,323.00 in 2021 and \$153,588.00 in 2022.

The Employer submits that to the extent that PBA 265 seeks a meaningful comparison with any of the other law enforcement bargaining units, PBA 265 employees' job responsibilities are more comparable with the Rank-and-File units, and not the Superior Officers' units. The Employer asserts the Superior Officers' units represent the upper limit of salary increases for law enforcement employees in the County. The Employer maintains that given the significant disparity in responsibilities, which include less erratic schedules and effectively zero dangerous situations, any salary increases approaching this upper limit would be inequitable.

The Employer notes that none of the other law enforcement bargaining units received a yearly cost of living adjustment across the board, which is sought here. Based on comparability, the Employer submits PBA Local 265's salary demand is untenable. They also assert that none of these units retained the benefit of enrolling in the Traditional Plan at the County's expense for the first three ½ years of their new agreement. The Employer maintains that PBA 265 is sufficiently dissimilar from these law enforcement bargaining units to warrant lesser increases, and their ability to maintain the Traditional Plan for such a long duration merits mitigation of their salary demands in addition to elimination of the Traditional Plan. The Employer emphasizes that PBA 265 should not be rewarded for their delay of negotiations. The Employer suggests this reasoning should be similarly applied to PBA 265's appeal for breakage to factor

into additional compensation. The Employer suggests PBA 265's unfair delay in resolving a new Agreement has necessarily increased the amount of "breakage" available and the unions have no entitlement to same. The Employer submits an award which exceeds comparability to the Rank-and-File bargaining units of PBA Local 197 and PBA Local 286, and which incorporates this inflated breakage, would only encourage such stalling behavior in the future.

#### PBA 265 Cost Out

PBA 265's cost out shows a total base salary as of December 31, 2018 of \$7,963,393.00. PBA 265 cost out shows an increase in the base pay from 2018 to 2019 in the amount of \$79,034.00 for a total cost of \$8,042,428.00. In 2020, PBA 265 submits the cost decreases \$226,862.00 due to breakage for a total cost of \$7,815,565.00. In 2021, the total cost increases to \$7,944,970, an increase of \$129,405.00. In 2022, the cost increases by \$231,648.00 to \$8,176,617.00. In 2023, the cost decreases by \$42,171.00 to \$8,134,446.00. In 2024, the cost increases by \$285,350.00 to \$8,419,797.00. PBA 265's cost out shows a 5.43% increase over the life of the agreement.

PBA 265's proposed salary guide for a Detective has a starting salary in 2019 of \$49,143.00 with a top step of \$114,650.00. In 2024, the last year of the proposed contract, the starting salary increases to \$60,963.00 and top step increases to \$130,630.00. A Detective 1<sup>st</sup> Grade starting salary in 2019 is \$50,510.00 increasing to \$62,503.00 in 2024 with the top step of \$122,200.00 in 2019 increasing to \$139,232.00 in 2024. A Sergeant starting salary in 2019 is \$59,913.00 increasing to \$78,543.00 in 2024 with the top step in 2019 of \$132,835.00 increasing to \$151,349.00. A Lieutenant starting salary in 2019 is \$70,962.00 increasing to \$90,242.00 in 2024 with the top step of \$136,891.00 increasing to \$155,971.00. A Captain starting salary in 2019 is \$76,083.00 increasing to \$148,924.00 with the top step of \$148,924.00 increasing to \$169,681.00.

PBA 265's cost out scattergram shows an Investigator/Detective with a base salary of \$61,488.00 increases to \$66,600.00 in 2019, \$72,212.00 in 2020, \$78,766.00 in 2021, \$85,624.00 in 2022, \$93,219.00 in 2023, \$100,762.00 in 2024. PBA 265's cost out for a Detective 1<sup>st</sup> Grade shows a base salary of \$96,402.00 increases to \$100,203.00 in 2019, to \$106,931.00 in 2020, \$114,982.00 in 2021, and \$123,394.00 in 2022, \$132,795.00 in 2023 and \$139,232.00 in 2024. A Sergeant making \$126,443.00 increases to \$132,835.00 in 2019, \$135,139.00 in 2020, \$138,876.00 in 2021, \$142,695.00 in 2022, \$147,298.00 in 2023, and \$151,349.00 in 2024. A Lieutenant with a base salary of \$135,613.00 increases to \$144,487.00 in 2019, \$151,531.00 in 2020, \$155,698.00 in 2021, \$159,979.00 in 2022, \$165,140.00 in 2023, and \$169,681.00 in 2024. A Captain earning a base salary of \$144,487.00 increases to \$148,812.00 in 2019, \$156,106.00 in 2020, \$161,023.00 in 2021, \$170,304.00 in 2022, \$176,965.00 in 2023 and \$181,506.00 in 2024.

