

**NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION**

**Case No: IA-2021-004**

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

**Passaic County Sheriff's Office,**

**PUBLIC EMPLOYER**

**and**

**Police Benevolent Association, LOCAL 286,**

**EMPLOYEE ORGANIZATION**

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**INTEREST ARBITRATION  
DECISION AND AWARD**

**BEFORE:**

**Marc A. Winters  
Interest Arbitrator**

**APPEARANCES**

**For the Employee Organization:**

**Frank M. Crivelli, Esquire  
Of Counsel and on the Brief**

**Donald C. Barbati, Esquire  
On the Brief**

**Michael O. DeRose, Esquire  
On the Brief**

**For the Public Employer:**

**Lester E. Taylor III, Esquire  
Of Counsel and on the Brief**

**David I. Solomon, Esquire  
On the Brief**

## **PROCEDURAL HISTORY**

On September 4, 2020, the PBA Local 286, filed a Petition to Initiate Compulsory Interest Arbitration (“Petition”) with New Jersey’s Public Employment Relations Commission (“PERC”). By filing the Petition, the Union asked PERC to appoint an interest arbitrator pursuant to the Police and Fire Interest Arbitration Reform Act, *N.J.S.A. 34:13-16(e)(1)* to make an award concerning a successor collective negotiation agreement. (“CNA”) with the Passaic County Sheriff’s Office. On September 29, 2020, this Arbitrator was appointed, by PERC, to serve as interest arbitrator.

Pursuant to *N.J.S.A. 34:13-16(b)(3)*, on October 26, 2020, this Arbitrator conducted a mediation session, virtually, with the parties to “effect a voluntary resolution of the impasse.” At the conclusion of the October 26, 2020 mediation session, it was determined that the impasse should proceed to interest arbitration. Evidentiary Hearings were scheduled and conducted, virtually, on November 18, November 20, and November 24, 2020.

Frank M. Crivelli, Esquire and Donald C. Barbati, Esquire of the firm Crivelli & Barbati, LLC represented the Union. Lester E. Taylor, Esquire and David I. Solomon, Esquire of the firm Florio, Perrucci, Steinhard, Cappella, Tipton & Taylor, LLC. represented the Borough.

During the hearings, the parties were permitted the opportunity to argue orally, present documentary evidence, and examine and cross-examine witnesses. P.B.A. #286 offered the testimony of: (1) its President, Sheriff’s Officer Ferdinand Fernandez; (2) Christopher Drew, retired Lieutenant for the Mercer County Sheriff’s Office; (3) Donald Barbati, Esq.; (4) healthcare expert, Domenick Fanuele; and (5) financial expert, Dr. Raphael Caprio. The County offered the testimony of: (1) health insurance expert, Michael Atkinson; (2) Richard Cayhill, the finance director for the County; (3) Jason Mitchell, division head for payroll and pensions at the County; (4) Chief Sheriff Officer George Rosenthal; and (5) health insurance expert, Ryan Graham.

In addition, the parties submitted extensive documentary evidence, to include various collective negotiations agreements, Memorandums of Agreement, prior interest arbitration awards, and financial/economic data, which included an expert financial report from Dr. Caprio. Subsequently, the parties were permitted to submit post-hearing briefs. Ultimately, post-hearing briefs were submitted on December 11, 2020 and the record was closed at that time. The evidence provided and the arguments set forth by both parties have been fully considered in preparation and issuance of this Interest Arbitration Decision and Award. The above-mentioned Statutory provisions requires this Arbitrator to issue a written decision within 90 days of the Arbitrator's appointment.<sup>1</sup>

## **BACKGROUND**

P.B.A. #286 and the County are parties to a collective negotiations agreement which expired on December 31, 2018.

Passaic County, established in 1837, is presently comprised of 16 municipalities. Passaic County is located in Northeastern New Jersey and occupies 193.81 square miles. It ranks 18<sup>th</sup> in size among New Jersey's 21 counties. However, on the basis of population, it ranks as the 9th most populous county in New Jersey. The County's proximity to New York, Philadelphia, and New Jersey's most populated cities and towns, as well as the quality of life the County offers, makes Passaic County particularly attractive for homeowners and small businesses.

P.B.A. #286 is recognized by the County as the sole and exclusive collective negotiations representative for those individuals employed by the County and/or Sheriff as non-supervisory or rank-and-file Sheriff's Officers and Sheriff's Investigators for purposes of collective negotiations

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<sup>1</sup> A waiver/extension of the 90day requirement was issued, to this Arbitrator, by PERC, on December 17, 2020 due to and based on Covid-19 pandemic issues.

concerning salaries, wages, hours of work, and other terms and conditions of employment. The County is a body politic which serves, along with the Passaic County Sheriff, as the employer for the members of P.B.A. #286. The Passaic County Sheriff's Office is the agency responsible for various law enforcement functions throughout the County, to include County Patrol, Crime Scene Investigation, Special Weapons and Tactics ("SWAT"), the operation of the Passaic County Jail, and the security of County facilities, including the County Courthouse and Administration Complex.

The Sheriff's Officers and Investigators who comprise P.B.A. #286 are sworn law enforcement officers for the County Sheriff's Office. The County Sheriff's Office is comprised of three (3) separate divisions: (1) the Court Services Division; (2) the Bureau of Law Enforcement or the Law Enforcement Division; and (3) the Bureau of Corrections or Corrections Division. Sworn Sheriff's Officers and Investigators employed by the County are assigned to the Court Services Division or the Law Enforcement Division, whereas County Correctional Police Officers comprise the Corrections Division. There are approximately one-hundred (100) Sheriff's Officers/Investigators assigned to the Court Services Division and one-hundred and four (104) Sheriff's Officers/Investigators assigned to the Law Enforcement Division.

## **FINAL OFFERS OF THE PARTIES**

### **Union Final Offer:**

#### **1. Amend Article 1 – Witnesseth, 2<sup>nd</sup> Paragraph as follows:**

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

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

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

3. Amend Article 5 – Work Week – Hours of Work

~~A. All Employees employed in the continuous operation of the Patrol Unit shall have a workweek, inclusive of two week-ends, consisting of four (4) consecutive days on and two (2) consecutive days off.~~

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

A. Starting January 4, 2021, all Employees employed in the continuous operation of the Patrol Unit shall work a continuous Twelve (12) Hour Shift. Time worked shall be divided into work cycles consisting of twenty-eight (28) consecutive calendar days. During each work cycle all employees of the unit shall work tours of duty which in the aggregate total one hundred and sixty eight (168) hours.

B. All employees assigned to Patrol will work a steady, non-rotating scheduled twelve (12) hour tour for the twenty eight (28) day cycle that shall consist of either a “day shift” or a “night shift” that will follow the rotation of the attached twenty eight (28) day work cycle (See Exhibit A). During each twenty eight (28) day work cycle, no matter if an officer is assigned to the day or the night shift, each officer shall receive two “weekends” off from work that consists of a consecutive Friday, Saturday and Sunday.

C. Tours will run from 7:00AM to 7:00PM, followed by 7:00PM to 7:00AM. A Tour of Duty shall be considered the same as a “work shift” or “work day” as the terms may be used interchangeably throughout this agreement.

D. The work year for all employees shall consist of 2,080 hours. Each employee whose planned work schedule results in he or she working in excess of 2,080 hours shall receive compensatory time off at the rate of one (1) hour for one (1) hour for the excess time scheduled. Due to the nature of the planned schedule, officers will be credited with the excess hours scheduled to work on January 1st of that year in anticipation of continued employment. This will be referred to as "Pitman Adjustment Time (PAT Time)". The utilization of PAT Time off from work must be pre-scheduled and used in the calendar year in which it was earned and may not be carried over unless specifically approved by the Sheriff.

**Overtime shall be paid for any time worked in excess of an employee's normal workday and/or for any work on a scheduled day off.**

**4. Amend Article 6 – Overtime**

Add New Section F.:

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

**5. Amend Article 7 – Salaries**

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

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

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

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

**SCHEDULE A**

	2018	2019	2020	2021	2022	2023
<b><u>Step</u></b>						
Step 1	\$38,301	\$38,301	\$38,301	\$38,301	\$38,301	\$38,301
Step 2	\$41,397	\$41,397	\$41,397	\$41,397	\$41,397	\$41,397
Step 3	\$46,420	\$46,420	\$46,420	\$46,420	\$46,420	\$46,420
Step 4	\$52,443	\$52,443	\$52,443	\$52,443	\$52,443	\$52,443
Step 5	\$58,807	\$58,807	\$58,807	\$58,807	\$58,807	\$58,807
Step 6	\$67,020	\$67,020	\$67,020	\$67,020	\$67,020	\$67,020
Step 7	\$73,990	\$73,990	\$73,990	\$73,990	\$73,990	\$73,990
Step 8	\$81,359	\$81,359	\$81,359	\$81,359	\$81,359	\$81,359
Step 9	\$90,132	\$90,132	\$90,132	\$90,132	\$90,132	\$90,132
Step 10	\$98,175	\$101,365	\$104,660	\$108,061	\$111,573	\$115,199

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

Add a New Paragraph D

**D. Hazardous Duty Pay**

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

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

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

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

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

Add New Paragraph C.

