

NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION

Case No: IA-2020-008

In the Matter of the Interest Arbitration between:

**MERCER COUNTY PROSECUTOR'S OFFICE,
PUBLIC EMPLOYER**

and

POLICEMEN'S BENEVOLENT ASSOCIATION, LOCAL 339.

EMPLOYEE ORGANIZATION

**INTEREST ARBITRATION
DECISION AND AWARD**

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

APPEARANCES

For the Employee Organization:
Frank M. Crevelli, Esq.
Donald C. Barbati, Esq.
Crivelli & Barbati, L.L.C.

For the Public Employer:
Joseph M. Hannon, Esq.
Mohammad Barry, Esq.
Genova Burns, L.L.C.

I. PROCEDURAL BACKGROUND

On January 17, 2020, the Policemen's Benevolent Association, Local 339 ("Local 339" or "Union") filed a Petition to Initiate Compulsory Interest Arbitration ("Petition") with New Jersey's Public Employment Relations Commission ("PERC"). By filing the Petition, Local 339 asked PERC to appoint an interest arbitrator pursuant to Police and Fire Interest Arbitration Reform Act, *N.J.S.A. 34:13-16(e)(1)* to make an award concerning a successor collective negotiation agreement. ("CNA") with the Mercer County Prosecutor's Office ("County"). On July 27, 2020, I was appointed to serve as interest arbitrator¹.

Pursuant to *N.J.S.A. 34:13-16(b)(3)*, on August 27, 2020 and September 2, 2020, I conducted mediation sessions with the parties in an effort to "effect a voluntary resolution of the impasse." At the conclusion of the September 2, 2020 mediation session, it was determined that the impasse should proceed to interest arbitration. I conducted arbitration hearings on September 21, 2020 and September 30, 2020. The hearings were conducted via Zoom teleconferencing.

Local 339 offered the testimony of: (1) Union President, Detective Christopher Rios; (2) Captain Matthew Norton, President of P.B.A. Local 339A, Prosecutor's Superior Officers Unit ("SOA"), the collective negotiations unit representing the Superior Officers of the Prosecutor's Office; (3) Donald Barbati, Esq.; and (4) municipal finance, budgeting, property tax and local government policy and practice expert, Dr. Raphael Caprio. The County offered the testimony of: (1) Mercer County Prosecutor Angelo Onofri; (2) Jessica Plumeri, Chief of Detectives for the Mercer County Prosecutor's Office; and (3) David Miller, Chief Financial Officer for the County.

¹ I was the second interest arbitrator appointed on this proceeding, the first interest arbitrator withdrew, and the proceeding was further delayed because of the COVID-19 Pandemic.

Frank M. Crivelli, Esq. and Donald C. Barbati, Esq. of the firm of Crivelli & Barbati, L.L.C. represented the Union. Joseph M. Hannon, Esq. and Mohammad Barry, Esq. of the firm of Genova Burns, L.L.C. represented the County.

Both parties were afforded a full opportunity to examine and cross-examine witnesses, submit evidence, and present arguments in support of their respective positions. Both parties submitted briefs by October 30, 2020 and the record was closed at that time. The evidence adduced and the positions and arguments set forth by the parties have been fully considered in preparation and issuance of this Interest Arbitration Decision and Award.

II. PROPOSALS

A. FINAL UNION PROPOSALS

The Union presented the following proposals for my consideration:

Economic Issues

1. Amend Section 4 “Work Schedules” as follows:

4. WORK SCHEDULES

4.1 The weekly work schedule shall consist of five (5) consecutive days in any seven (7) day period, which schedule shall be established by the employer and may be changed by the Employer after giving reasonable notice.

4.2 The weekly work schedule and the starting time of work shifts shall be determined by the Prosecutor and, in emergency situations, may be changed at the discretion of the Prosecutor.

4.3 A workday shall consist of eight (8) consecutive hours, including ~~one (1) hour for lunch which shall be unpaid.~~ **a paid thirty (30) minute, non-guaranteed meal period, to which Detectives are subject to recall.**

2. Amend Section 5 “Overtime” as follows:

5. OVERTIME

5.1 Employees will be compensated for **hours time** worked in excess of ~~thirty-five (35)~~ **forty (40)** hours per week as follows:

- a. ~~All compensatory time earned through June 3, 1993 will be frozen. Employees may use compensatory time hours off from work.~~
- b. ~~After an Employee has accrued fifty (50) new comp hours (in Bank I—35 to 40 hours), Employees will be compensated at his/her current hourly rate for hours worked between 35 and 40 per week on an hour for hour basis. (Effective 7/1/93)~~
- c. **Hours Time** worked in excess of forty (40) hours per week will be compensated at the rate of one and one-half (1½) times the Employee's hourly rate of pay. ~~(Effective 7/1/93)~~
- d. ~~Effective January 1, 2001 the first hour of extra duty work (beyond 35 hours) shall be paid at the straight time rate and all work beyond 36 hours shall be paid at the overtime rate. (One and one-half times the Employee's hourly rate.)~~
- e. ~~Effective April 1, 2003 overtime shall be paid at the time and one half rate after 35 hours per week.~~

3. Amend Section 6 "Salaries" as follows:

6. SALARIES

6.1 Salaries for Employees covered by this Agreement shall be as set forth in Appendix A annexed **hereto**.

For Explanatory Purposes Only—Not to be included in the text of the Contract: [A New 12 Increment Step Guide shall be utilized starting January 1, 2021. The new guide proposes to add increments between the Academy Step and Step 1 and Steps 8 and 9. The New Guide as of January 1, 2021 is as follows:]

PBA #339 New Salary Guide As of January 1, 2021

Step	Salary (40hrs)
Step 1 (Academy) (6 Mos)	\$58,868.57
Step 2	\$62,168.57
Step 3	\$65,500.57
Step 4	\$72,132.57
Step 5	\$76,118.86
Step 6	\$80,105.14
Step 7	\$84,092.57
Step 8	\$88,073.14
Step 9	\$92,053.71
Step 10	\$100,034.29
Step 11	\$108,757.50
Step 12	\$118,725.21

The following wage increases and step movement are proposed:

Year 1 (1/1/2020—12/31/2020):

On January 1, 2020, the top step of the current nine step salary guide shall be increased by 1.0%. All bargaining unit members who are not on the top step of the salary guide shall advance one step on the salary guide effective July 1, 2020.

Year 2 (1/1/2021—12/31/2021):

On January 1, 2021, all employees shall begin to work an eight (8) hour workday with a one-half hour paid lunch period in which they shall be subject to recall. The employees' annual salary shall be based on their January 1, 2020 hourly wage multiplied by 2,080 hours. No employees shall advance on the salary guide in 2021.

Year 3 (1/1/2022—12/31/2022):

On January 1, 2022, the top step of the salary guide shall be increased by 1.0%. On July 1, 2022, all employees who are not on the top step of the salary guide shall advance one step on the salary guide effective July 1, 2022.

Year 4 (1/1/2023—12/31/2023):

On January 1, 2023, the top step of the salary guide shall be increased by 1.0%. On July 1, 2023, all employees who are not on the top step of the salary guide shall advance one step on the salary guide effective July 1, 2023.

Year 5 (1/1/2024—12/31/2024):

On July 1, 2024, all employees who are not on the top step of the salary guide shall advance one step on the guide effective July 1, 2024.

5. Amend Section 12 “Holidays” as follows:

12. HOLIDAYS

12.2 Holidays enumerated in Paragraph 12.1 above which fall on a Saturday shall be celebrated on the preceding Friday; holidays which fall on a Sunday shall be celebrated on the following Monday; holidays which fall within an Employee’s vacation period shall be celebrated at the Employee’s option unless the Prosecutor determines that it cannot be taken because of pressure of work.

12.3 In order to be eligible for holiday pay, an Employee must be on the active payroll of the County and must have worked his full regularly scheduled workday before and after the holiday unless such absence is authorized with pay or ordered.

~~12.4 Effective January 1, 2016, Lincoln’s Birthday and Washington’s Birthday shall be deleted from the list of holidays in 12.1 above and President’s Day shall be added as a holiday.~~

~~12.54~~ All work performed by Bargaining Unit Employees on holidays shall be compensated at the overtime two times his or her hourly rate of pay (time and one-half.) An Employee will be deemed to have worked on the holiday and shall receive the commensurate holiday pay if the Employee works on the date the holiday is celebrated and/or the actual day of the holiday.

6. Amend Section 18 “Longevity” as follows:

18. LONGEVITY

18.1 Every full time Employee, temporary or permanent, classified or unclassified, of the County of Mercer, shall be paid longevity payments on a prorated basis with each salary check during the calendar year, and such longevity payment shall be considered in total with the salary for pension purposes.

All full time Employees shall be entitled to longevity payments added to their gross per. annum pay consistent with the following guide:

<u>No. of Years</u>	<u>Dollar Amount</u>
<u>Beginning in the 5th year</u>	\$300.00
<u>Beginning in the 10th year</u>	\$900.00
<u>Beginning in the 15th year</u>	\$1,350.00
<u>Beginning in the 20th year</u>	\$1,850.00
<u>Beginning in the 24th year</u>	\$2,300.00
<u>Beginning in the 30th 29th year</u>	\$3,900.00

Any interruption of service due to a cause beyond the control of the Employee, i.e. for military service, injury, or illness, shall be considered as service for the County of Mercer for the purpose of determining the completion of said cumulative period of service with the County of Mercer. Nothing contained in this Article shall be construed to apply to any person whose employment has been terminated for any reason prior to the effective date of the adoption of this contract.