PBA 265 argues it's Agreement differs vastly from Local 197, 197A, 286 and 286A because it covers both Rank-and-File and Superior Officers. PBA Local 286 and Local 286A are separate bargaining units, as is the case for PBA Local 197 and 197A. PBA 265 notes it has a 15-17 step salary guide, where the average number of steps on the salary guides throughout Passaic County is ten steps. PBA 265 notes that the greater the number of steps, the smaller the salary increases per year. PBA 265 notes that a salary guide with ten steps, like PBA Local 286, is equivalent to approximately an \$8,000.00 increase per year. While PBA 265's in salary guide increases are approximately \$4,000.00 per year, per step. PBA 265 submits that although the other County law enforcement units rank below PBA 265 in salary, they currently achieve a near equal top step in five less years. PBA 265 also argues it sits at or near the bottom of the salary comparison chart as compared to other law enforcement agencies within Passaic County and other Prosecutor Offices. PBA 265 also submitted a comparison of Sergeant's compensation. The PBA submits other PBA salary guides have significantly smaller guides for their Superior Officers, with most guides



having two or three steps. PBA 265 argues the Sergeant's salary comparison shows the same disparity in compensation as the Detectives/Investigators. PBA 265's Sergeants' top step are among the lowest paid in the County and among other Prosecutor offices that have much smaller guides, with significantly less steps. PBA 265 notes it currently has "discretionary steps" which PBA 265 proposed be incorporated into the contract's salary guide as non-discretionary. The discretionary steps contained in the PBA 265's Agreement awards the current top steps to employees solely at the discretion of the County Prosecutor. PBA 265's proposal to incorporate these discretionary steps as mandatory would further assist in bringing PBA 265 some type of competitive compensation package it maintains. PBA 265 also asserts that its members receive no unique add-ons or fringe benefits including no longevity, night differential, and no ability to work PBA Road Jobs, also referred to as side jobs, for overtime compensation.

Here, an analysis of the criteria, evidence and arguments supports a Salary Award like that previously awarded in the Interest Arbitrations and the MOA. The Employer's Final Offer does not comport with those Interest Arbitration Awards and MOA and continues a freeze on increases for those at top step and off guide which is unreasonable under the application of the 16(g) criteria. The Employer argues that PBA 265 should receive lesser increases than awarded in the Interest Arbitration Awards and MOA due to the nature of their job responsibilities and the delay in negotiations allowing them to continue enrollment in the Traditional Plan. As noted by Arbitrator Winters in the PBA Local 286 Interest Arbitration Award and applicable here, the Employer's wage proposal fails to meet the most minimal expectations. The Employer's justifications for its deviation from the pattern established in the Interest Arbitration Awards and MOA are not sufficient to warrant award of the pattern. Thus, the Employer's Final Offer on Salary is not awarded and is denied.

PBA 265's Final Offer on salary is compelling, practical, and not unreasonable when applying the 16(g) criteria. However, its justifications for its deviation from the Interest Arbitration Awards and MOA also does not outweigh consistency in labor relations and the pattern of settlement. No other bargaining unit received annual step increases and annual across the board cost of living increases. PBA 265 is the last law enforcement unit to settle and a deviation from the settlement pattern and award of their proposal will discourage future settlements and undermine employee morale in other units. PBA 265 has not established sufficient justification for me to deviate from the Interest Arbitration Awards and MOA or give them lesser or no weight. Thus, PBA 265's Final Offer on Salary is not awarded and is denied.

As noted above, parity in economic benefits is one of the most basic tenets of sound labor relations. Parity and pattern of settlement cuts both ways-it prevents whipsawing by either the employer or union. It also has been found to eliminate controversy between bargaining units and enhance the continuity of peaceful labor relations. Deviation from a settlement pattern can affect the continuity and stability of employment by discouraging future settlements and undermining employee morale in other units. The Employer and PBA 265's respective justifications for deviation from the Interest Arbitration Awards and MOA do not outweigh maintaining an established pattern of settlement that promotes harmonious labor relations, improves compensation, provides uniformity of benefits, maintains high morale, and fosters consistency in negotiations.

The application of the Interest Arbitration Awards and MOA to PBA 265 addresses many of the issues PBA 265 raises related to its compensation. For example, top step compensation for PBA 265's Rank-and-File and Superior Officers will significantly increase as will their ranking among their peers. In addition, the Salary Award of the salary increases in the Local 197A Interest Arbitration Award and Local 286A MOA to the Sergeants, Lieutenants and Captains of the Prosecutors Superior Officers' Association will compensate them sufficiently to provide for separation between the Rank- and-File and the Sergeants, and also address any issues related to duties and responsibilities related to on call responsibilities. As discussed, I am bound by interest arbitral precedent, parity, pattern of settlement and the internal



comparables; specifically, the Interest Arbitration Awards and MOA and award same to this unit as set forth below.

The interest and welfare of the public was given great weight in this Award. The Salary Award is in the interest and welfare of the public as it provides a salary and benefit package sufficient to ensure the Prosecutor's Office is staffed by competent, dedicated personnel with good working morale. At the same time, the Award does not impact the employer's ability to fund the agreement without deleteriously affecting the amounts budgeted for other programs and without exceeding the CAP on municipal/county expenditures. The County is well funded and does not have an ability to pay issue. The Salary Award gives consideration to the public's interest in preventing the diminution of service and that PBA 265 members receive competitive salaries and benefits in order to prevent the deterioration of public safety. The Salary Award herein is based on the Interest Arbitration Awards and MOA and is in the public's interest as it recognizes the importance of parity and pattern of settlement in labor relations and does not treat one group of employees differently than another.