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

**7. Amend Article 11 – Vacation, Sick, Personal and Death Leaves**

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

**D. Bereavement Leave**

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

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



**grandchildren, niece, nephew, uncle, aunt, or any person related by blood or marriage residing in an employee's household. Employees are paid for all working days during the Bereavement Leave. Employees may be asked for proof at the discretion of the Personnel Department or Administration. An additional day shall be given in the event of the Employee's spouse or children's death.**

**8. Amend Article 14 -- Payment for Education/Continuing Education**

Revise Paragraph B as follows:

Associate Degree--~~\$1,000.00~~            \$2,000.00

Bachelor's Degree--~~\$1,500.00~~        \$3,500.00

Graduate Degree--~~\$2,000.00~~ \$5,000.00

**9. Amend Article 15 – Medical Benefits**

Add New Paragraph

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

**10. Amend Article 17 – Ceremonial Activities**

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

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

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

**Employer Final Offer:**

**1. Duration:**

January 1, 2019 Through December 31, 2022

## 2. Article 3 – Grievance Procedure

- A. The Employee shall present the grievance, in written form, to the Employee's immediate Shift Commander within ten (10) days of its occurrence. The Shift Commander shall then attempt to adjust the matter and shall respond ~~verbally~~ **or in writing** to the Employee within ten (10) working days.
- B. If the grievance has not been settled, it shall be presented in writing by a PBA Representative to the appropriate Division Head within ten (10) days after the Shift Commander's response is received or due. The Division Head shall then respond in writing to the PBA Representative within ten (10) working days.
- C. If the grievance still remains unsettled, it shall be presented in writing by the PBA Representative to the Sheriff within ten (10) days after response of the Division Head is received or due. The Sheriff or his designated representative shall respond ~~verbally~~ **or in writing** to the PBA Representative within ten (10) working days.
- D. If the grievance is still unresolved within ten (10) days after written notice is received or due from the Sheriff, either party, ~~PBA or The County of Passaic~~ **(PBA 286 or The County of Passaic)** may request binding arbitration of the grievance, pursuant to PERC rules and regulations (19:12-5.1). The cost of arbitration shall be borne equally by the County of Passaic and the PBA.

## 3. Article 5 – Work Week Hours of Work

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

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

~~The basic hours of work for five and two (5 & 2) Employees shall be from 8:00 AM to 4:00 PM. All five and two (5 & 2) Employees shall be allowed one (1) thirty (30) minute lunch period.~~

- B. **All Employees employed in the continuous operation of the Sheriff's Office shall have a workweek, inclusive of two week ends, consisting of five (5) consecutive days on and two (2) consecutive days off.**

**The basic hours of work for five and two (5 & 2) Employees shall be from 7:00 AM to 3:00 PM, 9:00 AM to 5:00 PM, 3:00 PM to 11:00 PM and 11:00 PM to**

**7:00 AM with the ability to stagger shifts by 120 minutes. All five and two (5 & 2) Employees shall be allowed one (1) thirty (30) minute lunch period at a time and in an area designated by the Supervisor.**

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

#### 4. Article 7(A) – Salaries/Compensation

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

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

**• Effective January 1, 2020, employees will not move on the Salary Guide and will not receive a cost of living adjustment in his/her salaries. Employees shall receive \$1,000 on top of base salary effective July 1, 2020.**

**• Effective January 1, 2021, employees will not move on the Salary Guide and will not receive a cost of living adjustment in his/her salaries.**

**• Effective January 1, 2022, employees will not move on the Salary Guide and will not receive a cost of living adjustment in his/her salaries.**

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

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

Sheriff's approval, receive their certification from the Passaic County Community College at the employer's expense.

6. Article 7(C) – Salaries/ Compensation

C. The annual Detective or Commander allowance shall be paid to all Detectives as follows:

**Grade**

Commander	\$3,000
Detective, 3rd Grade/ <del>Specialist, Corrections</del>	\$1,500
Detective, 2 <sup>nd</sup> Grade	\$2,500
Detective, 1 <sup>st</sup> Grade	\$5,500

For any Employee that is assigned to Detective or Commander for less than the full calendar year, the ~~Detective~~ differential shall be pro-rated with the Employee receiving one-twelfth (1/12) of the applicable ~~Detective~~ differential for each month or portion thereof during which the Employee is assigned as a Detective or Commander. The designation of Detective shall be defined as per policy.

The actual duties and responsibilities of Detective or Commander shall be at the discretion of the Sheriff or designee who will assign said duties in accordance with the needs of the department.

7. Article 8 – Increments and Longevity

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

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

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

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

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

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

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

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

**(Per MOA)**

## 8. **Article 9 – Night Differential**

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

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

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

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

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

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

9. **Article 11(A) – Vacation, Sick, Personal, and Death Leaves**

Provided vacation requests are submitted by January 15<sup>th</sup> each year, such requests will be granted on the basis of seniority of service within each Division (Patrol, Corrections, Courthouse) of the Passaic County Sheriff’s Department. If an Employee requests time off on a holiday, and it is granted, no additional time off will be granted for being on vacation, *etc...* on a holiday.

Vacation time shall be granted as follows:

<b>Years of service</b>	<b>Working Days’ Vacation</b>
1-5 Years	12
6-10 Years	15
11-15 Years	18

16-20 Years 20

Over 20 Years 22

It shall be duly noted that at no time shall an Officer ~~have~~ **carry over** more than **one (1) year** ~~two (2) years~~ vacation time **for a total of no more than a two (2) year allotment per calendar year** accumulated without permission from the **Sheriff and shall be submitted in writing no later than December 1<sup>st</sup> of that year**. ~~Division Head~~. An Employee who becomes ill during vacation leave shall be charged sick time. The Employer may demand a doctor's certification.

Vacation time for employees hired after September 6, 2016 shall be granted as follows:  
(as per MOA)

<b>YEARS OF SERVICE</b>	<b>WORKING DAYS VACATION EACH YEAR</b>
1-8 YEARS	12
9-14 YEARS	15
15-19 YEARS	18
20 + YEARS	20

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

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

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

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

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

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

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

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

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

**12. Article 11(F) – Vacation, Sick, Personal, and Death Leaves**

**F. Family Leave**

**Family and medical leave is generally unpaid. Employees who have available sick, vacation, and personal time will be required to use this time first as part of their family and medical leave for a serious health condition thus considered “paid leave”. However, if the leave is for the birth of the employee’s child, to care for the newborn child, for the placement of an adopted or foster child or care for a newly placed child, only vacation, compensation or personal time will be charged. All remaining family/medical leave will be unpaid.**

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

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

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

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

1. Recognized holidays that fall on a Saturday shall be celebrated on the preceding Friday.
2. Recognized holidays that fall on a Sunday shall be celebrated on the succeeding Monday.



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

**14. Article 13(C) – Criminal Civil Actions**

- C. The minimum counsel fees for Employees, in connection with civil litigation or criminal charges arising within the scope of their employment, shall be

Non-indictable criminal offenses ~~\$120.00~~ **\$150.00** per hour

Defense in civil matters ~~\$120.00~~ **\$150.00** per hour

Defense in criminal matters ~~\$120.00~~ **\$150.00** per hour

Plus the following disbursement: Required transcripts, required expert fees Court cost and fees.

~~It is noted~~ Prior to retaining any Attorney, ~~that the attorney must be~~ **notification shall be made to the Sheriff's Administrative Office, in writing, indicating the specific charges (criminal/civil), the name of the Attorney and that the Attorney is** in agreement with the County of Passaic's fee schedule, or the Employee ~~may~~ **will** be liable for the difference.

**15. Article 14(B) – Payment for Education/ Continuing Education**

- B. Any Employee who enrolls in and attends a course in ~~law enforcement~~ **Criminal Justice** related studies at an accredited institution or college approved by the Middle State Association Colleges and Secondary Schools, shall be paid Twenty (\$20.00) per credit, yearly.

All the aforementioned courses must be approved in advance by the Sheriff and shall be paid during the first quarter of the calendar year. In addition, those Employees who have attained, or hereafter attains a college degree, shall receive an annual educational increment as follows:

~~Associate Degree – \$200.00~~

~~Bachelor Degree – \$400.00~~

~~Effective January 1, 2005, the annual educational increment shall be as follows:~~

~~Associate Degree - 1,000.00~~

Bachelor Degree - 1,500.00

Graduate Degree - \$2,000.00

Only one degree is payable at a time.

## 16. Article 15(A) – Medical Benefits

Replace with language from the October 11, 2016 MOA:

### A. Medical

- ~~1. The level of Employee contribution of 1.5% of base salary shall be as set forth in P.L. 010, ch.2, effective May 22, 2010. This level of Employee contribution shall be inclusive of, rather than in addition to, any statutory obligation towards an Employee's requirement to make contributions toward the payment of health insurance.~~
- ~~2. Effective upon execution of this Agreement, the co-pay under this plan shall be Five Dollars (\$5.00) for generic drugs and Ten Dollars (\$10.00) for brand name drugs. Mail order generic drugs shall have a co-pay of Ten Dollars (&10.00) per prescription (for a three (3) month supply). Mail order brand name drugs shall have a co-pay of Twenty Dollars (\$20.00) per prescription (for a three (3) month supply). The coverage shall include family members.~~
- ~~3. Any Employee hired after the ratification of this Agreement shall contribute towards the cost of medical benefits as follows:
  - ~~i. Two Percent (2%) of Base Salary for single Coverage:~~
  - ~~ii. Two and One Half Percent (2.5%) of Base Salary for Husband/wife; One Parent and One (1) Child, Employee/Domestic Partner.~~
  - ~~iii. Three Percent (3%) of Base Salary for Family Coverage.~~~~
- ~~4. Co-Pays for doctor's visits shall be Fifteen Dollars (\$15.00). The deductible for health insurance shall be Two Hundred and Fifty Dollars (\$250.00) for the Employee and Five Hundred Dollars (\$500.00) for family members. Out of pocket maximum contributions for in-network providers shall be Two Hundred Dollars (\$200.00) for Employees and Four Hundred Dollars (\$400.00) for family members and for out of network providers, Six Hundred Dollars (\$600.00) for Employees and One Thousand Dollars (\$1,000.00) for family members.~~

