

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Interest Arbitration Between:

STATE OF NEW JERSEY (DIVISION OF CRIMINAL JUSTICE)

-and-

Docket No. IA-2015-03

FRATERNAL ORDER OF POLICE, LODGE #91

Before: Susan W. Osborn, Interest Arbitrator

Appearances:

For the State:

Jackson, Lewis, attorneys
(Jeffrey J. Corradino, of Counsel)
(James J. Gillespie, of Counsel)

For the FOP:

Pelettieri, Rabstein & Altman, attorneys
(Frank M. Crivelli, of Counsel)

REMAND AWARD

On December 3, 2014, I issued an interest arbitration award for an initial collective negotiations agreement between the State of New Jersey, Division of Criminal Justice, and Fraternal Order of Police (FOP) Lodge 191. On December 19, the State appealed the Award on numerous grounds, including my conclusion that the 2% arbitration cap (N.J.S.A. 34:13A-16.7(b)) did not apply to this bargaining unit. On February 13, 2015, the Public Employment Relations Commission (PERC) issued a decision finding that the 2% arbitration cap applies to this circumstance. The Commission vacated my Award and remanded the matter to me for further consideration.

On March 19, the FOP filed a Motion with the Appellate Division for Leave to Appeal the Commission's decision and requested a stay of further proceedings before the arbitrator. On April 10, the Court granted the Union's motion and issued a stay of further remand proceedings until the Court decided the Union's motion for appeal. On May 21, the Appellant Division denied the Union's Motion for Leave to Appeal and the stay on further proceedings was then lifted.

Following the Commission's remand order, it advised me that the remand award would be due within 90 days of the Commission's decision -- by May 13. However, the Appellant Division's stay on remand proceedings extended this time period by 41 days; the remand award is now due June 23.

SUMMARY OF PRIOR AWARD

In my first Award ("hereinafter referred to as State/DCJ I"), I awarded a five-year contract covering the period July 1, 2014 through June 30, 2019. For State employees this covers fiscal years ("FY") 2015 through 2019.

I awarded across-the-board increases ("ATB") as follows:

- 1.75% ATB increase effective 10/1/14
- 1.5% ATB increase effective 7/1/15
- 1.5% ATB increase effective 7/1/16
- 1.5% ATB increase effective 7/1/17
- 1.5% ATB increase effective 7/1/18.

I also directed that step increments continue to be paid pursuant to the previously established increment plan for these employees.

In addition, I awarded a contract provision that requires the Division to advance employees from detective II to detective I after five years of service effective July 1, 2015.

Further, effective January 1, 2015, I awarded a clothing and equipment allowance of \$300 annually also to be paid in a lump sum the first pay period of each calendar year. Effective July 1, 2015, I awarded lump-sum educational incentive payments of \$1,000 annually for employees holding a master's degree, and \$1,500 annually for employees holding a PHD or JD degree.

Moreover, I awarded a provision requiring employees to be reimbursed for the cost of continuing education credits pursuant to existing departmental policy, when funds are available.

I calculated that the cost of these awarded provisions over the life of the five-year agreement would be as follows:

COST OF THE AWARD

Cost of the Award				
Year	Increment ¹	ATB	Advancements ²	Totals
FY15	108,308.86	137,766	0.00	246,074.86
FY16	175,761.43	162,440	12,618.96	350,820.39
FY17	148,800.33	165,341	2,359.00	316,500.33
FY18	110,617.25	167,343	9,436.00	287,396.25

¹ The cost of increments was taken directly from the data provided in the State's list, S-11. It includes the cost of step movement and cost of moving employees from trainee rate to Det. II rate. Increment costs were calculated using S-11 submitted at hearing on October 30, 2014. On November 14, after the record closed, the State submitted a "corrected copy" of S-11 with updated data. However, this document could not be accepted as the record was already closed.

² Cost of moving employees from the detective II range to the detective I range effective July 1, 2015.