As noted above, I am bound by interest arbitral precedent, pattern of settlement and the internal comparables; specifically, the Interest Arbitration Awards for the Sheriff Officers and Superior Officers (Local 286 and 286A), and Corrections Police Officers and Superior Officers (Local 197 and 197A). The Employer suggests the Rank-and File units are the proper comparison. In that vein, I find PBA 265 members to be more comparable to PBA Local 286 members and the Superior Officers to be comparable to PBA 286A Superior Officers. That said, I note this unit, unlike those, is a hybrid unit comprised of Detectives, Investigators, Senior Investigators/Detectives 1<sup>st</sup> Grade and Superior Officers. In that regard, I note the salary awards in the Interest Arbitration Awards and MOA with yearly percentage increases at top step will create a bubble in the respective salary guides. Nevertheless, though not improving the internal guides, the increase to the top step creates an incentive for individuals to stay with the PCPO to see those increases. The different percentage salary awards for the Rank-and-File units (PBA Local 197 and PBA Local 286), and for the Superior Officer units (PBA Local 197A and PBA Local 286A) also creates an internal conflict for any uniform salary award for this hybrid unit. While the unit is a hybrid unit, I note there are terms and proposals that differ within the unit for the Rank-and-File and Superior Officers. For example, PBA 265's Final Offer includes a stipend to the Superior Officers for on call responsibilities. PBA 265 also expressed concern over the separation in pay between the Rank-and File and Superior Officers. The application of the Interest Arbitration Awards and MOA will help resolve these issues. On balance, despite the bubble and intra-union conflict, the application of the Interest Arbitration Awards and MOA to PBA 265, and consistent treatment of bargaining units will help address employee morale and retention issues by continuing step movement and providing significant increases to those that stay with the PCPO and reach top step or are promoted to be a Superior Officer.

The external comparability analysis in the Interest Arbitration Awards found that PBA Local 197, 286, 197A and 286A have fewer steps and rank higher in external comparability amongst their respective peers than do the members of the PBA here. While the salary increases here for the Detectives, Investigators, Senior Investigators and Detectives 1<sup>st</sup> Grade may not significantly improve their overall status among their peers as would have their proposal, it nevertheless allows them to keep pace with their colleagues by competitively improving their compensation, and significantly improving the top step compensation. The award of step movement each year of the agreement and top step increases will enhance the continuity and stability of employment and allow the unit to keep its members and its standing with other Prosecutor Investigators and Detectives in the State. Under the Salary Award over the term of the Agreement, a Detective at top step earning \$108,377.00 will see the top step salary increase to \$119,657.00 with the discretionary step increasing from \$112,676.00 to \$124,403.00. A Detective 1<sup>st</sup> Grade at top step earning \$115,284.00 will see the top step salary increase to \$127,282.00 with the discretionary step of \$120,098.00 increasing to \$132,597.00. The Detective's and Detective 1<sup>st</sup> Grades salary at top step and discretionary step in 2023 will improve their ranking *vis a vis* other Passaic County law enforcement units

and other Prosecutor Offices. Under the Salary Award over the term of the Agreement, a Sergeant earning \$126,118.00 will see the salary increase to \$149,058.00 with the discretionary step of \$130,550.00 increasing to \$154,296.00. A Lieutenant earning top step pay of \$130,488.00 will see an increase to \$154,223.00 with the discretionary step of \$134,537.00 increasing to \$159,008. A Captain at top step pay of \$112,002.00 will see an increase to \$132,374.00 with a discretionary top step of \$146,363.00 increasing to \$172,985.00. The Sergeants salary at top step and discretionary step in 2023 significantly improves their ranking based on the comparisons to Sergeants in other Passaic County law enforcement units and County Prosecutor Offices.

The financial impact and lawful authority of the Employer has been considered and given great weight. In addition, the financial difficulties that the County is projected to face because of the COVID-19 pandemic, and the costs attributed to continuing the Traditional Plan for this unit has also been evaluated. I note the Employer has not made an “ability to pay” argument and Dr. Caprio’s un rebutted testimony to the fine fiscal health of the County is acknowledged. Though the Employer does not make an “ability to pay” argument, I note the total cost of the Salary Award will have a negligible financial impact on the Employer, County, and its taxpayers. As Dr. Caprio testified, the County is well funded and does not have an ability to pay issue. Though the pandemic has had a significant impact, as Arbitrator Winters noted the County has had the ability to regenerate surplus, continues to have excess budget appropriations year over year that are cancelled and placed back into the fund balance, and maintains budget flexibility. Dr. Caprio testimony and expert report indicates that the County revenue collections have been stable, property tax increases have been flat, and the County’s extraordinary fund balance has more than doubled in size within the past five years. As Dr. Caprio noted, the County is in excellent financial condition and should be commended for its excellent financial management.