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

**All employees hired on or after September 6, 2016 shall not be entitled to enroll in the County's Traditional Health Care Plan.**

**All Employees in P.B.A. Local #286 shall be subject to the contributions outlined in Chapter 78 of Public Law 2011.**

**All Employees hired on or after September 6, 2016 shall, upon retirement and twenty five years of service to Passaic County, be entitled to enroll only in the HBCBS Advantage EPO DESIGN 4 plan or an equivalent plan that may be offered.**

**Effective September 6, 2016, all out of network charges will be paid at 180% of the rate established by the Center for Medicare and Medicaid services ("CMS") in 2017 and 150% of the rate established by CMS in 2018. [MOA language]**

**17. Article 16(G) – Miscellaneous**

Employee seniority shall be based upon length of continuous, permanent service **within title or rank** in the Passaic County Sheriff's Office. Elapsed time on leave without pay shall be deducted therefrom. All appropriate Civil Service laws, rules and regulations shall apply

**18. Article 16(I) – Miscellaneous**

~~I. As of the effective date of this Agreement, any permanent Employee in the bargaining unit who does not join the Union within thirty (30) days of initial employment, and any permanent Employee previously employed within the unit who does not join within the ten (10) day re-entry into employment with the unit shall, as a condition of employment, pay a representation fee to the Union by automatic payroll deduction. The representation fee shall be an amount equal to eighty five (85%) percent of the regular Union membership dues, fees and assessments as certified to the Employer by the Union. The Union may revise its certification of the amount of representation fee at any time to reflect changes in the regular Union membership dues, fees and assessments.~~

**19. Article 16(K) – Miscellaneous**

~~K.~~ **J. On Duty Status**

While on any **approved** volunteer SERT detail, including training the Employee is considered "on duty" for insurance, pension, *etc.* purposes, however no payment of overtime, straight time, *etc.* is paid whatsoever. **The detail/training must be approved by the unit supervisor prior to attending. Officers working PBA jobs will be considered "on duty" for pension purposes providing that the money is paid through the county payroll.**

## 20. Article 16(M) – Miscellaneous

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

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

## 21. Article 16(S) – Miscellaneous

~~S. **R.** Effective January 1, 2004, The following assignments will be recognized within the Passaic County Sheriff's Department's specialized units. Assignment to these positions will be based on criteria established through policy at the Sheriff's discretion.~~

*Commander*

*Detective 3<sup>rd</sup> Grade/Corrections  
Specialist Detective, 2<sup>nd</sup> Grade*

*Detective, 1<sup>st</sup> Grade*

~~Although the actual duties and responsibilities of these assignments will be investigative in nature—The Sheriff, or his designee, will assign duties in accordance with the needs of the Department.~~

## 22. Period of Agreement

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

## STIPULATIONS OF THE PARTIES

At the close of the interest arbitration proceedings, P.B.A. #286 and the County executed a written stipulation agreeing upon the award of certain proposals sought by the parties in their respective final offers. The proposals agreed upon by the parties are as follows:

**1. Duration**

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

**2. Article 3 – Grievances**

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

The Parties further agree to amend Paragraph D as follows: If the grievance is still unresolved within ten (10) days after written notice is received or due from the Sheriff, either party, ~~PBA or The County of Passaic~~ **(PBA 286 or The County of Passaic)** may request binding arbitration of the grievance, pursuant to PERC rules and regulations (19:12-5.1). The cost of arbitration shall be borne equally by the County of Passaic and the PBA.

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

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

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

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

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

- B. All Employees whose anniversary date falls between July 1 and December 31 shall receive the increment to which they would have been entitled on their anniversary date, retroactive to July 1 of the contract year.
- C. **An Employee's anniversary date shall be determined based upon the employee's initial date of hire as an officer within their title, as defined by the Civil Service Commission.**
- D. Longevity pay shall be determined by length of employment as follows:
  - A. 2% of base oat the beginning of seven (7) years;
  - B. 4% of base pay at the beginning of ten (10) years;
  - C. 6% of base pay at the beginning of fifteen (15) years;
  - D. 8% of base pay at the beginning of twenty (20) years;
  - E. 10% of base pay at the beginning of twenty-five (25) years.
- E. ~~\*As of January 1, 1992,~~ Length of employment for all Employees will be determined by length of service with the County of Passaic.
- F. All employees hired subsequent to January 1, 2017 shall be entitled to "senior officer pay" in lieu of longevity pursuant to the following schedule:
  - a. Twenty-five hundred (\$2,500) added to the base pay of employees after fifteen (15) years of service;
  - b. Thirty-five hundred dollars (\$3,500) added to the base pay of employees after twenty (20) years of service;
  - c. Five thousand dollars (\$5,000) added to the base pay of employees after twenty-four (24) years of service;  
(Per MOA)

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

The Paragraph shall be revised to read as follows:

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

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

**Bereavement Leave shall not extend beyond three (3) consecutive calendar days immediately following the death or funeral of a family member unless approved by the**

County Administrator. "Immediate Relative" includes spouse, civil union partner, child, parent, stepchild, stepparent, sibling, grandparents, mother-in-law, father-in-law, daughter-in-law, son-in-law, grandchildren, niece, nephew, uncle, aunt, or any person related by blood or marriage residing in an employee's household. Employees are paid for all working days during the Bereavement Leave. Employees may be asked for proof at the discretion of the Personnel Department or Administration.

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

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

### A. Medical

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

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

Add New Paragraph

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

**7. Article 13(C)–Criminal Civil Action**

The minimum counsel fees for Employees, in connection with civil litigation or criminal charges arising within the scope of their employment, shall be:

Non-indictable criminal offenses	<del>\$120.00</del> <b>\$150.00</b> per hour
Defense in civil matters	<del>\$120.00</del> <b>\$150.00</b> per hour
Defense in criminal matters	<del>\$120.00</del> <b>\$150.00</b> per hour

Plus the following disbursement:

- Required transcripts,
- required expert fees
- Court cost and fees

~~It is noted~~ Prior to retaining any Attorney, ~~that the attorney must be~~ **notification shall be made to the Sheriff’s Administrative Office, in writing, indicating the specific charges (criminal/civil), the name of the Attorney and that the Attorney is** in agreement with the County of Passaic's fee schedule, or the Employee ~~may~~ **will** be liable for the difference.

**8. Article 16(G)–Miscellaneous**

Employee seniority shall be based upon length of continuous, permanent service **within title or rank** in the Passaic County Sheriff’s Office. Elapsed time on leave without pay shall be deducted therefrom. All appropriate Civil Service laws, rules and regulations shall apply.

**9. Article 16(K)–Miscellaneous**

On Duty Status

While on any **approved** volunteer SERT detail, including training the Employee is considered "on duty" for insurance, pension, *etc.* purposes, however no payment of overtime, straight time, etc. is paid whatsoever. **The detail/training must be approved by the unit supervisor prior to attending. Officers working PBA jobs will be considered “on duty” for pension purposes providing that the money is paid through the county payroll.**

**10. Article 16 – Ceremonial Activities**

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



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

### **11. Period of Agreement**

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

**Given the parties have agreed upon these issues, these proposals will be awarded without any analysis being necessitated.**

### **POSTION OF THE PARTIES**

#### **POSITION OF THE PBA**

By way of summation, the statutory restrictions, or rather the lack thereof, fully favor an award of P.B.A. #286's final economic and non-economic offers in their entirety. Simply put, the statutory restrictions imposed for approximately the past decade have already reduced the amount of monies in the members' pockets and drastically reduced the overall compensation package for P.B.A. #286 members. This hardship should not be further extended in this proceeding. Rather, P.B.A. #286 members should be rewarded to the fullest possible extent in recognition of the concessions and/or inequities forced upon them in the recent past.

In assessing the extensive documentary evidence and the available data admitted into evidence, the comparability criterion adequately supports the final offers of P.B.A. #286, most notably regarding its wage proposal. If the County's final offer is awarded, P.B.A. #286 would fall behind not only other law enforcement units in the State and County, but, potentially, civilian units in terms of compensation. Moreover, the existing pattern of settlement the County itself has already established will be infringed upon, if not eradicated. Based upon the nature of the

members' employment and the applicable case law, this simply cannot happen. As such, P.B.A. #286's final economic offers should be awarded in their entirety.

## **POSITION OF THE COUNTY**

N.J.S.A. 34:13A-16g(5) requires that the Arbitrator give consideration and due weight to the lawful authority of the employer. Pursuant to P.L. 2015, c. 249, signed into law on January 19, 2016, constitutional offices, such as a Sheriff's Office, shall limit any increase in that portion of its budget request to 2.0% of the previous year's budget request. In its 2020 budget, the Passaic County Sheriff budgeted \$2,102,506, as outlined in Exhibit L, introduced by the Union. A two percent (2%) increase to this amount would constitute \$42,050.12. However, as a result of the ongoing COVID-19 pandemic and the County's loss in revenue, the Sheriff's Department is projected to collect only \$1,139,264 in 2020. This is substantially less than what was realized in 2019 and/or Budgeted for in 2020. Specifically, in 2019, the Sheriff's Department realized \$2,687,750 and budgeted \$2,102,506 for 2020. Thus, the Sheriff's Department budget will be operating at deficit totaling approximately \$963,242 from the outset.

In these difficult economic times, it is hard to imagine Sheriff's Officers would leave the security of a well-paying job with extremely good healthcare and pension benefits for another job, whether in the private sector or public sector. By awarding the County's proposal, it will allow the members of Local 286 to collect a salary which is comparable to similarly situated Unions throughout the State, and which also exceeds the County average salary. Additionally, the County's offer will provide stability for both the members of the Union, as well as the residents of Passaic County. Specifically, the County will have the opportunity to provide for its employees,

protect the welfare of its citizens, and mitigate/prepare for future financial hardship, which could occur at any moment during this ongoing public health crisis.