Such additional longevity payments shall be paid notwithstanding the maximum salary provided for such employment.

18.2 Law Enforcement Longevity Prosecutor's Detectives and Investigators having completed nine (9) ten (10) years of continuous law enforcement service with the County of Mercer shall receive an annual payment of four hundred dollars (\$400.00) dollar stipend beginning in their tenth year of service. The payment stipend shall not count as earnings in the calculation of overtime payments. Payments shall be made on a prorated basis with each salary check. Law enforcement longevity shall be considered in total with the salary for pension purposes.

Prosecutor's Detectives and Investigators having completed fourteen (14) fifteen (15) years of continuous law enforcement service with the County of Mercer shall receive an annual payment of six hundred fifty dollars (\$650.00) dollar stipend beginning in their fifteenth year of service. The payment stipend shall not count as earnings in the calculation of overtime payments. Payments shall be made on a prorated basis with each salary check. Law Enforcement longevity shall be considered in total with the salary for pension purposes.

Non-Economic Issues

1. Amend Section 29 “Departmental Investigations” as follows:

29. DEPARTMENTAL INVESTIGATIONS

Add new sub-section 12. :

12. All departmental investigations shall be conducted in accordance with the rules and regulations set forth in New Jersey Attorney General’s “Internal Affairs Policy and Procedures,” as may be amended from time to time.

2. Amend Section 34 “Termination” as follows:

34. TERMINATION

34.2 This Agreement shall be effective ~~upon execution~~ **January 1, 2020** and shall remain in full force and effect until the 31st day of December ~~2019~~ **2024**. It shall be renewed from year to year thereafter unless either party shall give written notice of its desire to modify the Agreement. Such notice shall be made by certified mail or personal service by October 1 of any succeeding year.

In the event that such notice is given, negotiations shall begin no later than 90 days prior to the anniversary date. This Agreement shall remain in full force and be effective during the period of negotiations **and until a new agreement is reached.**

B. FINAL COUNTY PROPOSALS

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

Economic Issues

1. Term of Agreement: Three Years, 1/1/20 through 12/31/22

2. Wages:

- Effective January 1, 2020: 0% with steps.
- Effective January 1, 2021: 1.0% across-the-board with no step movement
- Effective January 1, 2022: 1.25% across-the-board with steps.

3. Step Movement:

Revise Article 6.3 as follows:

Step movement shall be applied annually on July 1st, 2020, 2021, and 2022. There shall be no automatic step movement once the agreement has expired. All Employees with at least one (1) year of service shall annually advance one (1) step position until reaching the maximum pay rate as provided by the salary schedule.

Non-Economic Issues

1. Union Security

Revise Article 3.1 as follows:

Such termination of dues deductions shall take place ~~as of January 1st or July 1st of the next succeeding date on which written notice of withdrawal is filed by an employee with the Employer and the Union~~ the 30th day after the anniversary date of employment after the employee has revoked such authorization by providing written notice to the County during the 10 days following the anniversary date of their employment and any other notices as required by law.

2. Agency Shop

Delete Article 3.3 and replace with:

Any employee who is not a union members [sic], but whose position is covered by the recognition clause of this Agreement may pay a representation fee to the Union by automatic payroll deduction only if the employee provides written, voluntary consent to do so. The representation fee shall be in an amount equal to 85% of regular union membership dues, fees and assessments as certified by the Union to the Employer.

3. Non-Paid Leave of Absence

Delete Article 10.1 which provides: A permanent employee shall be entitled to a leave of absence with pay to accept a permanent appointment with another governmental agency in New Jersey for a period not to exceed four (4) months.

III. STIPULATIONS OF THE PARTIES

The County stipulated to the Union's proposals on **Article 18 Longevity** and **Article 29 Departmental Investigations**. The CNA will now be amended to provide:

18. LONGEVITY

18.1 Every full time Employee, temporary or permanent, classified or unclassified, of the County of Mercer, shall be paid longevity payments on a prorated basis with each salary check during the calendar year, and such longevity payment shall be considered in total with the salary for pension purposes.

All full time Employees shall be entitled to longevity payments added to their gross per. annum pay consistent with the following guide:

<u>No. of Years</u>	<u>Dollar Amount</u>
<u>Beginning in the 5th year</u>	\$300.00
<u>Beginning in the 10th year</u>	\$900.00
<u>Beginning in the 15th year</u>	\$1,350.00
<u>Beginning in the 20th year</u>	\$1,850.00
<u>Beginning in the 24th year</u>	\$2,300.00
<u>Beginning in the 30 29th year</u>	\$3,900.00

Any interruption of service due to a cause beyond the control of the Employee, i.e. for military service, injury, or illness, shall be considered as service for the County of Mercer for the purpose of determining the completion of said cumulative period of service with the County of Mercer. Nothing contained in this Article shall be construed to apply to any person whose employment has been terminated for any reason prior to the effective date of the adoption of this contract.

Such additional longevity payments shall be paid notwithstanding the maximum salary provided for such employment.

18.2 Law Enforcement Longevity Prosecutor's Detectives and Investigators having completed nine (9) ~~ten (10)~~ years of continuous law enforcement service with the County of Mercer shall receive an annual payment of four hundred dollars (\$400.00) dollar stipend beginning in their tenth year of service. The payment stipend shall not count as earnings in the calculation of overtime payments. Payments shall be made on a prorated basis with each salary check. Law enforcement longevity shall be considered in total with the salary for pension purposes.

Prosecutor's Detectives and Investigators having completed fourteen (14) ~~fifteen (15)~~ years of continuous law enforcement service with the County of Mercer shall

receive an annual **payment of** six hundred fifty **dollars** (\$650.00) ~~dollar stipend beginning in their fifteenth year of service~~. The ~~payment stipend~~ shall not count as earnings in the calculation of overtime payments. Payments shall be made on a prorated basis with each salary check. Law Enforcement longevity shall be considered in total with the salary for pension purposes.

29. DEPARTMENTAL INVESTIGATIONS

Add new sub-section 12. :

12. All departmental investigations shall be conducted in accordance with the rules and regulations set forth in New Jersey Attorney General's "Internal Affairs Policy and Procedures," as may be amended from time to time.

IV. STATUTORY CRITERIA

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

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

- (1) The interests and welfare of the public. Among the items the arbitrator shall assess when considering this factor are the limitations imposed upon the employer by P.L.1976, c.68 (C. 40A:4-45.1 et seq.).
- (2) Comparison of the wages, salaries, hours and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally:

- (a) In private employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.
 - (b) In public employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.
 - (c) In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L. 1995, c.425 (C. 34:13A-16.2); provided, however, that each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.
 - (d) In comparative private employment.
 - (e) In public and private employment in general
- (3) The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received.
 - (4) Stipulations of the parties.
 - (5) The lawful authority of the employer. Among the items the arbitrator shall assess when considering this factor are the limitations imposed upon the employer by P.L.1976, c.68 (C. 40A:4-45.1 et seq.).
 - (6) The financial impact on the governing unit, its residents, the limitations imposed upon the local unit's property tax levy pursuant to section 10 of P.L.2007, c. 62 (C.40A:4-45.45), and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take into account, to the extent that evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element or, in the case of a county, the county purposes element, required to fund the employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers of the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and

services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in a proposed local budget.

- (7) The cost of living.
- (8) The continuity and stability of employment including seniority rights and such other factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours, and conditions of employment through collective negotiations and collective bargaining between the parties in the public service and in private employment.
- (9) Statutory restrictions imposed on the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the Employer by Section 10 of P.L. 2007, c. 62 (C.40A:4-45.45).

V. BACKGROUND

The County is located midway between New York and Philadelphia. It is a diverse county consisting of urban, suburban, and rural settings. The County includes the City of Trenton, Princeton University and almost 8000 acres of preserved farmland. Statistically, the County is close to the New Jersey median on several important statistical indices. The following table sets forth some comparisons between the County, the State of New Jersey, and the United States.

DATA TYPE	MERCER COUNTY	STATE OF NJ	USA
Population	369,811		
Square Miles	224.4		
Median Age	38.9	40	38.2
Median Individual Income	\$42,302	\$42,815	\$33,831
Median Household Income	\$80,632	\$81,740	\$61,937
Persons Below Poverty Line	11.2%	9.5%	13.1%
Median Value of Owner-Occupied Housing Units	\$289,700	\$344,000	\$229,700

From March 2020 to August 2020, the County's unemployment rate rose from 3% to 12%. (County Ex. 3 at 672). This increase in the unemployment rate is directly linked to the ongoing world-wide COVID-19 Pandemic ("Pandemic").

The members of the Local 339 bargaining unit are employed as Detectives by the Mercer County Prosecutors Office². The Investigative staff of Detectives in the Prosecutor's Office is comprised of two divisions: Operations and Administrative. The members of the bargaining unit perform investigative functions on behalf of the County. The bargaining unit members conduct investigations of alleged criminality, and frequently work with other federal, state, and local law enforcement agencies. Much of the Detectives work is performed in support of prosecutors. The Detectives assist the prosecutors in the preparation of a variety of criminal proceedings. The Detectives also process civil forfeitures, prepare extraditions, and recommend the forfeiture or return of

² While the employees are paid by the County, the Prosecutor is the Chief Law Enforcement Officer in the county and is appointed by the Governor and subject to confirmation by the New Jersey State Senate.

firearms. The Detectives also seek to bring fugitive defendants before the courts. Finally, the Detectives are involved in training other law enforcement agencies.