The cost of living has increased since the expiration of the parties’ Agreement and has greatly increased in 2021 and 2022. In the New York/ Newark area, the CPI increased 1.7% during the twelve (12) months ending June 31, 2019, and 1.3% during the twelve (12) months ending June 30, 2020. The CPI for all urban consumers in the United States was 4.1 percent in June 2021 based on CPI data with the CPI in the Northeast reported at 4.6%. The March 2022 Consumer Price Index for All Urban Consumers rose 1.2 percent, seasonally adjusted, and rose 8.5 percent over the last 12 months, not seasonally adjusted. The Salary Award of step movement and increases to top step like awarded in the Interest Arbitration Awards and MOA will help PBA 265 members keep pace with the cost of living. The increase in the cost of living in 2021 and 2022 also weighs against treating this bargaining unit differently than the other bargaining units due to the delay in negotiations that the Employer attributes to PBA 265 and as reflected in its Final Offer.

PBA 265 encourages consideration of the “breakage” in the unit and notes Arbitrator Winter’s use of same in his award. The Employer suggests PBA 265’s unfair delay in resolving a new Agreement has necessarily increased the amount of “breakage” available. The Employer also suggests Arbitrator Cure, in contrast to the Arbitrator Winters, declined to factor in breakage in his awards for Local 197 and 197A. While considerations of employers cost reductions or increases in costing out an award is no longer prohibited in light of the expiration of the 2% cap, PERC has found that arbitrators may use their discretion in deciding whether it is appropriate to factor in such reductions or increases when rendering a salary award. I/M/O Hopewell Twp. and Hopewell PBA Local 342, IA-2019-016 (2019). I have taken breakage into consideration, which I note is not insignificant. That said, I have not considered “breakage” in the cost out of the Award as the “ability to pay” is not at issue. While “breakage” is relevant to the cost of the contract to the Employer, it is not necessarily relevant to the respective wage rate being paid any particular employee for the work they perform.

Since the County has already voluntarily agreed to an identical proposal and implemented the Interest Arbitration Awards, the Employer has determined that the cost of the Agreement is not a barrier to its

operations. I conclude that the County will be able to afford the increased costs emanating from this Salary Award, and that there is no statutory impediment to this Award.

Based on the 16(g) criteria and evidence, the Salary Award is as follows:

- A. Effective and retroactive to January 1, 2019, Detectives, Investigators, Senior Investigators, Detectives 1<sup>st</sup> Grade will move one (1) step on the Salary Guide, and all those employees at maximum, off guide or the discretionary step will receive a two percent (2%) cost of living adjustment in his/her salaries. Effective and retroactive to January 1, 2019, Sergeants, Lieutenants and Captains will move one (1) step on the Salary Guide, and all those employees at maximum, off guide or the discretionary step will receive a four percent (4%) cost of living adjustment in his/her salaries.
- B. Effective and retroactive to January 1, 2020, Detectives, Investigators, Senior Investigators, Detectives 1<sup>st</sup> Grade will move one (1) step on the Salary Guide, and all those employees at maximum, off guide or the discretionary step will receive a two percent (2%) cost of living adjustment in his/her salaries. Effective and retroactive to January 1, 2020, Sergeants, Lieutenants and Captains will move one (1) step on the Salary Guide, and all those employees at maximum, off guide or the discretionary step will receive a four percent (4%) cost of living adjustment in his/her salaries.
- C. Effective and retroactive to January 1, 2021, Detectives, Investigators, Senior Investigators, Detectives 1<sup>st</sup> Grade will move one (1) step on the Salary Guide, and all those employees at maximum, off guide or the discretionary step will receive a two percent (2%) cost of living adjustment in his/her salaries. Effective and retroactive to January 1, 2021, Sergeants, Lieutenants and Captains will move one (1) step on the Salary Guide, and all those employees at maximum, off guide or the discretionary step will receive a three percent (3%) cost of living adjustment in his/her salaries.
- D. Effective and retroactive to January 1, 2022, Detectives, Investigators, Senior Investigators, Detectives 1<sup>st</sup> Grade will move one (1) step on the Salary Guide, and all those employees at maximum, off guide or the discretionary step will receive a two percent (2%) cost of living adjustment in his/her salaries. Effective and retroactive to January 1, 2022, Sergeants, Lieutenants and Captains will move one (1) step on the Salary Guide, and all those employees at maximum, off guide or the discretionary step will receive a three percent (3%) cost of living adjustment in his/her salaries.
- E. Effective and retroactive to January 1, 2023, Detectives, Investigators, Senior Investigators, Detectives 1<sup>st</sup> Grade will move one (1) step on the Salary Guide, and those employees at maximum, off guide or the discretionary step will receive a two percent (2%) cost of living adjustment in his/her salaries. Effective and retroactive to January 1, 2023, Sergeants, Lieutenants and Captains will move one (1) step on the Salary Guide, and all those employees at maximum, off guide or the discretionary step will receive a three percent (3%) cost of living adjustment in his/her salaries.