**NOTE:**

Prior to the interest arbitration hearings being conducted, P.B.A. #286 filed a Motion to Strike certain proposals put forth by the County in its final offer. In short, P.B.A. #286 contended the County's failure to file a timely Answer to P.B.A. #286's Petition to Initiate Compulsory Interest Arbitration precluded it [the County] from submitting proposals in connection with certain issues due to its failure to properly identify those subject areas as being in dispute.

After the County filed opposition to the same, the Motion to Strike was denied by this Arbitrator in electronic correspondence sent on November 28, 2020. Nevertheless, in their post-hearing brief, P.B.A. #286 renews its Motion to Strike.

This Arbitrator is not convinced by the PBA's filing that the County failed to submit a timely answer. This Arbitrator also believes, for all intents and purposes, the issue raised by the PBA, for this case, and at this time, is now moot. Based on the decisions and award that follows below, This Arbitrator believes that PBA Local 286 has not been prejudiced by the denial of the above-motion to strike.

**STATUTOR REQUIREMENTS**

This Arbitrator is required to make a reasonable determination of the issues, giving due weight to the statutory criteria set forth in N.J.S.A. 34:13A-16(g). The statutory criteria are as follows:

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

- (2) Comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally:
  - (a) In private employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.
  - (b) In public employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.
  - (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, each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.
- (3) The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received.
- (4) Stipulations of the parties.
- (5) The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by the P.L. 1976 c. 68 (C.40A:4-45 *et seq.*).
- (6) The financial impact on the governing unit, its residents 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 on 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 its 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).

In arriving at the terms for this Award, this Arbitrator has concluded that all of the Statutory factors are relevant but not all are entitled to equal weight.

This Arbitrator, however, is required to make a reasonable determination of the issues with a reasoned explanation for the decision and award, indicating which statutory factors are deemed relevant, the due weight that was given to each factor, and which factors, if any, are deemed to be irrelevant. The criteria also provides this Arbitrator with the authority to consider other such factors not confined to those specifically stated which are ordinarily or traditionally considered in the determination of wages, hours and conditions of employment. [*N.J.S.A. 34:13A-16(g)(8)*].

Having reviewed all the Statutory criteria, this Arbitrator, has determined the following to be the most significant criteria to be applied for this decision. That being: The interests and welfare of the public. The interests and welfare of the public grasps and envelops many other factors and recognizes the interconnection and correlation among all of the statutory criteria.

Those factors and criteria that interconnect and correlate with the interest and welfare of the public and should be accorded more weight, in this case, are the public sector comparisons, and the financial impact on the governing unit, its residents, and taxpayers.

This Arbitrator has also given due weight to the fact that this Award will not require the County to exceed its lawful authority or any statutory restrictions. The party seeking a change or to modify an existing term or condition of employment bears the burden of justifying the proposed change.

The decision, hereunder, is to award or deny any individual issue in dispute as part of the overall terms that have been awarded, along with the continuation of contract terms and benefits that are not in dispute.

The parties argue that the statutory criteria must be applied in comportment to and aligned with their respective final offers.

The parties, in this case have submitted very extensive and voluminous amounts of documentation as exhibits as well as very lengthy and comprehensive closing arguments addressing their positions along with the statutory criteria.

This Arbitrator can assure both parties that all submission have been thoroughly reviewed and considered when determining the merits of each final offer.

Each issue in dispute will be discussed and analyzed, in the Discussion and Analysis Section below, and will include, in this decision, to award or deny thereby resolving each issue. The totality of the issues awarded will be set forth in the Awards Section of this decision at the end.

## **DISCUSSION AND ANALYSIS SECTION - ISSUES IN DISPUTE**

### **Term of the Contract**

Both the PBA and the County have stipulated to having a five (5) year agreement. With that said there is no reason to discuss or alter that stipulation.

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

### **Analysis, Decision & Award**

#### **Wages/Salaries**

For the reasons set forth below and after careful consideration of the facts developed from the extensive submissions presented by the parties (the record), this Arbitrator has concluded the following:

First, that the County is well funded and does not have an ability to pay issue. That statement is based on the expert testimony of Dr. Raphael Caprio: The analysis performed by Dr. Caprio clearly demonstrates that the County has the ability to regenerate surplus, continues to have excess budget appropriations year over year that are cancelled and placed back into the fund balance, and maintains budget flexibility. Moreover, revenue collections are stable, property tax increases have been modest, and the County's fund balance has more than doubled in size within the past five (5) years. All of these factors are indicative of the County's sound financial condition even with the loss of revenue that can be attributed to the Covid-19 Pandemic.

Second, even with acknowledging that the previous hard cap and chapter 78 contributions may have contributed to a decline in the PBA members compensation and earnings, the PBA members are still well compensated when compared to other County employees and with their external comparables found in Passaic County.

The seminal issue in almost every interest arbitration proceeding usually revolves around the wage proposals of the parties. This case is no different. This is the first collective negotiations agreement between the parties being negotiated and/or awarded after the expiration of the

restrictions contained within N.J.S.A. 34:13A-16.7(b), commonly referred to as the “two percent (2%) salary cap” or “interest arbitration hard cap.”

P.B.A. #286 has submitted a wage proposal for a five (5) year contractual term, whereas the County has submitted a wage proposal for a four (4) year contractual term. The parties, however, have a stipulation for a five (5) year agreement which came after this interest arbitration hearing. Although the parties stipulated to a five (5) year term, the County’s wage proposal for a four (4) year term remains in dispute.

There is currently a ten (10) step salary guide in place as provided and set forth in the 2015-2018 Memorandum of Agreement (“MOA”) that was executed between the parties

The PBA has proposed the following wage proposal:

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

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

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

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

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



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

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

The County has proposed the following wage proposal:

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

Effective January 1, 2020, employees will not move on the Salary Guide and will not receive a cost of living adjustment in his/her salaries. Employees shall receive \$1,000 on top of base salary effective July 1, 2020.

Effective January 1, 2021, employees will not move on the Salary Guide and will not receive a cost of living adjustment in his/her salaries.

Effective January 1, 2022, employees will not move on the Salary Guide and will not receive a cost of living adjustment in his/her salaries.

PBA 286 argues that they have suffered due to the effects of the 2% Hard Cap, and their obligation to contribute to their health insurance pursuant to Chapter 78 of Public Law 2011 and are now making contributions at the maximum or Tier 4 level.

PBA 286 argues that the County’s wage proposal is unreasonable and fails to consider the restrictions placed on members of the bargaining unit stemming from the 2% hard cap and Chapter 78.

PBA 286 notes that both it and the County have stipulated to eliminate the County’s Traditional Healthcare Plan, which the PBA argues will result in additional savings to the County.

PBA 286 argues that its wage proposals can in large part be funded by the elimination of the Traditional Healthcare Plan.

P.B.A. 286 is not seeking a reduction in healthcare contributions on behalf of their members. Assuming the wage increases requested by P.B.A. 286 are awarded and those members still progressing on the salary guides receive annual increments, many P.B.A. 286 members will then fall under a new contribution level under the mandates of Chapter 78. As such, P.B.A. 286 members will have their healthcare contributions increase by a certain percentage, thereby offsetting the wage increases realized and placing more money back into the hands of the taxpayer as they will be contributing more toward the cost of healthcare.

PBA 286 points to the Superior Officers Local 286A CNA and states that Local 286A's wage increases were generated after Local 286A agreed to eliminate the Traditional Healthcare Plan and the County was able to count on significant cost savings.

PBA 286 relies upon the expert testimony of Dominick Fanuele and Dr. Raphael Caprio as to the savings which the County would receive by the elimination of the Traditional Healthcare Plan, which after their analysis state the savings to the County would result anywhere between 900,000 and 1,000,000.

Dr. Caprio's analysis of the County's ability to pay for the PBA proposal. shows that the County has unused revenue capacity due to the 2% hard cap which could easily fund the wage increase it is seeking. Dr. Caprio's analysis, also shows that property tax increases in the County have been modest, the tax levy has been unchanged, the fund balance in 2020 is 70% larger than the fund balance in 2016, and that debt service has decreased by an annual average of \$6.5 million dollars from 2016 to 2020.

PBA 286 further argues that the County is in a healthier fiscal condition than it was in the last round of negotiations.

PBA 286 believes that the County is creating disincentives for prospective employees. Consequently, if the County's final wage proposals were awarded, the morale of the members of P.B.A. 286 would not be stimulated but rather destroyed

The County argues that N.J.S.A. 34:13A-16g(5) requires that the Arbitrator give consideration and due weight to the lawful authority of the employer. Pursuant to P.L. 2015, c. 249, signed into law on January 19, 2016, constitutional offices, such as a Sheriff's Office, shall limit any increase in that portion of its budget request to 2.0% of the previous year's budget request. In its 2020 budget, the Passaic County Sheriff budgeted \$2,102,506, as outlined in Exhibit L, introduced by the Union. A two percent (2%) increase to this amount would constitute \$42,050.12. However, as a result of the ongoing COVID-19 pandemic and the County's loss in revenue, the Sheriff's Department is projected to collect only \$1,139,264 in 2020. This is substantially less than what was realized in 2019 and/or Budgeted for in 2020. Specifically, in 2019, the Sheriff's Department realized \$2,687,750 and budgeted \$2,102,506 for 2020. Thus, the Sheriff's Department budget will be operating at deficit totaling approximately \$963,242 from the outset.

The County further argues that the cost of both pensions and health benefits for public employees constitute an enormous financial burden for counties and municipalities. In an effort to continue to gain control over excessive costs associated with public employment, the Legislature and Governor passed legislation on or about May 21, 2010 requiring public employees to make a contribution to health care costs calculated at one and one-half percent (1.5%) of their salary to offset a portion of the premium costs for health care benefits. Subsequently, the law was amended

again on or about June 28, 2011 under Chapter 78, P.L. 2011. The amendment imposed a four-year phase-in of an employee premium sharing schedule based on an employee's salary.