FY19	102,930.78	169,215	9,436.00	281,581.78
Total	646,418.65	802,105	33,849.96	1,482,373.61

In addition to the above, I calculated that the cost of the educational incentive payments over the life of the contract would be \$21,000 annually (\$1,500 X 2 employees + \$1,000 x 18 employees), and the cost of the clothing and equipment allowance would be \$40,500 annually (135 employees x \$300). However, these payments are in the form of a lump sum and not considered a part of base pay. Therefore, these payments are not subject to the 2% arbitration cap restrictions.

Further, I awarded stipends and other economic fringe benefits available to certain employees in limited situations. I awarded compensation of \$35 daily for employees required to serve as duty officer or unit phone monitor. I also awarded language requiring the State to grant DCJ detectives time off to attend necessary continuing professional education courses and to reimburse such employees for their costs of the courses if funds are available. The total cost of the duty officer/unit phone monitor stipend, as well as the reimbursement for continuing education courses is not calculable on an annual basis, but the cost is minimal.

I also awarded contract language incorporating the existing benefits which permit employees to cash out unused vacation leave and up to 90 days of unused sick leave, to a maximum of \$15,000 pursuant to the statutes.

As this was the first contract between the parties, contract language for the entire new agreement was not yet finalized. The parties were able to agree on a substantial number of contract language clauses and I awarded numerous other non-economic provisions.

In accordance with N.J.S.A. 34:13a-16f(5) (a) and N.J.A.C. 19:16-8.1(a), the State appealed several of the awarded provisions including the finding that the 2% cap does not apply in this matter and the automatic "advancement" from detective II to detective I. On February 13, 2015, the Commission issued its decision concerning the State's appeal of the interest arbitration award. State of New Jersey and FOP Lodge #91, P.E.R.C. No. 2015-50, 41 NJPER 382 (¶120 2015). The Commission found that the 2% cap on increases in base salaries applies pursuant to N.J.S.A. 34:13A-16.7(b). It vacated the award and remanded the salary issues to me for a new award concerning employee base pay. The Commission did not reach any of the other issues which were the subject of the State's appeal. Accordingly, issues other than base pay will not be addressed in this remand decision³.

ANALYSIS OF 2% CAP

N.J.S.A. 34:13A-16.7(b), as amended on June 24, 2014, provides:

An Arbitrator shall not render any award pursuant to

³ The calculations under the 2% arbitration cap limitation necessarily include an evaluation of advancement pay in moving detective II's to detective I's.

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

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

The statute also provides a definition as to what subjects are included in "base salary" at 16.7(a):

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

It should be noted, pursuant to the above language, the 2.0% cap is not tied directly to contract terms but rather to the aggregate amount expended by the public employer on base salary items for the members of the bargaining unit in the twelve-month

period immediately preceding the starting date of the new collective negotiation agreement subject to arbitration.

Here, the record reveals that "total base pay" includes the employees' salaries pursuant to the salary ranges, their increments, and the costs of moving detective trainees from the trainee rate on salary scale Y95 to the detective II rate on salary scale Y24 at the conclusion of their training period.

The State's list (S-11) shows that the total amount of base pay actually paid in the base year -- fiscal year 2014 -- was \$9,913,644.91. The Union accepted this amount as the total base year costs. Applying the compounded 2% maximums permitted under the statute, the total amount which can be awarded in this matter is as follows:

2% Calculations	
Base Yr. Total	9,913,645
x 2% (1st Yr.)	198,273
FY15	10,111,918
x 2% (2nd Yr.)	202,238
FY16	10,314,156
x 2% (3rd Yr.)	206,283
FY17	10,520,439
x 2% (4th Yr.)	210,409
FY18	10,730,848
x 2% (5th Yr.)	214,617
FY19	10,945,465
Total 2% CAP (5 yrs)	1,031,820

Increments

As noted above, the cost of increments must necessarily

be included as costs attributable to the 2% maximum under the arbitration cap. The cost of increments here is not insignificant. The State calculated the cost of increments for each year of the contract, including the costs of moving detective trainees from the trainee rate on salary scale Y95 to detective II rate on salary scale Y24 (from \$51,239 to \$53,622). The FOP did not submit its own calculation of increment costs. The State's calculations, as recited in its brief, show the following increment costs for the life of the five-year contract:

Fiscal Yr.	Total Increments	Percent
FY 2015	\$582,800.95	5.88%
FY 2016	\$195,117.95	1.97%
FY 2017	\$168,725.53	1.70%
FY 2018	\$130,541.57	1.32%
FY 2019	\$122,856.30	1.24%
Total	\$1,200,042.30	12.11%

However, it appears that the State has miscalculated the cost of increments in the first year and misreported increments for the remaining years. First, the State's brief relied on calculations submitted in its corrected versions of (S-11) and (S-12). S-11 is the State's employee list which includes base pay and increments for each employee from fiscal year 2014 through fiscal year 2019. S-12 is the State's calculations based upon the raw data in S-11. While the State submitted corrected versions of S-11 and S-12 on November 14, these were not accepted because the record had already been

deemed closed. Thus, the calculations based upon the revised data are not substantiated by record evidence and therefore must be rejected. Second, the State's reported increment cost calculations for FY 2015 must be rejected on the basis that they are illogical. In FY 2014, there were 41 employees already at top step and therefore there is no increment payable in FY 15. There are 55 detective I's and 15 detective II's who are moving up the respective salary guides in FY 15. Detective II's have a constant increment value of \$2,500.22 and detective I's have an increment value of \$2896.82. An increment cost of \$571,671 for these 136 employees would mean that, even if every unit employee received a step increment (which they do not), their increments would be \$4,203 (which they are not). Therefore, the State's calculations of increment costs for FY 2015 must be rejected.

Rather, it appears that the Employer's method of calculating increment costs relied on a subtraction of the total amount spent in FY 14 (\$9,913,644.91) against the total amount projected to be spent in FY 2015 (\$10,485,315.98); this method is inconsistent with the Commission's directives in Borough of New Milford P.E.R.C. No. 2012-53, 38 NJPER 340 (¶116 2012). First, it includes the savings of amounts that no longer will be paid to employees who retired or resigned in 2014 as negative amounts. This savings, commonly referred to as "breakage",

totals \$223,230.88, and is improperly included in the Employer's aggregate FY 15 increase of \$571,671. PERC has previously stated that breakage money may not be considered in calculating the cost of an award as it applies to the 2% cap. New Milford; Atlantic City, P.E.R.C. No. 2014-3, 40 NJPER 140 (¶53 2013); Borough of Ramsey, P.E.R.C. No. 2012-60, 39 NJPER 17 (¶3 2012).

Further, the State's asserted increment costs for FY 2015 includes (in addition to increment costs) the amount needed to bring employees who were paid for part of the year in FY 2014 to full salary in the subsequent year. This is not a true "increment cost".

In New Milford, the Commission provided instructions for costing out the award to include increment costs. It stated that the best method to cost out would be to take the complement of employees on the employer's payroll on the last day before the new contract, and move them forward through the steps (where increments are being awarded) and any across-the-board increases. Thus, the appropriate starting point to track costs for contract year one is the total base salaries of unit employees on the last day before the new contract begins⁴.

Of the 141 employees that worked at any time in FY 2014, five employees either retired or resigned their service at some point

⁴ This date would ordinarily be the last day of the expired contract.

before the end of FY14.⁵ These employees are not being carried forward into 2015; thus, there are 136 employees that are being carried forward for the life of the new contract. In addition, there were 16 new hires in FY 14, hired at the detective trainee rate. Recruits are hired at the Academy rate of \$48,970.62 and after 6 months advance to a second step trainee rate of \$51,239.81; and upon their one year anniversary, trainees move to the detective II salary guide with a step one rate of \$53,622.79. Ten of these new hires will advance from the Academy rate to the six-month trainee rate in FY 15; six will move from the six-month rate to the first step as detective II's in FY 15. It appears that the Employer's "increment costs" for FY 2015 includes not only the cost of advancing employees on their respective salary guides, but also includes the roll-up costs which result from pro-rating an employee's partial salary in the year they began their employment (FY 14) to bring them up to full salary in the first year of the contract (FY 15). The cost of bringing these employees up to full pay pursuant to the salary guides (roll-up costs) is significant. It is just as inappropriate and contrary to New Milford to charge off roll-up costs against the 2% cap as it is to credit breakage amounts to the Union's benefit.