Based on the Employer's scattergram cost out in 2019 of base pay of \$7,598,360.00, the cost of the Salary Award in 2019 is \$7,730,633.00. In 2020, the cost of the Salary Award increases to \$8,035,876. In 2021, the cost increases to \$8,311,917. In 2022, the cost increases to \$8,583.638. In 2023, the cost increases to \$8,711,491. "Breakage" which is not insignificant,

PBA 265's Final Offer also seeks a \$5,000.00 on-call stipend to Superior Officers. The PBA has not demonstrated compensation for on-call responsibilities is warranted. That said, I note the Salary Award increases to the Superior Officers' takes their duties and responsibilities in consideration when applying the terms of the Local 197A Interest Arbitration Award and Local 286A MOA to this unit. PBA 265 has not met its burden to prove a \$5,000.00 on call stipend to Superior Officers' is warranted and the same is denied.

PBA 265 has proposed moving to a forty-hour work week. The Employer rejected this proposal. Sufficient evidence to warrant consideration of this proposal was not submitted. The PBA has not met its burden to prove the Final Offer proposal of a forty-hour work is warranted and should be awarded and same is denied.

The PBA has also proposed removal of the salary caps that the Employer has rejected. Sufficient evidence to warrant consideration of this proposal was not submitted. The PBA has not met its burden to prove its Final Offer to remove the salary caps should be awarded and the same is denied.

### **Article VIII, Health and Insurance Benefits**

The other significant issue in this impasse is over health benefits. Specifically, the elimination of the Traditional Plan.

The PCPO's Final Offer provides as follows:

All Employees shall no longer be allowed to enroll in the PCPO's Traditional Health Care Plan. All employees shall exit the Traditional Health Care Plan, effective thirty (30) days from the ratification date of this agreement.

Delete Article VIII(B) and replace with:

All Employees shall contribute to the cost of their medical benefits in accordance with Chapter 78 of the laws of New Jersey.

The PBA Final Offer provides:

All PBA members not on Schedule A will pay a percentage of their pensionable salary as the contribution towards retiree health benefits based on the plan they are enrolled in as set forth below:

A. If enrolled in Traditional health benefits plan in retirement, employees not on Schedule A shall contribute:

1. Single: 8% of pensionable salary
2. Parent/Child: 9% of pensionable salary
3. Husband/Wife: 14% of pensionable salary
4. Family: 15% of pensionable salary

B. If enrolled in the EPO health benefits plan in retirement, employees not on Schedule A shall contribute:

1. Single: 4.5% of pensionable salary

2. Parent/Child: 5% of pensionable salary
3. Husband/Wife: 7.5% of pensionable salary
4. Family: 8.5% of pensionable salary

The Employer's Final Offer included the elimination of the Traditional Plan currently utilized by members of PBA 265. They submit the proposal was discussed at length during negotiations between the parties prior to interest arbitration, but the parties were unable to come to an agreement. As was testified to by the County's health insurance expert, the County has been attempting to phase out the Traditional Plan among all bargaining units in the County, and the Interest Arbitration Awards and MOA eliminated the Traditional Plan.

The Employer submits that per the expert testimony from County witness there is no guaranteed saving to the County by eliminating the Traditional Plan. They submit the County remains self-insured, meaning it bears the burden for paying the claims made by its employees. Additionally, they note the County is not required and/or responsible for making payments to any carrier. They submit that if the County were fully insured by an outside entity, the County would be required to make these premium payments and would thereby actualize the savings alleged by PBA Local 265, as the rates would be assessed by the carrier, and the carrier would assume the burden of the risk. However, as the County is self-insured, they submit there is no guarantee for how many claims may be made and any savings for the County is not quantifiable. The Employer notes that the Winters and Cure Arbitration Awards for related bargaining units came to identical conclusions: "However, while the savings that will be experienced by 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. . . [A]s the County is self-insured, there is no guarantee for how [sic] claims may be made. Therefore, any savings for the County is not quantifiable."

The Employer also notes the saving amounts that PBA 265 alleges are speculative, based solely upon premium levels designed by actuaries, for purposes of the premium equivalent rate, and are not guaranteed. In other words, the County may realize a cost savings, however, it may also incur a greater cost based upon the claims that are made by the members and benefits/services paid for by the County. The Employer submits that by leaving the Traditional Plan and entering into the EPO or POS plan, the members will be receiving a true cost savings. They submit that by leaving the Traditional Plan, the members will automatically begin to make a lower Chapter 78 contribution to their medical premiums, as their total cost in premium would decrease into a more affordable plan. Thus, while the County seeks all PBA 265 members leave the Traditional Plan, the County does not agree with PBA 265's assessment regarding a potential cost savings upon their departure. They maintain the remaining plans offered by the County, namely the HSA and POS plans do provide members with the opportunity and ability to seek out-of-network benefits, similar to the Traditional Plan.