During the hearing, the Union made a proposal to eliminate the traditional health care plan. The proposal was discussed at length during negotiations between the parties. Generally, the County has no objection, and would further encourage that members of the Union leave the Traditional Plan. This was demonstrated both by Chief Rosenthal's testimony, as well as the County's increasing attempts to mitigate against the Traditional Plan, as demonstrated in Article XV of the 2015-2018 MOA.

While leaving the traditional plan would be beneficial to both parties, however, the Union presented witnesses who testified to speculative cost savings to the County by members leaving the traditional medical plan and entering into either the EPO or POS medical plans that are offered by the County. Specifically, Mr. Fanuele testified that, by leaving the traditional health care plan, the members of Local 286 would save the County approximately \$926,802 to \$1,311,170 per year.

However, per the expert testimony from County witnesses Mike Atkinson, there is no guaranteed saving to the County. The fact of the matter is that the County remains self-insured, meaning, it bears the burden for paying the claims made by its employees. Additionally, the County is not required, and/or responsible for making payments to any carrier. If the County were fully insured, the County would be required to make these premium payments and would thereby actualize the savings alleged by the Union, as the rates would be assessed by the carrier, and the carrier would assume the burden of the risk. However, as the County is self-insured, there is no guarantee for how claims may be made. Therefore, any savings for the County is not quantifiable.

Moreover, the saving amounts that the Unions allege are speculative, based solely off of premium levels designed by actuaries, for purposes of the premium equivalent rate, and are not

guaranteed. In other words, the County may realize a cost savings, however, it may also incur a greater cost based upon the claims that are made by the members and benefits/services paid for by the County.

Alternatively, by leaving the traditional plan and entering into the EPO or POS plan, the members will be receiving a true cost savings. By leaving the traditional plan, the members will automatically begin to make a lower Chapter 78 contribution to their medical premiums, as their total cost in premium would be reduced into a more affordable plan. Thus, while the County is in agreement with, and would further prefer that, all members of Local 286 leave the traditional healthcare plan, the County does not agree with the Union's assessment regarding a potential cost savings upon their departure. Furthermore, Mike Atkinson testified to the remaining plans offered by the County. Specifically, the POS plan does provide members with the opportunity and ability to seek out-of-network benefits, similar to the traditional plan.

To make a determination, this Arbitrator has taken into consideration the following statutory criteria:

With respect to PBA reliance on internal and external comparables

#### Comparability with Passaic County Municipalities

A comparison of the wages of P.B.A. #286 members to comparable public sector employees, to include the municipal police departments throughout Passaic County, is also appropriate and warranted in this matter. As testified to by President Fernandez, P.B.A. #286 members work alongside various municipal police departments in Passaic County performing the exact same duties in a variety of scenarios and on a routine basis. Consequently, it is P.B.A. #286's position that its members should be paid commensurate wages and benefits with those Passaic

County Municipal Departments to ensure parity amongst employees performing similar job duties and responsibilities in the same locale.

A review of the wages provided to P.B.A. #286 members in comparison with those given to comparable law enforcement agencies in Passaic County illustrates that there is great disparity present. The chart below illustrates the top salaries paid to rank-and-file officers in each respective unit as compared to P.B.A. #286 members pursuant to the most recent collective negotiations agreements:

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

<b>P.B.A. #286</b>	<b>2018</b>	<b>\$98,175</b>
Paterson	2019	\$95,901
Passaic City	2011	\$95,386

As one can see, the top salary for P.B.A. #286 members is less than the top salary for Patrol Officers in almost all of the other law enforcement units in Passaic County. This is despite the fact P.B.A. #286 members engage in law enforcement duties commensurate with and work alongside many of these officers/police departments on a routine basis. In fact, the top salary step for P.B.A. #286 members is the fifteenth (15<sup>th</sup>) lowest of the seventeen (17) municipalities delineated above.

Again, P.B.A. #286's wage proposal does not even seek to alter the salary guide applicable to its members with the exception of the top step, further demonstrating the reasonableness of said proposal. Even assuming its wage proposal is awarded, P.B.A. #286's placement near the bottom of the salary chart will not be altered significantly as an award of the same would move them to twelfth (12<sup>th</sup>) place out of the seventeen (17) municipalities listed. Nevertheless, such an award would ensure that the salaries of P.B.A. #286 members who have achieved the max step keeps up with that of their counterparts in other law enforcement agencies throughout the County.

After synthesizing the available data, an award of P.B.A. #286's wage proposal is necessitated so as to ensure its members are compensated in a manner that is commensurate with their Passaic County law enforcement peers. Specifically, if P.B.A. #286's wage proposal was awarded, the increases to the top step of the salary guide would promote and further this goal. In short, P.B.A. #286's wage proposal seeks to reduce the disparity currently present, rather than outpace its counterparts by any measure. Instead, P.B.A. #286 merely seeks a level of comparability amongst their peers.

Comparability with Sheriff's Officers Statewide

Perhaps the most appropriate comparison to demonstrate that P.B.A. #286's wage proposal must be awarded is a comparison with other County Sheriff's Officer collective negotiations units throughout the State. A review of the applicable data below shows that P.B.A. #286's standing in that regard has faltered in recent years in terms of the salary increases that have been achieved. To this end, the data shows the following:

<b>UNIT</b>	<b>TOP SALARY RANK &amp; FILE</b>
Bergen	\$131,757
Monmouth	\$106,501
Mercer	\$103,720
Morris	\$101,495
Middlesex	\$100,383
<b>P.B.A. #286</b>	<b>\$98,175</b>
Hudson	\$97,160
Cape May	\$94,448
Ocean	\$93,748
Essex	\$92,957

This comparability data fully supports P.B.A. #286's wage proposal in that it [P.B.A. #286] used to be one of the highest paid, or amongst the top five (5) highest paid, collective negotiation units in the State when compared to its counterparts in other counties. However, through the institution of the two percent (2%) salary cap and the restrictions associated therewith, P.B.A. #286's standing amongst the other County Sheriff's Officer collective negotiations units "dropped a few pegs" and they are no longer in the top five (5) highest paid county units. The Arbitrator



must also be mindful of the fact that P.B.A. #286's salary guide has remained stagnant since 2015 and will remain stagnant with the exception of the top step, in the event P.B.A. #286's wage proposal is awarded. Notably, however, this comes on the heels of P.B.A. #286 recently adding three (3) additional steps to its salary guide and suffering a "step freeze" in the recent past.

It is important to note, and the County will be the first to admit, that the cost of living and the rate of taxation in Passaic is one of the highest in the State of New Jersey. Therefore, when one looks to the salary guide of P.B.A. #286, this fact must be strongly considered as well. While the County is quick to point this fact out, it must be understood that it is a two (2) way street. In other words, when one recognizes the arguments made for why the salary proposal of P.B.A. #286 cannot be paid, the very same reasoning must be applied as to why these modest cost of living increases must be awarded to ensure that the members of P.B.A. #286 are able to maintain their standard of living in the County where they work and live.

Thus, P.B.A. #286's standing in terms of its salary guide, as compared to similar County Sheriff's Officer negotiation units throughout the State, is likely to continue to decrease even if P.B.A. #286's wage proposal is awarded. However, the top step and "off guide" increases associated with its wage proposal would ensure that P.B.A. #286 otherwise maintains its current placement amongst Sheriff's Officers statewide. At the same time, such an award would also prevent P.B.A. #286 from falling further behind their counterparts more than they already have. Consequently, P.B.A. #286's wage proposal is fully supported from a comparability standpoint.

#### Comparability with Civilian Bargaining Units

An award of P.B.A. #286's wage proposal is also warranted after reviewing evidence of the compensation packages provided to the County's civilian bargaining unit employees in recent

contract cycles. As previously recounted numerous times earlier in this brief, P.B.A. #286 was subjected to the restrictions of the two percent (2%) salary cap for the last decade. On account of this fact, many of the values contained on the P.B.A. #286 salary guide have remained stagnant and/or unchanged for the last several years, the members have been subject to pay and/or step freeze, and the members at the top step or “off guide” have not received more than a one percent (1%) annual cost of living adjustment for many years. In actuality, in its most recent agreement with the County, which covered 2015 through 2018, P.B.A. #286 was subjected to a complete freeze in 2015 and received step movement and/or a one percent (1%) cost of living adjustment for members at the top step or “off guide” each of the remaining years. In other words, P.B.A. #286 members have made significant economic concessions in the most recent past, receiving only nominal wage increases due to the statutory restrictions that were in place.

On the other hand, the County’s civilian bargaining units were not subjected to the restrictions of the two percent (2%) salary cap as their members do not serve as law enforcement officers and, thus, cannot avail themselves of the interest arbitration process. As such, as compared to their law enforcement counterparts, many County civilian bargaining unit employees were able to secure somewhat generous percentage increases to their salaries for the several years during the two percent (2%) salary cap’s existence and applicability.

Given the County’s civilian bargaining units achieved wage and/or percentage salary increases without the corresponding restrictions of the two percent (2%) cap, P.B.A. #286’s wage proposal is wholly supported, especially in light of the fact that during that same time period the salary guide for P.B.A. #286 members remained stagnant and, even more problematic, was expanded by three (3) additional steps. As a result, if its wage proposal is not awarded in this proceeding, P.B.A. #286 members will, in essence, continue to “fall behind” the civilian units

when considering the last few rounds of collective negotiations. Quite frankly, such a situation is untenable given the importance of the services provided by P.B.A. #286 members.