As of the last day of the most recently expired CNA, December 31, 2019, the unit of rank and file members was comprised of 49 Detectives. (County Ex. I 002-006). The members of the bargaining unit receive wage rates commensurate with their experience. As of December 31, 2019, there were ten salary steps ranging from employees in the Academy earning \$51,510 to those at Step 9 or the top step earning \$102,856³.

The following table sets forth the scattergram of the members of the bargaining unit:

Step	2019 Base Salary	# on Step
9	\$102,856	22
8	\$87,530	1
7	\$80,547	2
6	\$77,064	5
5	\$73,581	4
4	\$70,092	11
3	\$66,604	0
2	\$63,116	0
1	\$57,313	3
Academy	\$51,510	1

³ Although the top step is Step 9, there are ten steps because the Academy step is not numbered.

VI. THE PARTIES' DISCUSSION OF THE COMPETING ECONOMIC PROPOSALS

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

The Union has several significant and intertwined economic proposals. Although it is not necessarily a wage proposal, the Union initially seeks to change the work schedule for members of the bargaining unit. Members of the bargaining unit currently work seven hours a day and have a one-hour unpaid lunch. The bargaining unit's hourly wage is based upon a thirty-five (35) hour week or eighteen-hundred and twenty (1820) hours per year. The Union is proposing to modify this schedule to provide for an eight (8) hour day with a paid thirty (30) minute meal period. This change would increase the number of hours worked per year from eighteen-hundred and twenty (1820) to two thousand and eighty (2080). The increase in hours would be linked to an increase in compensation

The Union links this schedule change proposal to its wage proposal and characterizes its wage proposal as providing two cost savings measures. The first proposal is to add two additional salary steps. At present, the salary guide provides for a fifteen-thousand three-hundred and twenty-six (\$15,326) dollar raise from Step 8 to the top step or Step 9 – a “bubble step.” The Union contends that by adding the two additional steps the Union will reduce the bubble step. The Union is also proposing to postpone the step increments which are presently due to be paid on July 1, 2021 for one year, and instead have the step increments paid on July 1, 2022. The Union is proposing the following salary schedule based on a forty (40) hour workweek:

Step	Salary (40 Hour Work Schedule)
1 (Academy) (6 Months)	\$58,868.57
2	\$62,168.57
3	\$65,500.57
4	\$72,132.57
5	\$76,118.86
6	\$80,105.14
7	\$84,092.57
8	\$88,073.14
9	\$92,053.71
10	\$100,034.29
11	\$108,757.50
12	\$118,725.21

Under this part of the Union's wage proposal, the twenty-two employees at the top-step would have their salaries increased from \$102,856 to \$118,725.21. There would be similar increases for the other salary steps. As will be discussed below, the Union is asking for a contract extension through December 31, 2024 but is not seeking any additional changes to the salary guide beyond 2021.

However, for those at the top step, Step 12, the Union seeks a salary increase of 1% in the third year of the agreement. The top step of the salary guide would increase by one percent (1%) and those members still advancing on the salary guide would advance one (1) step on July 1, 2022. In the fourth year of the agreement, January 1, 2023 through

December 31, 2023, the top step of the salary guide would again increase by one percent (1%) and those members of the bargaining unit still advancing on the salary guide would advance one (1) step on July 1, 2023. In the fifth and final year of the proposed agreement, January 1, 2024 through December 31, 2024, all P.B.A. #339 members not at the top step of the salary guide would advance on the salary guide and receive one (1) step on July 1, 2024. Those at the proposed top step of the salary guide would receive 1% wage increases in 2022, and 2023. There would be no increase in 2024. The top step would increase from \$118,725.21 in 2021 to \$119,912.46 in 2022, and increase to \$121,111.59 in 2023, and would not change in 2024. Under the Union's proposal, employees below the top step of the salary guide would advance one step annually.

As noted above, the Union contends that extending the workday from seven to eight hours justifies these raises. The Union notes, that on February 26, 2018 and March 13, 2019, the County Prosecutor Angelo Onofri ("Onofri") wrote to the County Administrator in support of the eight-hour day for the bargaining unit members represented by Local 339. In his letters to the County Administrator, Mr. Onofri noted that other law enforcement officers in Mercer County work eight-hour days. He also stated that the change in schedule would "eliminate the unpredictable overtime that is generated from missed meal periods and increase productivity by adding work hours. . . ." (Union Ex. 22 internal Exs. A & B). In addition to the reasons cited by Prosecutor Onofri, the Union notes that Detective work hours often have to be adjusted, and the Union asserts that they often work through lunch without reporting that they worked and are therefore working for free. (Tr. Vol. 1 42-43).

The Union also points to data that shows that from September 25, 2017 until February 4, 2018, members of the bargaining unit, together with their superiors in PBA Local 339A, had over 1,131 overtime hours at a cost of \$84,497 as a result of working through lunch. (Union Ex. 22 internal Ex. A). In addition, in 2018 the County incurred \$115,859 in additional overtime expenses. (Union Ex. 22 internal Ex. B). The Union asserts that Detectives frequently work overtime in violation of applicable wage and hour laws, and that Prosecutor Onofri had admitted that the problem is growing. The Union asserts that if its eight-hour day proposal is granted it will save the Prosecutor's Office between \$250,000 and \$400,000 per year in lunch overtime. (Union brief at 33 citing Tr. Vol. 2 58-59).

The Union contends that the County has agreed to the eight-hour day for its other law enforcement bargaining units including: the Policemen's Benevolent Association Local Number 187 ("P.B.A. #187"), the collective negotiations unit that represents the rank-and-file Mercer County Sheriff's Officers; the Policemen's Benevolent Association Local Number 187A ("P.B.A. #187A), Superior Officer's Association, the collective negotiations unit that represents the Mercer County Sheriff's Superior Officers; County Correctional Police Officers and Superior Correctional Police Officers collective negotiations units, the Policemen's Benevolent Association Local Number 167 and Policemen's Benevolent Association Local Number 167A. (Union Brief at 34).

In comparing its offer to the County's, the Union characterizes the County's proposal of a zero percent (0.0%) increase in the first year of the agreement, a one percent (1.0%) across-the board increase in the second year of the agreement, and a one and one-quarter percent (1.25%) across-the-board increase in the final year of the

agreement, coupled with a step freeze at the expiration of the agreement as unreasonable. The Union argues that the County has failed to recognize that the members of the bargaining unit were laboring under the 2% hard cap, and that these employees were obliged to make health insurance contributions pursuant to Chapter 78.

The Union posits that the County's offer would destroy morale in the bargaining unit. The Union states that the County's wage offer fails to consider unpredictable overtime, and notes that Mr. Onofri has supported that portion of the Union's proposal seeking an eight-hour day. The Union also rejects the notion put forward by the County - discussed below that this proceeding is governed by the "Constitutional Officer Cap." P.L. 2015 c. 249. The Union asserts that its proposal would be fiscally responsible and cost-effective for the County. The Union characterizes the County's proposal as prolonging the economic restrictions previously imposed upon members of the bargaining unit.

The Union reviews the statutory criteria in support of its wage proposal. Initially, the Union notes that the 2% hard salary cap which had previously dominated interest arbitration awards no longer applies. The Union concedes however, that it still has an obligation to prove that its wage proposal is fiscally prudent. Based on the testimony of its expert Dr. Ralph Caprio, the Union contends that the true cost of its wage proposal together with changes to the workday, would average 3% over five years. The Union submits that the cost of its wage proposal over five years is the following:

2020	\$87,396.76
2021	\$450,828.98
2022	\$83,110.90
2023	\$130,896.29
2024	\$125,217.76

The Union bases its calculations on the total payroll of \$3,989,968.00 as of December 31, 2019 and it includes the higher salaries of retired members. The Union also reiterates its argument, that if its wage proposal is accepted, overtime would be significantly reduced. The Union points to Dr. Caprio's finding that if its proposal were granted it would impose an annual cost of \$1.62 on the average residential property taxpayer.

The Union acknowledges that the County proposal of a three-year agreement would cost the County: (1) in 2020: \$65,797.00; (2) in 2021: \$106,577.62; and (3) in 2022: \$115,309.14. In total, the County's wage proposal would cost \$287,683.76 over the life of the proposed agreement. The Union states that the County's wage proposal would represent a 7.05% increase over the proposed three (3) year duration of the agreement for an average annual increase of 2.35%. (Union Ex. Internal Ex. A). However, the Union contends that the County's proposal fails to consider the overtime savings inherent in the Union's proposal. The Union also contends that in comparing the County proposal to the Union proposal, the costs of not providing the eight-hour day continue, and that over five years there would be an average annual wage increase of 7.68%.