For PBA 265, the most important issue besides salary is the medical and hospitalization provided presently provided by the Employer. PBA 265 notes that the Employer relies entirely on the Interest Arbitration Awards with and MOA to support their contention that Traditional Plan should be removed in this Interest Arbitration proceeding. However, PBA 265 notes the Employer ignores the fact that those other units proposed to give up the Traditional Plan in exchange for greater raises proposed in their Final Offers. PBA 265 has made no such offer and there has been no such stipulation. PBA 265 contests the removal of the Traditional Plan. PBA 265 argues it's wage and salary offer were based on their available health benefit plans remaining intact, as well as maintaining their Chapter 78 contributions at the highest level. PBA 265 members electing Traditional Plan coverage pay accordingly to have that coverage and share the cost with the County.

The County is self-insured and pays for most claims directly, by utilizing a TPA. The County provides a Traditional Plan, Point of Service (POS) plan, EPO Plan, and high-deductible plan. The Traditional Plan is expensive and the PCPO seeks to no longer provide it to the unit. As discussed above, the Interest Arbitration Awards and MOA all eliminated employee participation in the Traditional Plan. In those cases, the unions agreed to the elimination of participation in the Traditional Plan, but still argued over the savings engendered by the Traditional Plan's elimination in order to fund their salary proposal. Here, PBA 265 opposes the elimination of the Traditional Plan, and makes similar arguments over the elimination of the Traditional Plan and the savings engendered therefrom to fund their salary request. A goal of the Employer is the elimination of participation in the Traditional Plan due to its excessive cost. PBA 265 contends the savings generated from the elimination of the Traditional Plan would pay for the salary increase in PBA 265's Final Offer.

The Traditional Plan is the "richest" health insurance plan offered by the Employer. The healthcare plan most similar in benefit level coverage, albeit different, is the EPO Plan. The cost of the Traditional Plan for a family is \$44,328.00 per year. The employee contributes \$10,639.00 with the County paying \$33,689.00. The EPO Plan cost for a family is \$22,480.00 with the employee contribution of \$5,395 and the County cost of \$16,604.00. The cost of a parent/child in the Traditional Plan is \$21,669.00 with the employee contributing \$6,067.00 and \$15,602.00 from the County. The EPO parent Child plan costs \$11,200.00 with the employee contributing \$3,360.00 and the County \$7,840.00. The cost of a single in the Traditional Plan is \$17,314.00 with the employee contributing \$5,887.00 and employee \$11,427.00. The EPO single plan cost is \$8,949.00 with the employee contributing \$3,043.00 and costing the County \$5,906.00.

As noted in the Interest Arbitration Awards, the elimination of the Traditional Plan will engender significant savings for both the County and the bargaining unit. While the savings experienced by the unit members are quantifiable because Chapter 78 contributions will be reduced, the County's savings are more speculative because it is self-insured. The County bears the burden of paying the claims made by the employees and does not pay an insurance carrier. If the County were fully insured, the County would be required to make the premium payments and would thereby actualize savings, as the rates would be assessed by the carrier and the carrier would assume the burden of risk. However, as the County is self-insured, there is no guarantee for how claims may be made. The saving amounts are speculative and are not guaranteed based off of the premium levels designed by the TPA actuaries.

The Interest Arbitration Awards and MOA all eliminated employee participation in the Traditional Plan. As discussed above, the County has established a pattern of settlement and uniformity of benefits regarding the elimination of the Traditional Plan. PBA 265 has not demonstrated sufficient justification to deviate from the pattern. Their rejection of the elimination of the Traditional Plan and argument over the cost savings to the Employer justifying their Final Offer on salary is not sufficient justification for me to not follow the pattern of eliminating participation in the Traditional Plan. As such, the Employer has met its burden to prove the elimination of participation in the Traditional Plan is warranted and the same is awarded. That said, the employees enrolled in the Traditional Plan shall exit the Traditional Plan during the 2022 County open enrollment period.

The Employer's Final Offer proposed Chapter 78 language. PBA 265 made no proposal to alter Chapter 78 contributions rates for active employees. No evidence was proffered regarding Chapter 78 language other than it is the law. Sufficient evidence to warrant the award of this proposal was not submitted. As such, the Employer has not met its burden to warrant the change and same is not awarded.

PBA 265 proposed to change future retiree health benefits contributions to a pensionable salary-based percentage, as opposed to a premium based percentage. The PBA's proposed pensionable salary rates are equivalent to today's Chapter 78 rates for the corresponding plan. The PBA proposal establishes a fixed contribution rate for future retirees who are not on Schedule A. Sufficient evidence to warrant the

award of this proposal was not presented. Thus, PBA 265 has not met its burden to prove this Final Offer is warranted and the same is not awarded.

PBA 265 also proposed to have retiree health benefits provided for PBA 265 members with fifteen (15) years of service in PCPO instead of twenty-five (25) years as currently provided. PBA 265 argues this proposal would incentivize experienced law enforcement officers to seek employment with Prosecutor's Office. They submit there is currently no contractual language on this issue, and any underlying concerns for providing health care in retirement are lessened by the Employee's contributions towards their health care in retirement. They submit it would also induce higher salaried employees to retire, which would generate open positions for new hires with lower salaries. The Employer rejects this proposal. Sufficient evidence under the 16(g) criteria has not been submitted to warrant the award of this proposal. I note this proposal and part of PBA 265's argument in support for this proposal cuts against the retention of experienced personnel and the continuity and stability of employment by inducing more senior members of PBA 265 to retire earlier. As such PBA 265 has not met its burden to prove the proposal is warranted and it is hereby denied.