During the interest arbitration hearing, the County also submitted evidence regarding the compensation packages provided to its civilian bargaining unit employees, namely in the form of various collective negotiations agreements. In doing so, the County seems to take the position that the agreements with these groups justifies an award of its wage proposal in this case. However, a review of the evidence undermines any such contention by the County.

Prior contracts establish that the civilian employees have received different economic packages than P.B.A. #286 in terms of salary increases. Specifically, the average salary for members of P.B.A. #286 are vastly different from County civilian bargaining units. To this end, the salaries for P.B.A. #286 members are higher than those of the civilian units in most instances. Clearly, this is associated with the difficulty and the dangerousness of the work P.B.A. #286 members perform.

When circumstances such as those illustrated above exist, arbitrators have consistently refused to sustain a “pattern of settlement” argument amongst civilian and law enforcement personnel. In Township of Woodbridge and P.B.A. Local 81, PERC No. IA-96-119 (1998), the Township presented a “pattern of settlement” argument in an effort to saddle the P.B.A. with a smaller wage increase that was commensurate with an agreement that was reached with a civilian collective bargaining unit. The Arbitrator noted that the pattern of settlement was controlling in some years, but “yielded to other factors in other years.” Id. at 39. Accordingly, the arbitrator held that the pattern would not govern for the contract years before him and, therefore, rejected the Township’s argument. Ibid. The logic adopted in Woodbridge should be applied in this instance if the County raises such an argument in this matter. Here, it must be taken into account that the

employment duties of P.B.A. #286 negotiations unit members are vastly distinguishable from other County civilian employees. First, the last nine (9) months of employment has demonstrated such a situation as the members of P.B.A. #286 were forced to report to work on a regular and sustained basis during the COVID-19 pandemic and, in some cases, work at COVID-19 testing sites, while other Passaic County employees were permitted to remain home not working with pay and then, later, work from the comfort and safety of their home.

Further, the disparity amongst the duties performed by the County's civilian work force and law enforcement work force is evidenced by the fact that the County has not treated P.B.A. #286 members the same as civilian employees with respect to compensation in past collective negotiations. This statement holds true for collective negotiations agreements that were negotiated either before the salary cap was applicable as well during the time period the salary cap was adhered to. Presumably, based on this evidence itself, the County recognizes the dangers and difficulties faced by members of this negotiations unit. As a result, prior to the two percent (2%) salary cap's existence, past contract negotiations have reflected higher rates of pay and pay increases as compared to civilian employees. Throughout the years, these higher pay raises have typically included higher percentage salary increases and different levels of benefit compensation.

The County's wage proposal, with a miniscule monetary increase for "off guide" members in 2019 and the institution of a three (3) year step freeze coming on the heels of keeping the values of the salary guide stagnant and expanding the number of steps on the same, fails to keep pace with other public employees working in the same locale and performing similar services in comparable jurisdictions. As a result, the County's proposal fails to meet even the most minimal of expectations. Consequently, P.B.A. #286 members' wages would not allow them to achieve any level of comparability or parity with their brethren in the event the same were awarded.

With respect to County reliance on internal and external comparables:

Comparison to Other Law Enforcement Labor Contract Settlements in Passaic County.

While the majority of the law enforcement labor contracts remain unsettled in the County, the County has recently concluded or is currently under contract with a number of unions. These include the Passaic County Prosecutor's, who have continued on salary step movements; PBA 203, who have contracted for a period of 2019 through 2022 and are receiving one step or 2.5% increments at maximum; and PBA Local 286A who recently settled their contract and received step movement and 4% increases in years one and two and 3% increases for years three through five. However, the Agreement entered into with Local 286A was completed prior to the COVID-19 Pandemic and the ongoing state of emergency.

Comparison to Other Passaic County Labor Contract Settlements

Teamsters Local 125 settled their contract with the County for step movement and 1.25% increases for four years with a 1.5% being earned in the fifth year; CWA, AFL-CIO 1032 settled for a three year deal, earning \$1,500 on base with no step movement at all; District 15 IAMAW were frozen in their first year but received step or 2% each year for the subsequent four years; CWA AFL-CIO Local 1032 (Security Officers) received one step and 1% or \$1,000 at max for a period of four years; OPEIU Local 153 received one step or 2% at max in 2020 and 2021, and one step or 1.75% at max in 2022; Teamsters Local 11 received one step or \$1,250 at max; AFSCME 2273 received a 2.075% COLA and no step movement for four years; OPEIU Local 32 were frozen in year one and received one step or 2% for those at max for the remaining three years of their agreement; CWA 1032 (Nutrition Unit) only received a 1.25% COLA for four years; AFSCME AFL-CIO District 1199J (Nurse Supervisors) and AFSCME AFL-CIO District 1199J (RN & LPN) received four year agreements consisting of no step movement and 2.25% COLA increases; IBT

Local 11 (Blue Collar) reached a five year agreement with step movement or \$1,500 at max; and lastly, AFSCME 2522 (Supervisors) received a four year agreement consisting of no step movement and 2.25% COLA increases. In view of the foregoing, the demands by Local 286 deviates far from the County's internal pattern of settlement.

Comparison to Passaic County Residents and Private Sector.

As, mentioned in Point III, Richard Cahill, Chief Financial Officer of the County, testified on behalf of the County with respect to the state of the County's economy and demographics. Pursuant to his testimony, the County currently maintains an average income of \$60,681 (Exhibit F). This placed the median income of the County's proposal to Local 286 well ahead of the average Passaic County resident by approximately \$10,339 to \$13,862. Thus, there is little argument to be made with respect to any inequity in the County's compensation of its Sheriff's Officers.

Comparison Public Employers in the Passaic Metropolitan Statistical Area and Northern New Jersey Counties.

There are no "perfect twins" when it comes to evaluating compensation and employment terms among public employers. Although compensation comparisons can provide helpful reference points for purposes of assessing competitiveness, such evaluations are only fully meaningful in context of key differences across public employers. Some of these distinctions include the relative community economics and demographics that drive revenue generation and service demands, differences across the labor markets within which employees are recruited and retained, comparison of financial resources and burdens within the State, and non-cash compensation levels such as vacations, holidays, and sick days.

In 2018, the County reported an average income of \$60,681. Pursuant to the New Jersey Department of Treasury, Passaic County was ranked thirteenth out of twenty-one with respect to total county income. Moreover, when considering average income alone, Passaic County was fourth lowest, ahead of Cumberland, Atlantic, and Salem Counties. Additionally, in 2019, Passaic County was able to boast a 4.3% unemployment rate. However, testimony was elicited, and it was demonstrated that, by September 2020, the County of Passaic was enduring an 8.6% unemployment rate. A rate that was second only to Atlantic County, in the entire State of New Jersey.

#### Comparison to Other County Sheriff's Officer Contract Settlements

Hudson County, PBA Local 334 contracted for a four year agreement from 2016 through 2020 earning 2% increases each year, with a salary guide ranging from approximately \$34,000 - \$89,000 in 2016 to approximately \$37,000 - \$97,000 in 2020 (Union Exhibit T); Mercer County, PBA Local 187, recently concluded a five year agreement where they recalculated their thirteen step salary guide and added 1% to top step in the final three years of the agreement. This created a 2019 range of \$38,005 - \$88,967 and a 2023 range of \$43,434 - \$103,720 (Union Exhibit W); Middlesex County, PBA 165, are currently under contract for a period of five years and earning 2% increases each year with a 1% increase for those off guide. Their bifurcated salary guide thus produced a range between \$37,000/\$38,000 - \$90,000/\$93,000 in 2016 to \$40,200/\$42,000 - \$103,000/\$105,400 in 2020; Camden County, PBA 277 is also under contract for a four year agreement wherein they amended the second half of their salary guide to reflect a 2.75% increase in year one, followed by 2.25% increases in years two through four. This amended their salary guide to constitute a range of \$46,000 - \$94,800 in 2015 to \$46,023 - \$104,131 in 2020; In view of

the foregoing, the demands by Local 286 deviate far from the statewide pattern of settlement for Sheriff's Officers.

With respect to the Continuity of Service:

PBA 286 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 deputies. PBA 286 further argues that if the County's proposal is granted there would be an incentive for members of the bargaining unit to leave the County's employ and this would impose a cost on the taxpayers. PBA 286 argues that if its proposal is granted it would have a beneficial effect on morale.

County argues that in these difficult economic times, it is hard to imagine Sheriff's Officers would leave the security of a well-paying job with extremely good healthcare and pension benefits for another job, whether in the private sector or public sector. By awarding the County's proposal, it will allow the members of Local 286 to collect a salary which is comparable to similarly situated Unions throughout the State, and which also exceeds the County average salary. Additionally, the County's offer will provide stability for both the members of the Union, as well as the residents of Passaic County. Specifically, the County will have the opportunity to provide for its employees, protect the welfare of its citizens, and mitigate/prepare for future financial hardship, which could occur at any moment during this ongoing public health crisis.

In this Arbitrator's review, and after considering the arguments from both PBA 286 and the County, the above-listed evidence, however, does not show any significant deviation in the number of Sheriff's Officers.

With respect to the Cost of Living:



PBA 286 argues that over the past five (5) years, the CPI has risen approximately 7.50%. However, despite this rise in inflation, the top steps on the P.B.A. #286 salary guide has only increased by 2.00% in that same time period. Therefore, the wage increases that the members have received over the past five (5) years has failed to keep pace with the rate of inflation. The same logic applies for every other step on the salary guide since those values have remained completely stagnant since 2015. Moreover, the CPI is projected to increase by approximately 2.23% in each of the following four (4) years. In total, this equates to a projected 8.92% increase. In turn, the percentage increase of the CPI should set a minimum level of wage increases necessary for an employee to maintain his or her standard of living.