As to the Constitutional Officer's Cap the Union maintains that it is not applicable, and that the County's offer also exceeds the Cap. The Union contends that the calculation of the cap must be based on the entire budget of the prosecutor's office, and not limited to the salaries of the members of the bargaining unit. The Union points to the testimony of Chief Financial Officer Miller who agreed that the County's proposal exceeded the cap, but that the County would be compliant with the law when budgetary adjustments were made. (Union Brief at 52 *citing*, Vol. 2 Tr. 146). In addition, the Union contends that in passing its budget, the County frequently understated the amount of overtime it would pay. The Union notes that, in 2019, the County submitted a budget for nine-hundred thousand dollars of overtime expenditures, and actually paid over one million seven hundred thousand dollars in overtime to members of the bargaining unit.

The Union characterizes the Constitutional Cap restraints as "fluid" and contends that if expenses are more than the budget calls for, adjustments can be made. The Union reiterates its position that its wage proposal would drive down the cost of overtime. The Union also points out that P.B.A. Local 187 recently negotiated the eight-hour day and the Constitutional Cap did not seem to be an issue for the County. The Union also contends that the prosecutor could file a "Bigley Action" to request a budgetary enhancement.

The Union also notes that unlike municipalities the County is not constrained by the Property Tax Levy Caps.

In its analysis of additional statutory criteria, the Union contends that its wage proposal is consistent with the interest and welfare of the public. The Union points to the unique services provided by the members of the bargaining unit and their contribution to

the overall public safety of the County. The Union argues that its wage proposal would assist the County in attracting and retaining qualified Detectives consistent with the goals of the Prosecutor's Office. The Union also contends that the skills and experience of the members of the bargaining unit and their ability to assist other Mercer County law enforcement agencies in effect serve as a cost savings to the County. The Union posits that if its wage proposal is not granted, members of the bargaining unit would be incentivized to leave for other law enforcement agencies.

The Union also points to the effects of Chapter 78, P.L. 2011 which required public sector employees to make significant contributions to the payment of their health insurance premiums. The Union notes that the payment of these contributions results in a significant wage cut. The Union also notes that if its wage proposal is granted, members of the bargaining unit, based on the proposed wage increase, will also pay higher health insurance premiums.⁴

The Union posits that its proposed wage increase is also fiscally responsible, and notes that the wage increase it proposes is tied to an increase in hours worked. The Union relies on the work of Dr. Caprio and contends that the County is in excellent fiscal shape.

The Union also recognizes that, under the statute, I am obligated to compare the competing wage proposals by comparing "the wages, salaries, hours and conditions of employment of the employees involved in the arbitration proceedings with the wages,

⁴ The Union uses as an example family coverage under the State of New Jersey Plan which costs \$30,873.84 annually. Currently an employee at the top-step pays 32% of that premium or \$9,879.62 annually. If I were to grant the Union's wage proposal, that employee would pay 35% of the premium or \$10,805.84. (Union Brief at 68).

hours, and conditions of employment of other employees performing the same or similar services and with other employees generally.” *N.J.S.A. 34:13-16(g)(2)*.

Initially, the Union points to other statewide interest arbitration awards, but contends that these awards are not directly comparable because many of those awards arose under the two-percent hard cap. The Union notes that, in 2017, interest arbitration awards increased salaries by 1.86%, however voluntary settlements averaged 3.53%, and the Union maintains that this was because of the expiration of the hard cap. The Union contends that its proposal would permit the members of the bargaining unit to receive overdue compensation that they had failed to achieve under the hard cap.

The Union also compared the salaries of the members of the bargaining unit to that of other Mercer County law enforcement personnel. The Union points to the following table comparing rank and file Mercer County law enforcement salaries with longevity payments:

Mercer County	Starting Salary	Total # of Steps	Base Pay Top Patrol	Longevity Max	Total Salary	Contract Year
35 Hour Work Week						
Pennington Boro	\$32,486	9	\$81,485	\$0.00	\$81,485	2019
Mercer Corrections	\$46,987	8	\$93,206	\$400	\$93,606	2017
Trenton	\$36,904	12	\$93,145	\$10,246	\$103,391	2018
Hightstown	\$45,000	10	\$99,009	\$4,400	\$103,409	2018
Mercer Sheriffs	\$43,434	14	\$103,720	\$2,200	\$105,920	2023
Mercer Pros. Det.	\$51,510	9	\$102,856	\$3,900	\$106,756	2019
East Windsor	\$66,378	7	\$104,466	\$4,179	\$108,645	2020
Lawrence	\$30,000	9	\$112,453	\$5,500	\$117,953	2018
Hopewell	\$50,652	12	\$116,573	\$2,000	\$118,573	2021
Robbinsville	\$67,500	15	\$121,131	\$0.00	\$121,131	2019
West Windsor	\$46,962	12	\$119,259	\$3,032	\$122,291	2022
Hamilton	\$54,000	14	\$122,450	\$0.00	\$122,450	2019
Princeton	\$58,780	14	\$116,605	\$6,996	\$123,601	2019
Ewing	\$44,212	15	\$125,628	\$0.00	\$125,628	2018
Average	\$48,200		\$107,999		\$111,060	

The Union reiterates the point that members of the bargaining unit frequently work alongside the employees of the other law enforcement agencies. Based on this table, the Union notes that the salaries of the members of the bargaining unit are below that of a number of other law enforcement units in Mercer County and would still remain below the salaries of some law enforcement agencies even if its proposal was granted.

The Union also prepared a table comparing the Mercer County bargaining unit for prosecutor Detectives with that of other counties in New Jersey. The following table shows that currently the prosecutor Detectives at the top step in Mercer County are paid less than all but four other prosecutor detective offices in the state:

UNIT	TOP SALARY (Contract Year)
Bergen	\$161,500 (2020)
Gloucester	\$135,427 (2023)
Monmouth	\$135,252 (2019)
Middlesex (20 Years to Max)	\$135,252 (2020)
Middlesex (15 Years to Max)	\$132,953 (2020)
Middlesex (10 Years to Max)	\$129,080 (2020)
Hudson	\$118,365 (2022)
Mercer (Proposed Wages)	\$118,725 (2024)
Somerset	\$116,659 (2019)
Ocean	\$115,000 (2022)
Atlantic	\$113,209 (2020)
Essex	\$112,904 (2019)
Passaic	\$112,678 (2018)
Union	\$105,818 (2017)
Burlington	\$104,000 (2022)
Warren	\$103,554 (2020)
Cumberland	\$103,000 (2023)
Mercer (Current)	\$102,856 (2019)
Camden	\$102,720 (2021)
Cape May	\$99,000 (2022)
Sussex	\$93,699 (2019)
Salem	\$91,124 (2016)

The Union also notes that the Mercer County prosecutor's office is the only office paid based on a seven-hour day. As such, the Union contends that the award of the eight-hour day would make the bargaining unit's pay comparable to the rest of their direct counterparts.

The Union compares its wages to that of other Mercer County personnel. The Union notes that County administrative employees were not subject to the 2% hard cap and that those employees received wage increases from 2014 to 2017 that ranged from 2% to 3.92%. The Union asserts that those Mercer County employees who are covered by different collective negotiations agreements are not directly comparable, because the employees of the prosecutor's office work at more dangerous jobs, and because those civilian employees received different economic packages. The Union cites *Township of Woodbridge and P.B.A. Local 81*, PERC No. IA-96-119 (1998), in support of the proposition that patterns of settlement are important, but occasionally yielded to other factors. The Union maintains that unless its wage proposal is granted, the bargaining unit will fall behind comparable workers.

In its final comparison, the Union compares itself with four other Mercer County law enforcement unions, and notes that Local 339 and the Superior Officers working under the Prosecutor's Office Policemen's Benevolent Association, Local 339A CNA are the only Mercer County law enforcement employees to work seven hour days. Policemen's Benevolent Association, Locals 187, 187A, 167 and 167A all work eight-hour days. Local 187, which represents employees of the Sherriff's department, agreed to the eight-hour day in July of 2019. (Union Ex. 6). The Union contends that its proposal is almost identical to that of Local 187 and states that its proposal is twenty percent less

costly than that of the Local 187 agreement. Therefore, the Union maintains that there is a clear pattern of settlement which should be adhered to in this proceeding. (Union Brief at 91, *citing, City of Jersey and POBA*, Docket No. IA-2017-012, Award Date: October 10, 2017; *citing, Township of Holmdel and PBA, Local 239*, Docket No. IA-93-163; *West Windsor Township v. P.B.A. Local #271*, Docket Number IA-2019-014, Award Date: June 25, 2019. The Union contends that any departure from the settlement pattern must be justified, and it must be shown why a departure is permissible.

In comparing its proposal to the Local 187 wage agreement, the Union notes that the five-year agreement entered into by Local 187 represented a percentage increase of 23.95% for an average increase of 4.79% per year. The Union states that its proposal represents a percentage increase of 19.595 and an average increase of 3.92% per year. The Union states that its proposal is affordable, and costs less both in absolute dollars amount and on a percentage basis.

a-1 Union Discussion of Other Statutory Requirements

i. Lawful Authority of the Employer

The Union asserts that the County has not presented any evidence that the County cannot lawfully agree to the Union's proposals. The Union points to its proposals that § 34.2 of the CNA be amended to provide that members of the bargaining unit continue to move through the salary guide following the expiration of the CNA. The Union relies on the New Jersey Supreme Court's decision in *County of Atlantic*, 230 N.J. 237 (2017), because it recognizes that the County is proposing that step-progression be halted upon the expiration of the agreement.

ii. Financial Impact Upon the Governing Unit

In reliance on the testimony of its expert, Dr. Ralph Caprio, the Union contends that the County has the ability to pay for the economic proposals made by the Union. (Union Ex. 19, Internal Exs. B & C). The Union notes that, in the recent past, the County has not been constrained by the tax levy cap, which limits budgetary increases from year to year to 2% of the previous year's budget. The Union notes that the County's tax levy bank is almost eight million dollars. Dr. Caprio also noted that the County appropriation increases have consistently been under two percent. Based on Dr. Caprio's analysis, the Union maintains that the County has a dependable revenue pattern. In addition, the County's fund balance, or the difference between assets and liabilities in a government fund, has increased by twenty million dollars since 2016.