#### **Other Employer and PBA 265 Final Offers:**

##### **Article I-Management Rights**

The Employer's Final Offer seeks a change in the Management Rights Article. The Employer seeks to add language expanding its rights to "the institution of emergent shift changes" asserting it enshrines the Employer's preexisting managerial prerogative. PBA 265 rejects this proposal. Sufficient evidence under the 16(g) criteria was not submitted to warrant the award of this proposal. The Employer has not met its burden to prove this change should be awarded and the same is denied.

##### **Article IV – Bereavement Leave**

The Employer's Final Offer seeks a change in the Bereavement Article. The Employer seeks to align the list of family members for whom bereavement leave is available to the current County policy. PBA 265 notes that no County policy language to replace the current language was provided. No replacement bereavement language was provided and sufficient evidence under the 16(g) criteria was not submitted to warrant the award of this proposal. As such, the Employer has not met its burden to prove this change should be awarded and the same is denied.

##### **Article VII – Vacations**

The Employer's Final Offer seeks a change in the Vacations Article. The Employer seeks the following:

- G. An employee may request of the Prosecutor or his designee, the right to carry over into the next calendar year unused vacation days. Approval of such requests shall be in writing and shall not be unreasonably denied.

The carry over may not exceed one calendar year value. Upon retirement, an employee is entitled to receive no more than one (1) years' worth of unused vacation time, regardless of how many days they have carried over.

NEW:

H. Probation shall consist of a ninety (90) calendar day period prior to beginning the employee's first year of full-time employment.

PBA 265's Final Offer also seeks a change in the Vacation Article. PBA 265 seeks to convert vacation days to hours. They submit this is a non-monetary proposal that costs the Employer zero dollars. The Employer rejects this proposal.

Sufficient evidence under the 16(g) criteria was not submitted by either party to warrant the award of this proposal. As such, neither the Employer nor PBA 265 has met its respective burden to prove their proposed changes should be awarded and same is denied.

**Article XXV – Dues Deduction and Agency Shop**

The Employer's Final Offer seeks a change in the Dues Deductions and Agency shop Article. The Employer seeks to delete entire Article per the Janus decision and current law. PBA 265 rejects this proposal. No evidence or language was provided with respect to this Final Offer, and sufficient evidence under the 16(g) criteria was not submitted to warrant the award of this proposal. As such, the Employer has not met its burden to prove this change should be awarded and same is denied.

**Article XXVII – Usage of Automobiles**

The Employer's Final Offer seeks a change in the Usage of Automobiles Article. The Employer seeks the following:

The Employer agrees that it is the sole and exclusive obligation of the Employer to provide and pay for all vehicles it deems necessary for the effective performance of the duties required by the Employer, with no cost of any kind whatsoever to the employee.

~~At no time shall an employee be required to use a personal vehicle for office business.~~ Should an employee be required to utilize a personal vehicle to attend an officer-approved training, their mileage shall be reimbursed at the rate established by the New Jersey Office of Management and Budget.

The Employer has proposed to alter the language of the contract to no longer be required to provide automobiles to employees. The Agreement currently states that "at no time shall an employee be required to use a personal vehicle for office business." PBA 265 notes the Employer seeks to remove the benefit of providing vehicles for office use, forcing employees to use their personal vehicles. PBA 265 submits the Employer does have enough vehicles. PBA 265's Final Offer provides that the PBA will use the PCPO automobiles for trainings and all office related work.



Neither the Employer nor PBA 265 has sustained their burden under the 16(g) criteria to alter the language as it currently exists, and their proposals are not awarded and are denied.

### **Article XXVI – Overtime**

The Employer's Final Offer seeks a change in the Overtime Article. The Employer seeks to add language in paragraph C regarding instituting shift changes. PBA 265 suggests the proposal requests the addition of language giving the Employer an "absolute right" to alter work schedules and institute shift changes. PBA 265 argues such an unfettered proposal to alter employees shift times would conflict with the language in the contract establishing the members work schedules. PBA 265 argues the Employer has put forth no testimony or evidence as to why this proposal is being sought, the reason for the requested change, or any evidence to support altering the language. As such, they submit this proposal should also be rejected and the contractual language should remain unchanged.

Sufficient evidence under the 16(g) criteria was not submitted to address this proposal. Thus, the Employer has not met its burden to prove this change should be awarded and same is denied.

PBA 265's Final Offer proposes that effective January 1, 2023, the length of the workweek shall be increased from 38.75 hours a week to 40-hour work week with salary adjustments to account for the additional hours starting 2023. The Employer rejects this proposal. Sufficient evidence was not proffered to support this change. Thus, PBA 265 has not met its burden to prove this change should be awarded and same is denied.