⁵ During FY 2014, resignations/retirements included Douglas Mattei, Carlos Ortiz, Dawn Ryan, M. Schneiderman, and Audrey Young.

In summary then, the State's calculated FY 2015 increment cost method cannot be accepted. Rather, I rely upon the State's reported increment costs of \$108,308.86 as reported in column 10, labeled "increment cost" in S-11. The costs shown have been pro-rated for each employee to their anniversary date. I find that the true cost of increments for FY 2015 is \$108,308.86 as reported in State/DCJ I. I particularly note that neither the State, nor the Union, appealed this portion of my award. Therefore, the conclusion is the same: The cost of increments for this bargaining unit over the five-year period (before any increases are factored in) is as follows:

Year	Increment
FY15	108,308.86
FY16	175,761.43
FY17	148,800.33
FY18	110,617.25
FY19	102,930.78
Total	646,418.65

Application of 2% Increase

As noted above, the total allowable amount under the 2% compounded arbitration cap for the five-year period is \$1,031,820. Thus, the previously awarded increments, across-the-board increases, and adjustment pay for detective II's, which totaled \$1,482,373.61, are no longer sustainable given the 2% cap on base salary increases.

In addition to considering the limitations of the 2% arbitration cap, I am also required to consider the other nine

statutory criteria as set forth in N.J.S.A. 34:13A-16g(1) through (9). I have specifically considered and given weight to the Employer's ability to pay, continuity and stability of the bargaining unit, and comparable pay and benefits, both among other State law enforcement units and among other detectives and investigators employed by county prosecutor offices. However, the overriding factor in this remand must be the imposition of the 2% cap on an arbitration award pursuant to N.J.S.A. 34:13A-16.7(b). This constraint requires me to reconfigure the previously awarded salary increases as well as the awarded advancement pay for employees moving from detective II to detective I. I award the following:

FY 2015: The payment of all increments when due for employees moving through the step guide; increase step 10 to of salary range Y24 and salary range Y27 by 1.0%, effective and retroactive to January 1, 2015. The values of all other steps are to remain frozen at the 2014 rates.

FY 2016: The payment of all increments when due for employees moving through the step guide; across-the-board increases of 1.75% effective July 1, 2015 for all unit employees.

FY 2017: The payment of all increments when due for employees moving through the step guide; across-the-board increases of .50% effective July 1, 2016 for all unit employees.

FY 2018: The payment of all increments when due for employees moving through the step guide; across-the-board increases of .50% effective July 1, 2017 for all unit employees.

FY 2019: The payment of all increments when due for employees moving through the step guide; across-the-board increases of .60% effective July 1, 2018 for all unit employees.

This award will result in the following revised salary guides:

Detective Trainees Range Y95						
Awarded Salary Schedule						
Step	FY14 Salary	FY15 Salary	FY16 Salary	FY17 Salary	FY18 Salary	FY19 Salary
Recruit (Academy)	48,970.62	48,970.62	49,827.60	50,076.14	50,326.52	50,628.48
6 Months	51,239.81	51,239.81	52,135.68	52,396.36	52,658.34	52,974.29

Detective II Range Y24						
Awarded Salary Schedule						
Step	FY14 Salary	FY15 Salary*	FY16 Salary	FY17 Salary	FY18 Salary	FY19 Salary
1	53,622.79	53,622.79	54,561.19	54,833.99	55,108.16	55,438.81
2	56,123.01	56,123.01	57,105.16	57,390.69	57,677.64	58,023.71
3	58,623.23	58,623.23	59,649.14	59,947.38	60,247.12	60,608.60
4	61,123.45	61,123.45	62,193.11	62,504.08	62,816.60	63,193.50
5	63,623.67	63,623.67	64,737.08	65,060.77	65,386.07	65,778.39
6	66,123.89	66,123.89	67,281.06	67,617.46	67,955.55	68,363.28
7	68,624.11	68,624.11	69,825.03	70,174.16	70,525.03	70,948.18
8	71,124.33	71,124.33	72,369.01	72,730.85	73,094.51	73,533.07
9	73,624.55	73,624.55	74,912.98	75,287.54	75,663.98	76,117.97
10	76,124.77	76,886.01	78,231.52	78,622.67	79,408.90	79,885.35
* The FY15 increase applies to top step only and is effective and retroactive to 1/1/15.						