Dr. Caprio concluded that the Union's wage proposal, which has an average cost of \$175,000 would have a negligible impact on the County's residents.

The Union concedes that the Pandemic has had an impact on the County's economy but asserts that any shortfall in revenue can be offset by application of the CARES Act, including grants from the state government and FEMA.

iii. Cost of Living

The Union also seeks support for its economic position by pointing to statistical evidence that the cost of living in Mercer County and the surrounding areas have steadily increased. The Union states that over the past five years, the Consumer Price Index ("CPI") has increased 7.5% while the wages of those at the top step of the salary guide only increased by 3.74%.

The Union also reiterates its argument that, in addition to the increased cost of living, members of the bargaining unit are required to pay up to \$10,805 for health insurance pursuant to Chapter 78. The Union contends that the County wage proposal is simply too low and would not keep up with the expected increases in the cost of living

iv. Continuity and Stability of Employment

The Union argues that if its salary proposal is granted, it would contribute to the continuity and stability of employment among members of the bargaining unit and would encourage the retention of competent Detectives.

v. Statutory Restrictions

The Union points to Chapter 78 and the now expired 2% hard cap as having restricted the ability of members to negotiate an adequate wage package. The Union contends that since the 2% hard cap restriction is no longer in place, I am no longer confined to a particular mandate.

The Union argues that the award of its economic proposals would alleviate the statutory restrictions resulting from the 2% hard cap that had been placed on the members of the bargaining unit.

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

The County contends that any award governing wages and hours must consider the Pandemic and the effect it has had on the local economy. In addressing the Union's proposal for an eight-hour day, the County argues that interest arbitrators should not award a change in a work schedule without strong reasons for doing so. (County Brief at 13, *citing, City of Clifton and PBA Local 36*, IA-2001-48, (Mastriani, J.), *Burlington County*

Department of Corrections and PBA Local 249, IA-2013-5 p.87 (Osborn. Arb.).The County asserts that the Local 339 has not established that the change in works schedules would better meet organizational needs or create a more efficient department.

The County notes that, under the Union's proposal, the actual length of the work-day would remain the same, and that Detectives work through lunch as a routine matter, and as a necessary part of the job. The County also posits that the proposed change in the workday would not enhance supervision and would not enable management to assign more personnel or to train employees more efficiently.

In an effort to rebut the Union's contention that no comparable law enforcement offices work a 7-hour day, the County notes that the Essex, Hunterdon and Middlesex County Prosecutor offices work a 7-hour day, and that the Morris and Warren offices work 7.5 hour days. (County Ex. VII at 220, 358, 021, 122, 211, 446).

The County concedes that the Sherriff's rank and file unit negotiated for and received an 8-hour day in 2019. However, the County contends that this comparison is not meaningful because the negotiation of that provision occurred pre-Pandemic, and at a point where there was less financial uncertainty. The County notes that the increase to eight hours would result in an automatic increase in payroll of 14.3%, and that the financial impact mandates remaining with the status quo of the seven-hour day.

While conceding that there might be a reduction in overtime expenditures if the Union's proposal is granted, the County maintains that such a reduction is speculative, while the 14.3% increase would be definitive. The County also contends that the Sherriff's department which granted the eight-hour day has not resulted in a reduction of overtime. (County Brief at 17, *citing*, Tr. Vol 2 at 154).

The County confronts the issue of employee morale and concedes that granting the proposal would make members of the bargaining unit “happy,” but the County posits that there is no morale problem among members of the bargaining unit. The County contends that morale is not at issue, and notes that, except for retirement, no employee has left the department in the last decade. (County Brief at 18, *citing*, Tr. Vol. 2 at 73).

The County contends that the application of the statutory criteria requires the award of the County’s proposal.

i. The Interests and the Welfare of the Public

The County notes that the first statutory criterion to be considered concerns the interests and welfare of the public. *N.J.S.A. §34:13A-16(g)(1)*. While conceding that a well-paid work force is in the public interest, the County also contends that the public interest encompasses any budgetary constraints that are placed on the County.

The County also points to P.L. 2007, c.62 and P.L. 2010, c. 44 which caps property tax increases at 2%. The County contends that the legislative policy expressed in these statutes requires me to address the cost of a salary proposal and determine whether or not it is in the public interest. The County asserts that the Union expects to pay for any proposed wage increase by raising taxes. The County notes that the property tax levy per capita in Mercer County has steadily increased over the last five years rising from \$682 to \$735 between 2015 and 2019 and was the third highest in the state. The County argues that there is a need for property tax relief, especially since the County can expect decreasing revenues because of the Pandemic.

In support of its position, the County compares the average salary of a bargaining unit member with that of the per capita income of a Mercer County resident. The average

member of Local 339 earns \$85,420 per year, while the per capita income of a Mercer County resident is \$42,302, and the median household income in Mercer County is \$80,632. (County Ex. 3). The County argues that a Local 339 bargaining unit member is significantly better off than the average Mercer County resident. The County maintains that its offer is in the best interest of the public.

ii. The Comparative Financial Impact

The County notes that I am obligated to assess the financial impact of my award on the public employer and residents and taxpayers of the County. The County states that I must consider the effect my award will have on other employees and on the County's overall budget. *Hillsdale PBA Local 207 v. Borough of Hillsdale*, 263 N.J. Super. 163 (1993).

The County notes that 83% of County revenue is derived from property taxes and contends that it would be more appropriate for the County to reduce that amount to 75%. (County Brief at 30, *citing*, Tr. Vol. 2 at 95). The County contends that its residents are per capita, among the mostly highly taxed residents in New Jersey. While noting that the Union's expert Dr. Caprio suggests that the wage impact of the Union's proposal would result in an average property tax increase of \$1.62, the County states that this position ignores the effect of the Pandemic.

The County also acknowledges that it has a fund balance of \$37.6 million dollars, which was the fund balance in 2006, before the Great Recession of 2009. The fund balance is the excess of revenues over expenditures. The County points out that it took thirteen years to restore the fund balance to its current level. A healthy fund balance also helps the County secure a favorable credit rating. The County notes that, because of the

Pandemic, it is expecting a six-million-dollar revenue short fall because of the loss of fees from residents and a result of lost revenue from the County airport and other County properties.

The County also points out that if the Union's wage proposal is selected, there would be a concomitant increase in pension contributions, since the County is obligated to contribute 29.8% of salary to the New Jersey Police and Fire Retirement System. ("PFRS"). The County suggests its wage proposal is more reasonable because it is for a shorter term, and no one can predict the effect of the Pandemic on the Mercer County economy. In addition, the County notes that some major private sector employers are leaving the County and posits that the Union's proposal will put further stress on the County's revenue stream.

iii. The Lawful Authority

The County also contends that a review of the statutory limits under *N.J.S.A.* §34:13A-16(g)(5) reveals that its wage proposal is more reasonable. The County states that I must examine the County's budget cap and the fact that the County must prepare a balanced budget each year. The County points out that P.L. 2010, c. 62 imposed a 2% cap on property taxes, for each municipality. *N.J.S.A.* §34:13A-16(g)(5) specifically requires me to analyze the expenditures which affect the property tax, including the salary expenditures, and their impact on the Cap. In addition, there is a 2% cap on County constitutional officers as well, the County Entity Budget Cap. The County notes that under *N.J.S.A.* § 40A:4-45.44 a County constitutional officer such as the Mercer County Prosecutor in preparing that "portion of the budget request to be raised by property taxation, a county entity budget shall limit any increase in that budget request to 2.0% of the previous year's budget request . . ."

The County asserts that the Prosecutor's budget can only grow by \$350,000 under the Cap. The County compared its proposal to that of the Union's and asserts that Local 339's wage proposal would exceed the cap for the entire office, while only twenty-five percent of the offices employees are in the Local 339 bargaining unit.

In addition to the issues raised by the County Entity Budget Cap, the County compares the salaries of the Local 339 bargaining unit with that of the assistant prosecutors in the office. The County notes that, presently, the mean salary of the Detectives is \$98,451 while assistant prosecutors have a mean salary of \$96,533. In addition, the County points out the Detectives are non-exempt employees and are entitled to work overtime. The County contends that an excessive award to the Union would have a deleterious effect on the morale of the assistant prosecutors.

The County also notes that Dr. Caprio failed to take the County Entity Budget Cap into account when making his calculations. (County Brief at 38, *citing*, Vol. 1 Tr. 86).

iv. Comparisons to Other Employees

The County recognizes that the Statute requires me to compare the salaries of the members of the bargaining unit with other employees. While recognizing the statutory requirement to compare salaries of public and private sector employees, the County notes that over reliance on comparability among similar bargaining units could lead to "whip-sawing" with wages spiraling ever upward. (County Brief at 40, *citing*, *Hillsdale PBA Local 207 v. Borough of Hillsdale*, 263 N.J. Super. 163, 191 (1993)). The County contends that salaries of other public and private employees is not the sole criterion for satisfying the comparability requirements of the Statute, and that in addition to salaries, the County

urges me to compare other factors including tax revenues, ratables, tax rate, tax collection, and a department's budgetary considerations.