County argues that the cost of living criterion has generally received only passing consideration in interest arbitrations. The Consumer Price Index (CPI) published by the Bureau of Labor and Statistics (BLS) has traditionally been considered the upper bound relative to the cost of living index. This is because the CPI did not reflect changes made by consumers in their buying patterns or consumption habits to adjust to relative price changes. The C-CPI-U was created to more closely reflect the approximate cost of living index and has been maintained by the BLS as its most accurate measure for the cost of living on a national basis since 1999.

In its proposals, the County provided percentage step movement or increases of approximately 1% to those who were at the top step/off guide in year one, \$1,000 added to base in year in July of year two, and frozen steps/increases in years three and four. Notwithstanding this financial proposal, the average percentage of increase for the entire membership when taking step movement and salary increases into account was 5.609% in year one, 3.164% in year two, 1.047% in year three and 0% in year four, for a total average package of 2.45%. Therefore, the County's offer would provide the Passaic Sheriff's Officers salary increases in excess of the increased costs

of living of the County throughout the duration of the agreement. Additionally, the salary range for base salary alone would become approximately \$40,000 - \$103,182 in 2022. A range which is identical to the recent agreements settled throughout the State.

With respect to overall compensation:

PBA 286 states that an evaluation of the overall compensation presently received by P.B.A. #286 members establishes that there are certain areas in the overall benefit package which are lacking. In turn, P.B.A. #286 submitted various proposals addressing these problematic areas in an effort to correct the same. Moreover, there are a plethora of current practices amongst the County and P.B.A. #286 that are not expressly codified within the collective negotiations agreement between the parties. These practices provide significant benefits to P.B.A. #286 members and should be codified in the contract.

A review of all of the evidence strongly supports the award of these proposals so as to: (1) ensure parity with comparable law enforcement units; (2) codify existing practices amongst the parties to ensure such benefits are provided and maintained going forward; and (3) create a more competitive and favorable overall compensation package for P.B.A. #286 members.

County argues that a Passaic County Sherriff's Officer starts at an annualized salary of \$38,301 and receives additional annual step progressions that continue until the maximum base is reached after ten (10) completed years of service.

For Local 286, the median income for base salary in 2018 was \$61,366.88, ranging from a low of \$38,301 to a high of \$106,548 at max. When taking the County's financial proposal into consideration, by providing step movement or 1% increases to those at max, the average wage for those members in Local 286 would be \$71,705.27. When taking into consideration combined base

salary plus night differential, longevity and other stipend amounts, the average amount increases to \$75,228.36. This constitutes a low salary of \$38,301 to a high of \$122,895.90.

During the hearing, Richard Cahill, Chief Financial Officer of the County, testified on behalf of the County with respect to the state of the County's economy and demographics. Pursuant to his testimony, the County recently maintained an average income of \$60,681 in 2018. This places the median income of the County's proposal to Local 286 well ahead of the average Passaic County resident by approximately \$10,339 to \$13,862. Thus, there is little argument to be made with respect to any inequity in the County's compensation of its Sheriff's Officers.

Passaic County Rank and File Sheriff's Officers have significant opportunity to earn compensation beyond their regular base pay. (2007 – 2014 CNA). Both groups receive a night differential anywhere between 5% and 10%. Sheriff's Officers receive overtime pay calculated at time and one-half of the officer's current salary. This, notwithstanding the County's proposal to raise overtime rates to double time for shifts worked on a holiday for Local 286.

A Sheriff's Officer also receives longevity pay of 2% of base pay at the beginning of seven (7) years; 4% of base pay at the beginning of ten (10) years; 6% of base pay at the beginning of fifteen (15) years; 8% of base pay at the beginning of twenty (20) years; and 10% of base pay at the beginning of twenty five (25) years. (2007 – 2014 CNA at 14). This was then modified in the 2015-2018 MOA to provide instead for "Senior Officer Pay" in lieu of longevity for all those who were hired after January 1, 2017. This rate includes \$2,500 added to base pay of employees after fifteen (15) years of service; \$3,500 added to base pay of employees after twenty (20) years of service; and \$5,000 added to base pay of employees after twenty-four (24) years of service. (2015-2018 MOA). Additionally, the Union has various other stipends available, i.e. Detective, Education, and Sick cash in retirement.

In addition to base salary, longevity pay, and the various stipends, Passaic County Sheriff's Officers also receive 12 to 22 vacation days per year based upon years of service and 14 paid holidays per year. Officers receive 15 days of sick leave per year. *Id.* at 17. Ultimately, no testimony has been proffered, no exhibit submitted, demonstrating that the County's wages for Sheriff's Officers has retracted from, or in any way inhibited, the County's ability to hire and retain talent in Local 286.

The evidence in this matter, as demonstrated by the parties exhibits and briefs, including the discussion of comparisons outlined earlier in this decision shows that the overall compensation received by the PBA 286 members is competitive.

With respect to the internal comparison and/or pattern bargaining.:

Although a lot of weight is usually awarded to internal parity especially where consistent pattern bargaining can be found: This case, however, presents a little different picture. Passaic County Locals 197A, Local 286A and Local 286. Local 197 contracts in the past have been similar. However, both Local 197A and Local 286A represent superior officers, who work in smaller units, and whose contracts provide for only limited step movement.

As to Local 197, at the time of writing this decision, Local 197 and the County are involved in an appeal of the Local 197 Interest Arbitration decision that was issued by a different arbitrator. Not knowing where that appeal will land or what will be decided this Arbitrator cannot use the wage increase in the Local 197 decision, as a comparison, not knowing if that decision will stand.

With respect to the healthcare plan savings:

This Arbitrator is convinced by the expert testimony of Dr. Caprio and Domenick Fanuele that the County will realize the savings in the range of 900,000 and 1,300,000, by having the PBA 286 members leaving the traditional plan for the other plans now being offered, This Arbitrator is not convinced by the County's testimony or evidence that those amounts are only speculative. Unless an unforeseen catastrophic event occurs, those savings will be realized.

The salary proposal submitted by the PBA, in its final offer, is a little too high and is not supported by the evidence submitted into the record nor when applying the statutory criteria.

The salary proposal submitted by the County, in its final offer, on the other hand, is a little more appropriate, however, falling still short and somewhat insufficient when considering or addressing the statutory criteria.

In balancing all the evidence in conjunction with the statutory criteria, including the Covid-19 Pandemic, the salary award below will permit the County to maintain its fiscal responsibility/stability to their taxpayers while providing the PBA members with a fair and reasonable wage/salary increase which comports to be in the best interest of the public.

**Award:**

Based upon the above, this Arbitrator, hereby awards the following:

- Effective and retroactive to January 1, 2019, employees will move one (1) step on the Salary Guide and the top step of the salary guide shall be increased by (2%). For all employees that are currently "off guide", each employee shall receive a (2%) cost of living increase in his/her salaries.
- Effective and retroactive to January 1, 2020, employees will move one (1) step on the Salary Guide and the top step of the salary guide shall be increased by (2%). For all

employees that are currently “off guide”, each employee shall receive a (2%) cost of living increase in his/her salaries.

- Effective and retroactive to January 1, 2021, employees will move one (1) step on the Salary Guide and the top step of the salary guide shall be increased by (2%). For all employees that are currently “off guide”, each employee shall receive a (2%) cost of living increase in his/her salaries.
- Effective and retroactive to January 1, 2022, employees will move one (1) step on the Salary Guide and the top step of the salary guide shall be increased by (2%). For all employees that are currently “off guide”, each employee shall receive a (2%) cost of living increase in his/her salaries.
- Effective and retroactive to January 1, 2023, employees will move one (1) step on the Salary Guide and the top step of the salary guide shall be increased by (2%). For all employees that are currently “off guide”, each employee shall receive a (2%) cost of living increase in his/her salaries.

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

Any Union Employee who is promoted to the rank of Sergeant shall suffer no decrease in base salary for accepting said promotion. Should the employee’s base salary exceed any particular step of the Sergeant’s salary guide the employee shall be placed at the next highest step on the new rank that provides an increase in salary.<sup>2</sup>

When it became apparent that this Arbitrator was not going to award or implement either the PBA or the County salary proposal, this Arbitrator sent what is now the salary award above to both parties as a request to see how they would cost out the now awarded salaries.

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<sup>2</sup> Under its wage proposal, if a P.B.A. #286 member reaches a salary level that is greater than the first step on the P.B.A. #286A guide for Sheriff’s Sergeants, that individual would be promoted to the next highest step on the Sheriff’s Sergeant’s salary guide that would provide him/her with an increase in pay.

The language in the awarded proposal to accommodate such a situation is derived directly from the negotiated and agreed upon language contained in the MOA between the County of Passaic and P.B.A. #286A reached earlier in 2020.

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

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

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

Although this Arbitrator understands that the use of employee breakage for cost out purposes was not permitted under the 2% hard cap era, once the 2% hard cap ceased that restriction was now removed.

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

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

With that said, the cost outs for each year of the Agreement are as follows:

2019 – \$14,169, 210.47; 2020 – \$15, 535,577.47; 2021 – \$15,644,178.82;

2022 – \$17,598,136.25; 2023 – \$18,802,264.39.

#### **Article 5 – Work Week – Hours of Work**

P.B.A. #286's has proposed in its final offer a change in work hours in that all P.B.A. #286 members that work in the continuous operation of the Patrol Unit shall work a continuous twelve

(12) hour shift. The work schedule that is being proposed is commonly referred to as a “Pitman Schedule.” As proposed, the time to be worked for the Patrol Unit will be divided into work cycles consisting of twenty-eight (28) consecutive calendar days. During each work cycle, all members of the Patrol Unit shall work tours of duty which, in the aggregate, total one hundred and sixty-eight (168) hours. Moreover, as proposed, the shift cycles for the Patrol Unit shall be “steady” meaning that members will be assigned to either the night tour of duty or the day tour of duty. During each twenty-eight (28) day work cycle, no matter if an officer is assigned to the day or the night shift, each officer shall receive two “weekends” off from work that consists of a consecutive Friday, Saturday, and Sunday.