Detective I Range Y27 Awarded Salary Schedule						
Step	FY14 Salary	FY15 Salary*	FY16 Salary	FY17 Salary	FY18 Salary	FY19 Salary
1	61,509.73	61,509.73	62,586.15	62,899.08	63,213.58	63,592.86
2	64,406.55	64,406.55	65,533.66	65,861.33	66,190.64	66,587.78
3	67,303.37	67,303.37	68,481.18	68,823.58	69,167.70	69,582.71
4	70,200.19	70,200.19	71,428.69	71,785.84	72,144.77	72,577.63
5	73,097.01	73,097.01	74,376.21	74,748.09	75,121.83	75,572.56
6	75,993.83	75,993.83	77,323.72	77,710.34	78,098.89	78,567.49
7	78,890.65	78,890.65	80,271.24	80,672.59	81,075.96	81,562.41
8	81,787.47	81,787.47	83,218.75	83,634.84	84,053.02	84,557.34
9	84,684.29	84,684.29	86,166.27	86,597.10	87,030.08	87,552.26
10	87,581.11	88,456.92	90,004.92	90,454.94	90,907.22	91,452.66
* The FY15 increase applies to top step only and is effective and retroactive to 1/1/15.						

The salary increases awarded herein strike a balance between the interests of the bargaining unit members and the interests of the State, and yet respect the 2% arbitration cap. It recognizes that members of this bargaining unit have not had a salary increase since 2008 and have therefore fallen behind the average salary levels of comparable State law enforcement personnel as well as detectives and investigators employed by county prosecutor's offices as discussed in State/DCJ I. While this bargaining unit remained at a static salary over the last six years, the State's other law enforcement units achieved annual salary increases varying between .5% and 1.75% between 2013 and 2015. Moreover, the FOP has demonstrated that county prosecutors' detectives and investigators are now at an average of more than \$8,000 above these unit employees, even though

these employees are required to have a minimum of a bachelor's degree to qualify for their jobs.

The awarded increases as set forth above will bring detective II's to a top pay of \$79,885.35 and detective I's to a top pay of \$91,452.66 by the end of the contract period. Thus, they will continue to be below average pay when compared to county prosecutor's detectives. However, given the statutory constraints, I am prohibited from awarding any greater increases.

The cost of this award is as follows:

Cost of Remand Award						
Year	Beginning Total Cost	Increment *	New Increment	ATB %	ATB	Totals
FY15	10,377,007.12	108,308.86	108,308.86	1.00%**	18,277.74	126,586.60
FY16	10,485,315.98	175,761.43	178,837.26	1.75%	183,493.03	362,330.28
FY17	10,847,646.26	148,800.33	149,544.33	0.50%	54,238.23	203,782.56
FY18	11,051,428.83	110,617.25	111,170.34	0.50%	55,257.14	166,427.48
FY19	11,217,856.31	102,930.78	103,548.36	0.60%	67,307.14	170,855.50
Total		646,418.65	651,409.15	3.35%	378,573.28	1,029,982.43

* "Increment" referred to above denotes the amount of the increment costs prior to the awarded increases; "new increment" refers to the increment cost after the ATBs are applied.

** Applies to top step only and is effective 1/1/15.

For fiscal year 2015, I have frozen the dollar values on the salary guide and awarded no across-the-board increase except for the top steps for detective II's and detective I's. These employees are awarded a 1.0% increase effective and retroactive to January 1, 2015. I have awarded this increase in order to make top pay more competitive with other comparable detectives

as discussed above. I have limited the retroactivity of this increase because I recognize that the State's 2015 budget is severely constrained. The cost of this awarded increase for 2015 is \$18,277.44. (40 detective I's x \$875.81/2) plus (2 detective II's x \$761.24/2).