The County contends that within Mercer County the members of the bargaining unit compare favorably to other law enforcement personnel. Noting that the Detectives have higher starting salaries and higher top salaries when compared to Mercer County Sherriff and Corrections Officers. The County relies on the following table:

**MERCER INTRA-COUNTY COMPARISON
LAW ENFORCEMENT
SALARIES**

	STARTING SALARY	TOP SALARY
Prosecutors Office PBA 339 (Detectives & Investigators) (2019)	\$51,510	\$102,856
Corrections Officers PBA 167 (2017)	Officer: \$37,600	Officer: \$93,206
Sheriff's Officers PBA 187 (2020)	Officer: \$48,006	Officer: \$101,677

The County concedes that Sherriff and Correction Officer employees work eight-hour days but notes that members of the bargaining unit make higher salaries while working only seven hours per day. The County also points out that members of the bargaining unit have greater longevity bonuses. The County conceded that it is offering a 0% raise during the first year of the contract, but notes that Correction Officers did not

receive a wage increase under their present contract, and that Sherriff Department employees will not receive a wage increase in 2023.

The County also contends that the Sherriff Department employees compare favorably to non-law enforcement personnel, and that County employees working under other CNAs have received zero per cent wage increases in the recent past or will receive relatively small increases in the future.

The County also compares Local 339 salaries to that of private sector employees, noting that the average Detective makes about \$23,000 more than the average Mercer County wage earner. The County insists that its offer will allow members of the bargaining unit to remain well compensated.

v. Cost of Living

The County states that from August 2019 to August 2020, there has been a sharp decline in the rise of the Consumer Price Index. The CPI in the Philadelphia-Camden-Wilmington region, which includes Mercer County, increased by .8% for the month of August 2020, and .40% for the year. The County states that there is no evidence that the CPI will drastically increase during the life of the contract.

vi. Stability and Continuity of Employment

The County contends that there has been a history of stability in the employment of the Detectives in the Prosecutor's Office. The County notes that there have been no layoffs in the office, but suggests that because of the Pandemic, such layoffs are possible if the Union's proposals are granted.

C. DISCUSSION CONCERNING THE COMPETING ECONOMIC PROPOSALS

Having reviewed the economic proposals of both the Union and the County, I conclude that neither the proposal of the Union nor of the County should be granted in its entirety and that there should be blending of the two proposals.

As noted above, the Union's proposal seeks to fundamentally change the structure of the hours worked by the bargaining unit. The Union proposes to increase the number of hours worked from seven hours with an unpaid lunch to 8 hours with a half-hour "non-guaranteed meal period." The Union recognizes that the exigencies of the work performed by the Detectives sometimes requires the members of the bargaining unit to forego meals. To secure a higher salary, the members of the bargaining unit would trade their unpaid lunch for an abbreviated unguaranteed meal period. The Union has established that, prior to the onset of the Pandemic, law enforcement officers employed by the County Sheriff's Department represented by PBA Local 187 entered into a Memorandum of Agreement with the County on July 17, 2019 in which the County agreed that the members of the Local 187 bargaining unit would work an eight hour day. In addition, the Union has established that, throughout the State of New Jersey, Detectives who work for County prosecutors work eight-hours per day.

Indeed, although he testified on behalf of the County, Prosecutor Onofri has previously expressed support for the Union's position and in correspondence to the County Administrator made many of the same arguments in support of the eight-hour day made by the Union in this proceeding. These arguments include the recognition that under the Union's proposal the County expects a reduction in overtime. The Prosecutor

also recognizes that the change in the workday would have operational efficiencies which would support the mission of the Prosecutor's Office.

The County vigorously contends that the change in the workday would result in an immediate 14.3% increase in salary costs. The County characterizes the Union's promise of reduced overtime as speculative, and states that the County faces uncertain economic prospects because of the Pandemic.

The County also contends that the salary increase proposed by the Union would fail to comply with the County Entity Budget Cap, *N.J.S.A.* § 40A:4-45.44. This statute limits the budget increases for Constitutional officers such as the Prosecutor to annual increases of two percent. However, that figure concerns the entire Prosecutor's office budget, and while personnel costs represent a significant portion of the Prosecutor's Office's costs, the Union has established that unlike the rigid hard cap which recently lapsed, there is more flexibility in the County Entity Budget Cap. On cross-examination, Chief Financial Officer Miller testified that when the County Entity Budget Cap is in danger of being reached, the County has in the past made appropriate adjustments to comply with the statute. Also, on cross-examination, CFO Miller conceded that the Prosecutor's budget for overtime was frequently understated, and that annual overtime costs often exceeded the budgeted amount.

On balance, where I would ordinarily conclude that the Union has made numerous substantial arguments, I must consider the County's argument that its revenues are threatened by the Pandemic. Thus, the County is seeking a three year agreement, with only modest salary increases as opposed to the Union's proposal for a five year agreement with

immediate changes to the salary guide which would result in wage increases for the bargaining unit, especially those at the top step of the guide.

As such, I think it is appropriate to blend the two proposals. Accordingly, I am accepting the County's proposal of a three-year term, commencing January 1, 2020, and terminating December 31, 2022.

For the first two years of the agreement, the members of the bargaining unit shall continue working the present thirty-five hour per week schedule. However, commencing on January 1, 2022, I award the Union's proposal for a forty hour per week schedule. This will give the County an additional year to make the appropriate adjustments.

As to wages, the County proposed that for the first year of the CNA, and effective January 1, 2020, a 0% wage increase with step movement. I will award the County's proposal regarding step movement, but I will also award a 1% wage increase at the top step, so that the salary at the top step will be \$103,884.56. The County proposed a one percent across the board wage increase with no step movement in the second year of the CNA commencing January 1, 2021. Again, I will award step movement, and I will award a one percent increase only to those at the top step of the salary guide. The new salary at the top step shall be \$104,923.40.

I am partially adopting, the Union's salary proposal commencing January 1, 2022. As noted above the Union proposed that the bargaining unit transition to a forty-hour week on January 1, 2021. The Union made the following proposal:

On January 1, 2021, all employees shall begin to work an eight (8) hour workday with a one-half hour paid lunch period in which they shall be subject to recall. The employees' annual salary shall be based on their January 1, 2020 hourly wage multiplied by 2,080 hours. No employees shall advance on the salary guide in 2021.

For the January 1, 2022 contract year, the Union proposed the following language:

On January 1, 2022, the top step of the salary guide shall be increased by 1.0%. On July 1, 2022, all employees who are not on the top step of the salary guide shall advance one step on the salary guide effective July 1, 2022.

I will award a combination of the Union's proposals for January 2021 and 2022. That is:

On January 1, 2022, all employees shall begin to work an eight (8) hour workday with a one-half hour paid lunch period in which they shall be subject to recall. The employees' annual salary shall be based on their January 1, 2021 hourly wage multiplied by 2,080 hours. No employees shall advance on the salary guide in 2022.

As the Union proposes, there shall be two additional steps added to the salary guide for a total of twelve. Commencing, January 1, 2022 the salary guide shall be as follows:

STEP	SALARY 12/31/2021@1820hours	HOURLY RATE	SALARY 1/1/22 @ 2080 HOURS
1-ACADEMY	51,510	28.30	58,868.57
2	57,313	29.88	62,168.57
3	63,116	31.49	65,500.57
4	66,604	34.67	72,132.57
5	70,092	36.59	76,118.86
6	73,581	38.51	80,105.14
7	77,064	40.42	84,092.57
8	80,547	42.34	88,073.14
9	87,530	44.25	92,053.71
10* New Step		48.09	100,034.29
11* New Step		52.28	108,757.50

12**Previous Step 9 with 1% increase 1/1/2021	104,923.40	57.65	119,912.00
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i. Review of the Statutory Criteria under N.J.S.A. 34:13-16(g)

Although I have discussed some of the salient statutory criteria, I will now summarize the requirements of *N.J.S.A. 34:13-16(g)*. The primary statutory requirement is that the Award comports with the interests and welfare of the public. *N.J.S.A. 34:13-16(g)(1)*. This requirement must be read in conjunction with the remaining subsections of *N.J.S.A. 34:13-16(g)*. In the context of this proceeding, both the Union and the County have demonstrated that the work of the Detectives in the Prosecutor's office is vitally important to the citizens of Mercer County. In reading *N.J.S.A. 34:13-16(g)(1)* in conjunction with the other subsections, I am aware that the award may not conflict with the lawful authority of the employer regarding any revenue or tax levy restrictions, and that the costs of the Award not unduly impose a financial burden on the budget of the County or its taxpayers. In addition, I recognize that this Award is being issued during a Pandemic and I have taken that factor into account in assessing whether the award is issued in the interests and welfare of the public.