### **Article XXXIII – Off Duty Work [renamed]**

The Employer's Final Offer seeks a change in Off Duty Article. The Employer seeks to add new language as follows:

Passaic PCPO Prosecutor's Office vehicles are not authorized for use during off duty work, unless authorized by the prosecutor. Said authorization or denial of request(s) shall be final and binding and shall not be subject to the grievance procedure.

The Employer also seeks to change "part time PBA work" in this article with "off duty work."

No evidence was offered regarding this Final Offer. As such, the Employer has not met its burden to prove this change should be awarded and same is denied.

### **DETAILED SUMMARY OF THE AWARD**

Based upon the application of 16(g) criteria and the record before me, I respectfully enter the terms of this Award.

- 1. Article XXXV-Term and Renewal.** This Agreement shall be effective as of January 1, 2019 and shall remain in full force and effect through December 31, 2023.
- 2. Article II-Recognition.** The Chief and Deputy Chief shall be removed from the Recognition Clause.
- 3. Article XVI-Salaries.**
  - A. Effective and retroactive to January 1, 2019, Detectives, Investigators, Senior Investigators, Detectives 1<sup>st</sup> Grade will move one (1) step on the Salary Guide, and all those employees at maximum, off guide or the discretionary step will receive a two percent (2%) cost of living adjustment in his/her salaries. Effective and retroactive to January 1, 2019, Sergeants, Lieutenants and Captains will move one (1) step on the Salary Guide, and all those employees at maximum, off guide or the discretionary step will receive a four percent (4%) cost of living adjustment in his/her salaries.
  - B. Effective and retroactive to January 1, 2020, Detectives, Investigators, Senior Investigators, Detectives 1<sup>st</sup> Grade will move one (1) step on the Salary Guide, and all those employees at maximum, off guide or the discretionary step will receive a two percent (2%) cost of living adjustment in his/her salaries. Effective and retroactive to January 1, 2020, Sergeants, Lieutenants and Captains will move one (1) step on the Salary Guide, and all those employees at maximum, off guide or the discretionary step will receive a four percent (4%) cost of living adjustment in his/her salaries.
  - C. Effective and retroactive to January 1, 2021, Detectives, Investigators, Senior Investigators, Detectives 1<sup>st</sup> Grade will move one (1) step on the Salary Guide, and all those employees at maximum, off guide or the discretionary step will receive a two percent (2%) cost of living adjustment in his/her salaries. Effective and retroactive to January 1, 2021, Sergeants, Lieutenants and Captains will move one (1) step on the Salary Guide, and all those employees at maximum, off guide or the discretionary step will receive a three percent (3%) cost of living adjustment in his/her salaries.
  - D. Effective and retroactive to January 1, 2022, Detectives, Investigators, Senior Investigators, Detectives 1<sup>st</sup> Grade will move one (1) step on the Salary Guide, and all those employees at maximum, off guide or the discretionary step will receive a two percent (2%) cost of living adjustment in his/her salaries. Effective and retroactive to January 1, 2022, Sergeants, Lieutenants and Captains will move one (1) step on the Salary Guide, and all those employees at maximum, off guide or the discretionary step will receive a three percent (3%) cost of living adjustment in his/her salaries.

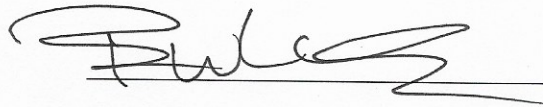
- E. Effective and retroactive to January 1, 2023, Detectives, Investigators, Senior Investigators, Detectives 1<sup>st</sup> Grade will move one (1) step on the Salary Guide, and those employees at maximum, off guide or the discretionary step will receive a two percent (2%) cost of living adjustment in his/her salaries. Effective and retroactive to January 1, 2023, Sergeants, Lieutenants and Captains will move one (1) step on the Salary Guide, and all those employees at maximum, off guide or the discretionary step will receive a three percent (3%) cost of living adjustment in his/her salaries.

Re number/letter remaining paragraphs.

**4. Article VIII-Health and Insurance Benefits.** Add to last sentence of paragraph A:

All Employees shall no longer be allowed to enroll in the Employer's Traditional Health Care Plan. All employees shall exit the Traditional Health Care Plan during the 2022 Open Enrollment Period.

5. All other proposals by the Employer and PBA 265 not awarded herein are denied and dismissed.
6. All provisions of the existing agreement shall be carried forward except for those which have been modified by the terms of this Award.
7. Pursuant to N.J.S.A. 34:13A-16(f), I certify that I have taken the statutory limitation imposed on the local tax levy cap into account in making the award. The Award also explains how the statutory criteria factored into my final determination.



Brian W. Kronick, Esq.  
Interest Arbitrator

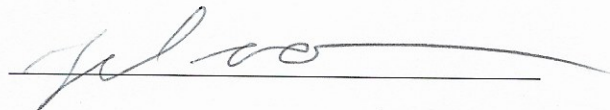
Dated: May 16, 2022

State of New York      }

ss:

County of New York      }

On this 16<sup>th</sup> day of May 2022, before me personally came and appeared Brian W. Kronick to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same.



MIGUEL MADERA  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01MA6381057  
Qualified in New York County  
My Commission Expires 09-24-2022