For fiscal year 2016, I have awarded a 1.75% increase across-the-board to all employees effective July 1, 2015. While this increase may appear to be substantial from the Employer's point of view, it is awarded because of the six-year freeze these employees have endured, while other State law enforcement units have achieved salary increases comparable to or in excess of these increases in 2014 and 2015. Moreover, I particularly note that the State's recently signed contract with the newly-formed bargaining unit of Deputy Attorneys General (DAGs) provided for a 1% increase in FY 2014, followed by a 1.75% increase in FY 2015.

Freezing the wages of these unit employees for such a long period no doubt has a negative impact on employee morale and discourages employee productivity, which is not in the public interest. The 1.75% increase being awarded in FY 2016 recognizes the statutory factors of comparability, cost of living, and continuity of employment, as providing employees with a more competitive wage will make it less likely that employees will seek employment opportunities in better-paying law enforcement settings. In addition, I note that the

financial impact on the Employer is slight. The cost of the awarded increase for FY 2016 is \$183,493.03, which is about one-half of 1% of the total DCJ budget of \$31.5 million which is not significant enough to be detrimental to the interests and welfare of the public.

For fiscal years 2017 and 2018, I have awarded one-half of one percent increases in each year. While the Union may view these awards as a mere pittance, the rationale for this award is the limitation imposed by the 2% arbitration cap.

For fiscal year 2019, I have awarded a .6% increase across-the-board to all unit employees. Again, the rationale for this is the limitation imposed by the 2% arbitration cap.

Increments have been awarded in each year throughout the contract primarily because the bulk of the 136-member unit are continuing to progress through the salary guides and have an expectation of such advances throughout the first twelve years of their career until they reach top pay. Further, I note that the State has a long history of continuing increment payments in nearly all situations for its non-exempt employees represented in negotiations units. Moreover, the State has not objected to the payment of increments nor proposed that increments should be suspended or eliminated. In addition, I note that the State has already funded and paid the increments in fiscal year 2015.

Career Advancement

In State/DCJ I, I awarded the FOP's proposal to require automatic advancement of detective II's to the detective I salary range after five years' service with the Division. The cost of this benefit was \$33,849.96. However, less than ten employees would be eligible for this benefit in fiscal year 2016, and only a small group would be eligible thereafter. I have determined that these financial resources would be better spent in enhancing the salaries of all unit employees rather than a select few; therefore, rescinding this benefit is in the interest of both parties and in the public interest. Accordingly, the career advancement benefit previously awarded is rescinded. Further, if the State fulfills its commitment to treat this career advancement as a "promotion", then detective II's will still have the opportunity to seek promotions to the detective I title.

SUMMARY OF THE AWARD**Increments/Salary Increases**

FY 2015: The payment of all increments when due for employees moving through the step guide; increase step 10 of salary range Y24 and salary range Y27 by 1.0%, effective and retroactive to January 1, 2015. The values of all other steps are to remain frozen at the 2014 rates.

FY 2016: The payment of all increments when due for employees moving through the step guide; across-the-board increases of 1.75% effective July 1, 2015 for all unit employees.

FY 2017: The payment of all increments when due for employees moving through the step guide; across-the-board increases of .50% effective July 1, 2016 for all unit employees.

FY 2018: The payment of all increments when due for employees moving through the step guide; across-the-board increases of .50% effective July 1, 2017 for all unit employees.

FY 2019: The payment of all increments when due for employees moving through the step guide; across-the-board increases of .60% effective July 1, 2018 for all unit employees.

Advancements

The previously awarded automatic advancements from detective II to detective I is hereby rescinded.

* * * *

All other items previously awarded in State/DCJ I are continued.

Susan W. Osborn
Interest Arbitrator

Dated: June 23, 2015
Trenton, New Jersey

On this 23rd day of June, 2015, before me personally came and appeared Susan W. Osborn to me known and known to me to be the individual described in and who executed the foregoing instrument and she acknowledged to me that she executed same.