I am also charged with determining how the Award compares with private sector employees, public employment in general, and public employment in the same or similar comparable jurisdictions. *N.J.S.A. 34:13-16(g)(2)*. Under the circumstances of this case, and because of the specialized nature of the work performed by the Detectives in the bargaining unit, I conclude that the most relevant point of comparison for the bargaining units to similarly situated employees working in other County Prosecutor offices throughout the state. The Union has demonstrated that even with this Award, the salaries

of members of the bargaining unit will still lag several other counties, and that those counties have been on an eight-hour schedule for several years. In addition, the Union has established that law enforcement officers employed by the Mercer County Sheriff's Department have achieved the eight-hour day in a pre-Pandemic contract settlement. In addition, I find that the comparison to other Mercer County public employees is less relevant.

The County has argued that the median salaries of Mercer County residents is significantly less than the median salaries of the Detectives. However, I conclude that this is not a meaningful comparison since the Detectives have significant skills and training not found in the private sector or in many other public-sector positions. In addition, the County notes that the Detectives earn salaries that are comparable to that of the Assistant Prosecutors in the Mercer County Prosecutor's Office. The County also notes that the Detectives could earn overtime, and the Assistant Prosecutors do not. While, this is a concern, on balance I conclude that this award meets the comparability criterion of the statute.

The next statutory requirement requires me to place the salary award in the context of the overall compensation including fringe benefits received by the members of the bargaining unit. *N.J.S.A. 34:13-16(g)(3)*. I recognize that pursuant to Chapter 78, members of the bargaining unit have had to pay significantly more for their health insurance and that in the recent past certain salary gains were held back by the now expired "hard salary cap." I have taken this factor into account in making this award.

The stipulations of the parties are addressed above. *N.J.S.A. 34:13-16(g)(4)*.

I am also required to consider the lawful authority of the County and the financial impact on the governing unit. *N.J.S.A. 34:13-16(g)(5)&(6)*. As noted above, the County has stressed that the “Constitutional Officer Cap.” P.L. 2015 c. 249 restricts the ability of the Prosecutor to increase his budget by more than two percent per annum. However, constitutional officers such as the Prosecutor have a broad range of discretion in setting their budgets and in reallocating funds to operate and manage their offices. 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 that the effect on the average Mercer County residential property owner would be \$1.62 per annum. Since the proposed award is less than that sought by the Union, I conclude that the County will be able to afford the increased costs emanating from this award.

The statute also requires me to analyze the impact of the cost of living. *N.J.S.A. 34:13-16(g)(7)*. While the County contends that the cost of living is not expected to rise, and indeed has dropped during the Pandemic, I conclude over the life of the contract the CPI will increase at least moderately, and there have also been moderate increases in the cost of living during the previous contract. I also consider that the bargaining unit members are required to pay increased health insurance premiums under Chapter 78. *N.J.S.A.*

Under *N.J.S.A. 34:13-16(g)(8)*, I am required to assess the effect of this Award on the continuity and stability of employment. During the first two years covered by this Award, those employees who have not yet reached the top step of the salary guide will be able to continue to move through the guide, and to provide a modest wage increase

to those employees at the top step of the guide. In the third and final year, I am awarding the 40-hour week requested by the Union which will enhance the base pay of the bargaining unit. I conclude that this Award will contribute to the continuity and stability of employment.

The final statutory provision to be reviewed is *N.J.S.A. 34:13-16(g)(9)* which requires me to consider the statutory restrictions placed on the Employer. I have discussed the Constitutional Officer Cap.” P.L. 2015 c. 249 above, and I conclude that there is no statutory impediment to this Award.

VII. OTHER UNION PROPOSALS

a. Term of Contract

The Union is proposing a five-year agreement, and the County is proposing a three-year agreement. The Union contends that its proposal is consistent with that of Local 187. As noted above, I award the County’s proposal for a three-year term. However, I will award the Union’s proposed amendment that the CNA remain in effect “until a new agreement is reached.” This is to ensure that step-movement continues at the conclusion of the CNA.

b. Overtime and Workday

In order to make its eight-hour day proposal consistent with the overtime provision of the CNA, the Union is proposing to revise the overtime provisions of the CNA, to provide that overtime be paid after forty hours in a week instead of after thirty-five hours, and that the schedule provision of the CNA be amended to provide for an eight-hour workday. The Union made these proposals in conjunction with its proposal to shift to a forty-hour workweek. However, because I have delayed the implementation of the forty-

hour workweek until January 1, 2022, I will award the Union's proposals concerning overtime and the workday, but delay implementation until January 1, 2022.

c. Holidays

The Union is also asking that the members of the bargaining unit be paid double time for all time worked on holidays. The Union makes this proposal based upon its position that bargaining unit members should be compensated for missing time with their families. I do not award this proposal.

VIII. OTHER COUNTY PROPOSALS

a. Term

Because of the uncertainty caused by the Pandemic, the County proposes a three-year agreement. It characterizes the Union's request for a five-year agreement and a large wage increase in 2021 as exorbitant. As noted above, I award this proposal with the exception that I have awarded the Union's suggested change to Article 34 concerning the term providing that the CNA remain in effect "until a new agreement is reached."

b. Step Movement

Based on the New Jersey Supreme Court's decision in *County of Atlantic*, 230 N.J. 237 (2017), the County requests that all step movement cease at the expiration of the agreement. The County asserts that it needs flexibility upon the expiration of the CNA. I do not award this proposal. As noted above, because I have ordered the transition to the 40-hour work week commencing January 1, 2022, I have also halted step movement in the third year of the agreement commencing January 1, 2022. It would be unfair to the bargaining unit to delay annual and expected raises because of the contract expiration. In addition, § 6.3 of the expiring CNA provides: "Step movement shall be applied annually

on July 1st.” Under the “dynamic status quo” doctrine, that provision remains in effect unless the parties specifically agree otherwise. *County of Atlantic*, 230 N.J. 237 (2017). Pursuant to §34.2 of the CNA, the parties have agreed to the following language: “This Agreement shall remain in full force and be effective during the period of negotiations.” Therefore, it is clear that the provisions regarding the salary guide are in effect, and in the event that no successor CNA is negotiated at the conclusion of this agreement, the members of the bargaining unit will still be entitled to receive step movement.

It should be noted that the Union is proposing that Article 34 concerning termination be amended to provide that the CNA remain in effect until a new agreement is reached. As noted above, I have awarded this proposal to make it clear that step-movement continue following the expiration of the CNA.

c. Union Security

The County urges a change in the Union Security provision in order to comply with the Workplace Democracy Enhancement Act, P.L.2018, c.15 §6. The County proposes to amend §3.1 to provide that revocation of dues deductions shall take place on the 30th day after the anniversary date. This proposal is designed to bring the County into compliance with the Workplace Democracy Enhancement Act, P.L.2018, c.15 §6. This law was passed during the last contract term. The last sentence of Article 3.1 which states that “[s]uch termination of dues deductions shall take place as of January 1st or July 1st of the next succeeding date on which written notice of withdrawal is filed by an Employee with the Employer and the Union. The language above was changed by the Workplace Democracy Enhancement Act. *N.J.S.A. 52:14-15.9e*. The County states that

the language in the proposed change should just be revised from “must take place” to “shall be effective” to comply with the law. I award this proposal.

d. Agency Shop

The County proposes language to amend the Agency Shop provision to comply with the United States Supreme Court’s decision in *Janus v. AFSCME, Council 31, et.al.*, 138 S.Ct. 2448 (2018). Specifically, County proposes to delete Article 3.3 and replace it with “Any employee who is not a union member, but whose position is covered by the recognition clause of this Agreement may pay a representation fee to the Union by automatic payroll deduction only if the employee provides written, voluntary consent to do so. The representation fee shall be in an amount equal to 85% of regular union membership dues, fees and assessments as certified by the Union to the Employer.”

The prior Article 3.3 provided, as a mandatory condition, that an employee who chose not to join the unit shall pay a representation fee to the Union by automatic payroll deduction. Such a condition is no longer permissible after the United States Supreme Court decision in *Janus v. AFSCME, Council 31, et.al.*, 138 S.Ct. 2448 (2018). For the representation fee to be deducted from the pay of an employee in the bargaining unit who chooses not to be a union member, the employee must affirmatively consent to pay. Such a waiver must be shown by “clear and convincing evidence.” Id. at 2486. I award this proposal.

e. Non-Paid Leave of Absence

The County proposes to delete Article 10.1 of the CNA which permitted employees to take a leave of absence for up to four months while working for another governmental agency. The Prosecutor testified that because of budgetary constraints he would be

precluded from replacing that individual and this would have a deleterious impact on the operation of the office. I award this proposal because I believe it will assist in the efficient running of the Prosecutor's Office.

IX AWARD

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

Amend Article 3 Union Security

Revise Article 3.1 as follows:

Such termination of dues deductions shall take place as of January 1st or July 1st of the next succeeding date on which written notice of withdrawal is filed by an employee with the Employer and the Union the 30th day after the anniversary date of employment after the employee has revoked such authorization by providing written notice to the County during the 10 days following the anniversary date of their employment and any other notices as required by law.

Agency Shop

Delete Article 3.3 and replace with:

Any employee who is not a union member, but whose position is covered by the recognition clause of this Agreement may pay a representation fee to the Union by automatic payroll deduction only if the employee provides written, voluntary consent to do so. The representation fee shall be in an amount equal to 85% of regular union membership dues, fees and assessments as certified by the Union to the Employer.

Amend Article 4 "Work Schedules" as follows:

4. WORK SCHEDULES

4.1 The weekly work schedule shall consist of five (5) consecutive days in any seven (7) day period, which schedule shall be established by the employer and may be changed by the Employer after giving reasonable notice.

4.2 The weekly work schedule and the starting time of work shifts shall be determined by the Prosecutor and, in emergency situations, may be changed at the discretion of the Prosecutor.

4.3a A workday shall consist of eight (8) consecutive hours, including one (1) hour for lunch which shall be unpaid.

4.3b **Effective January 1, 2022 a workday shall consist of eight (8) consecutive hours, including a paid thirty (30) minute, non-guaranteed meal period, to which Detectives are subject to recall.**

2. Amend Section 5 “Overtime” as follows:

Effective January 1, 2022, Employees will be compensated for ~~hours~~ time worked in excess of ~~thirty-five (35)~~ forty (40) hours per week as follows:

- a. ~~All compensatory time earned through June 3, 1993 will be frozen. Employees may use compensatory time hours off from work.~~
- b. ~~After an Employee has accrued fifty (50) new comp hours (in Bank I—35 to 40 hours), Employees will be compensated at his/her current hourly rate for hours worked between 35 and 40 per week on an hour for hour basis. (Effective 7/1/93)~~
- c. **Effective January 1, 2022 Hours Time** worked in excess of forty (40) hours per week will be compensated at the rate of one and one-half (1½) times the Employee’s hourly rate of pay. ~~(Effective 7/1/93)~~
- d. ~~Effective January 1, 2001 the first hour of extra duty work (beyond 35 hours) shall be paid at the straight time rate and all work beyond 36 hours shall be paid at the overtime rate. (One and one-half times the Employee’s hourly rate.)~~
- e. ~~Effective April 1, 2003 overtime shall be paid at the time and one half rate after 35 hours per week.~~

3 Amend Article 6 Salaries as follows:

6.3 Except as limited by the Interest Arbitration Award dated November 17, 2020 step movement shall be applied annually on July 1st. All Employees with at least one year of service shall annually advance one (1) step position until reaching the maximum pay rate as provided by the salary schedule.

6.4 Retroactive to January 1, 2020 there will be step movement, and a 1% wage increase at the top step, therefore the salary at the top step will be \$103,884.56.

6.5 Effective January 1, 2021 there will be step movement, and a 1% percent increase at the top step of the salary guide. The new top step shall be \$104,923.40.

6.6 Effective January 1, 2022, all employees shall begin to work an eight (8) hour workday with a one-half hour paid lunch period in which they shall be subject to recall. The employees' annual salary shall be based on their January 1, 2020 hourly wage multiplied by 2,080 hours. No employees shall advance on the salary guide in 2022.

Exhibit A shall be amended to include the following:

Commencing January 1, 2022, the following Salary Guide shall be implemented:

STEP	SALARY 1/1/22 @ 2080 HOURS
1-ACADEMY	58,868.57
2	62,168.57
3	65,500.57
4	72,132.57
5	76,118.86
6	80,105.14
7	84,092.57
8	88,073.14
9	92,053.71
10* New Step	100,034.29
11* New Step	108,757.50

12**Previous Step 9 with 1% increase 1/1/2021	119,912.00
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4. Non-Paid Leaves of Absence

Section 10.1 which provides: A permanent employee shall be entitled to a leave of absence with pay to accept a permanent appointment with another governmental agency in New Jersey for a period not to exceed four (4) months. **This provision is deleted from the CNA.**

5. Longevity

Amend Article 18 “Longevity” as follows:

18. LONGEVITY

18.1 Every full time Employee, temporary or permanent, classified or unclassified, of the County of Mercer, shall be paid longevity payments on a prorated basis with each salary check during the calendar year, and such longevity payment shall be considered in total with the salary for pension purposes.

All full time Employees shall be entitled to longevity payments added to their gross per. annum pay consistent with the following guide:

<u>No. of Years</u>	<u>Dollar Amount</u>
<u>Beginning in the 5th year</u>	\$300.00
<u>Beginning in the 10th year</u>	\$900.00
<u>Beginning in the 15th year</u>	\$1,350.00
<u>Beginning in the 20th year</u>	\$1,850.00
<u>Beginning in the 24th year</u>	\$2,300.00
<u>Beginning in the 30 29th year</u>	\$3,900.00

Any interruption of service due to a cause beyond the control of the Employee, i.e. for military service, injury, or illness, shall be considered as service for the County of Mercer for the purpose of determining the completion of said cumulative period of service with the County of Mercer. Nothing contained in this Article shall be construed to apply to any person whose employment has been terminated for any reason prior to the effective date of the adoption of this contract.

Such additional longevity payments shall be paid notwithstanding the maximum salary provided for such employment.

18.2 Law Enforcement Longevity Prosecutor's Detectives and Investigators having completed nine (9) ~~ten (10)~~ years of continuous law enforcement service with the County of Mercer shall receive an annual payment of four hundred dollars (\$400.00) ~~dollar stipend beginning in their tenth year of service~~. The payment stipend shall not count as earnings in the calculation of overtime payments. Payments shall be made on a prorated basis with each salary check. Law enforcement longevity shall be considered in total with the salary for pension purposes.

Prosecutor's Detectives and Investigators having completed fourteen (14) ~~fifteen (15)~~ years of continuous law enforcement service with the County of Mercer shall receive an annual payment of six hundred fifty dollars (\$650.00) ~~dollar stipend beginning in their fifteenth year of service~~. The payment stipend shall not count as earnings in the calculation of overtime payments. Payments shall be made on a prorated basis with each salary check. Law Enforcement longevity shall be considered in total with the salary for pension purposes.

6. Departmental Investigations

DEPARTMENTAL INVESTIGATIONS

Article 29 Add new sub-section 12 :

12. All departmental investigations shall be conducted in accordance with the rules and regulations set forth in New Jersey Attorney General's "Internal Affairs Policy and Procedures," as may be amended from time to time.

7. Termination

Article 34 shall be amended to provide:

34.2 This Agreement shall be effective ~~upon execution~~ January 1, 2020 and shall remain in full force and effect until the 31st day of December ~~2019~~ 2022. It shall be renewed from year to year thereafter unless either party shall give written notice of its desire to modify the Agreement. Such notice shall be made by certified mail or personal service by October 1 of any succeeding year.

In the event that such notice is given, negotiations shall begin no later than 90 days prior to the anniversary date. This Agreement shall remain in full force and be effective during the period of negotiations and until a new agreement is reached.

8. Other Proposals

All proposals by the Policemen's Benevolent Association, Local 339 and the Mercer County Prosecutor's Office not awarded herein are denied and dismissed. All provisions of the existing Collectively Negotiated Agreements⁵ shall be carried forward except for those which have been modified by the terms of this Award and any prior agreements between the parties.

XI. CERTIFICATION

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

Dated: November 17, 2020
Brooklyn, New York

Ira Cure

State Of New York }
County of Kings }

On this 17th day of November, 2020 before me personally came and appeared Ira Cure to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me he executed the same.

Notary Public

⁵ This includes salary increments.

8. Other Proposals

All proposals by the Policemen's Benevolent Association, Local 339 and the Mercer County Prosecutor's Office not awarded herein are denied and dismissed. All provisions of the existing Collectively Negotiated Agreements⁵ shall be carried forward except for those which have been modified by the terms of this Award and any prior agreements between the parties.

XI. CERTIFICATION

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

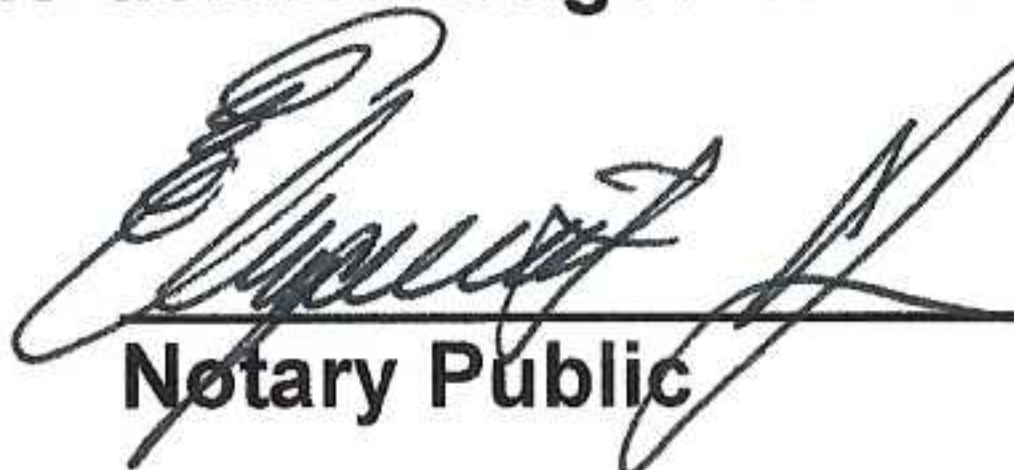
Dated: November 17, 2020
Brooklyn, New York


Ira Cure

State Of New York }
County of Kings }

On this 17th day of November, 2020 before me personally came and appeared Ira Cure to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me he executed the same.

ELIZABETH ORFAN
Notary Public, State of New York
No. 02OR4976601
Qualified in Kings County
Commission Expires April 23, 2023


Notary Public

⁵ This includes salary increments.