The tours of duty as proposed by the Union will run from 7:00 a.m. to 7:00 p.m., followed by 7:00 p.m. to 7:00 a.m. Finally, P.B.A. #286 has proposed that the members be provided with “Pitman Adjustment Time” which is “hour for hour” compensatory time off as a result of the time worked in excess of two thousand eighty (2080) hours. The Pitman Adjustment Time off from work would be prescheduled at the beginning of the work year much like vacation and must fit into the schedule to ensure that it does not create departmental overtime.

The County in opposition to the proposal is only that the Patrol Unit was currently working a “modified” Pitman schedule referred to as a “Floating Eight.” Chief Rosenthal stated that this schedule was implemented several months ago as a result of the COVID-19 pandemic and that the Department was amenable to memorializing the same within the contract:

Q. And now notwithstanding the fact that the County, we have our own proposal to tighten up this section, Article 5, but fair to say the County would be amenable to, or in agreement with memorializing the current modified Pitman schedule into the contract?

A. Yes.

In addition, it appears that the only other objection presented by Chief Rosenthal, for the County, to P.B.A. #286’s proposal was that he believed the use of the Pitman Adjustment Time



would create overtime within the Department. However, as testified to by President Fernandez, so long as this time off is scheduled in the beginning of the year for the entire year no overtime expenses would be incurred.

However, in its final offer, the County seeks to amend Article 5(A) of the CNA pertaining to hours of work. More specifically, the County is seeking the ability to stagger officer shifts by one hundred twenty (120) minutes. (P.B.A. #286 Exhibit 17). Currently, Article 5(A) provides that, for members working four (4) days on followed by two (2) days off, the basic hours of work are either 7:00 AM to 3:00 PM, 3:00 PM to 11:00 PM, or 11:00 PM to 7:00 AM.

The PBA adamantly opposes such a staggering of member work hours as the County proposed for a number of reasons. First, the County would have the ability to stagger these shifts by two (2) hours either forcing an officer to begin work early or later than their regularly scheduled time.

It would in essence give the County the ability to require a member assigned to a 7:00 AM shift to report for duty at 5:00 AM.

As noted by President Fernandez, the officers are very dependent on a stable and consistent work schedule. He noted that, if the proposal were awarded, a P.B.A. #286 member's work hours could change "by two hours in any direction without any notice."

This proposal could undermine or otherwise eviscerate the current stability associated with members' work schedules. President Fernandez indicated that this proposed modification could ultimately harm an officer's quality of life given one's complete inability to plan around his or her workday.

Under the County's proposal, the County/Sheriff would ostensibly be able to impose shift staggering at any time, before or after the traditional start and end time of an officer's shift. What

is incredibly important in regard to this fact, given its glaring omission from the proposal at issue, the County would be under no obligation to provide notice before engaging in such a staggering change.

It is very clear to this Arbitrator, based on the testimony given at the Hearing, that when looking at the two competing proposals for changes in work hours, the proposal by the PBA would improve the morale of its members while the proposal by the County would serve to only undermine members morale.

P.B.A. #286's Pitman proposal that consists of officers working twelve (12) hour shifts contains all of the necessary elements of a proposal that can be immediately implemented thereafter to ensure continuity of operations.

In addition, it would provide all of the same benefits that the Department is currently enjoying as a result of the modified Pitman being worked.

It allows administration to put greater manpower on the streets; It allows the members to "socially distance" themselves from one another; and it permits the turnover of equipment and vehicles to occur less frequently which assists in the sanitization of the same.

The testimony by PBA has adequately and satisfactorily answered the only concerns presented by the County. However, the proposal by the County has left too many unanswered questions for which the answers would be necessary prior to implementing to ensure continuity of operations.

Between the two competing proposals for changes to the work schedule the PBA's proposal is awarded in its entirety as there is sufficient justification to make such an award. However, the proposal for the County is not awarded as the County failed to justify their proposal.

The proposal by the PBA in providing a work schedule that would improve the morale of its members is definitely and always in the best interest of the public.

**Award:**

- A. Starting July 5, 2021, all Employees employed in the continuous operation of the Patrol Unit shall work a continuous Twelve (12) Hour Shift. Time worked shall be divided into work cycles consisting of twenty-eight (28) consecutive calendar days. During each work cycle all employees of the unit shall work tours of duty which in the aggregate total one hundred and sixty eight (168) hours.
- B. All employees assigned to Patrol will work a steady, non-rotating scheduled twelve (12) hour tour for the twenty eight (28) day cycle that shall consist of either a “day shift” or a “night shift” that will follow the rotation of the attached twenty eight (28) day work cycle (See Exhibit A). During each twenty eight (28) day work cycle, no matter if an officer is assigned to the day or the night shift, each officer shall receive two “weekends” off from work that consists of a consecutive Friday, Saturday and Sunday.
- C. Tours will run from 7:00AM to 7:00PM, followed by 7:00PM to 7:00AM. A Tour of Duty shall be considered the same as a “work shift” or “work day” as the terms may be used interchangeably throughout this agreement.
- D. The work year for all employees shall consist of 2,080 hours. Each employee whose planned work schedule results in he or she working in excess of 2,080 hours shall receive compensatory time off at the rate of one (1) hour for one (1) hour for the excess time scheduled. Due to the nature of the planned schedule, officers will be credited with the excess hours scheduled to work on January 1st of that year in anticipation of continued employment. This will be referred to as "Pitman Adjustment Time (PAT Time)". The utilization of PAT Time off from work must be pre-scheduled and used in the calendar year in which it was earned and may not be carried over unless specifically approved by the Sheriff.

Overtime shall be paid for any time worked in excess of an employee’s normal workday and/or for any work on a scheduled day off.

**Hazardous Duty Pay**

P.B.A. #286 has proposed the payment of “hazardous duty pay” for members assigned to perform “hazardous” or work involving extreme physical discomfort or distress, particularly if

protective devices will not entirely mitigate the danger/hardship, or work that could result in serious injury/illness or death. The County's duty to pay such hazard pay is specifically triggered when a State or County emergency is declared, for exposure to a physical hardship, or for exposure to a hazardous condition. The proposal provides for hazard pay compensation of an eighty dollar (\$80.00) flat shift premium over the employee's regular hourly wage. It would be payable only for those shifts actually worked and, in addition, the proposal also provides for hazard differential pay for any hazard duty/work performed when a member is working overtime at the prorated amount of ten dollars (\$10.00) for every hour worked.

Due to their status as "essential employees," the members of P.B.A. #286 have been required to continue reporting for duty throughout the pandemic, despite the risks posed by COVID-19. Once the pandemic struck, as a result of wide-scale court closures, P.B.A. #286 members were reassigned in large numbers to oversee the operation of various testing sites throughout the County. As such, the members that were reassigned were immediately confronted with a substantially increased risk of exposure, right at the start of the pandemic which continues to date. The County Sheriff's Officers and County Correctional Police Officers and, perhaps, the employees working at the Preakness Healthcare Facility, have been the only County employees that have been required to continually report for duty day in and day out.

As was established in the underlying arbitration, the language from the proposal came from the County's own resolution for the payment of hazard pay for the Preakness Health Center employees. Those employees are the medical staff working at the elderly patient hospital in the County, the Preakness Healthcare Center

Since the onset of the pandemic, officers have worked under anxiety inducing conditions, simply based on the fact that they fear possibly infecting loved ones and bringing the infection

home based upon their regular contact with people that are positive at the testing sites or through their obligation to apprehend suspects that may have the Moreover, as President Fernandez indicated, the County already agreed to this form of compensation for the Preakness employees and the additional pay could legally be financed through the County's \$87,564,767 Federal CARES Act funding it received in connection with the pandemic.

The County, on the other hand, opposes the new language, which was first proposed by Local 286 during the interest arbitration. Stating it was never introduced or discussed during the course of negotiations. During the hearing, testimony was taken with respect to the job duties and responsibilities of Sheriff's Officers. While there is no dispute that the job of a Sherriff's Officer is not easy, there was no showing that an Officer's job duties are substantially dedicated to mitigating or responding to the COVID-19 public health emergency which places them in a hazardous working condition. Therefore, hazard pay must not be awarded to Local 286.

Testimony was given by a number of witnesses for Local 286 with respect to the hazard pay that was offered to the employees at Preakness Healthcare Center. The County provided hazard pay to the employees at Preakness as a result of a Public Health Emergency and State of Emergency in the State of New Jersey due to the COVID-19 pandemic. Preakness is a New Jersey Department of Health licensed, 406-bed skilled nursing facility that is owned and operated by the County. Preakness offers a wide array of services, including sub-acute care, physical rehabilitation, long-term care, behavior management, ventilator and respiratory care, hospice and palliative care and respite services.

The residents of Preakness are particularly susceptible to contracting COVID-19 because of the residents' overall age and health. For that very reason, on or about March 24, 2020, the

Passaic County Administrator executed Administrative Order No. 20-02 placing restrictions at Preakness. Specifically, AO 20-02, Part 2 directed that “[a]ll essential employees at Preakness Healthcare Center are restricted from any outside employment, including but not limited to any work at other healthcare facilities, or any other outside employment, to protect the residents and employees of Preakness Healthcare Center from exposure to COVID-19.” If a Preakness resident or employee who was a carrier of COVID-19 remained outside of quarantine, it would have been perilous to the health, safety, and welfare of the residents and employees at Preakness. Additionally, in order to address a number of staffing issues due to the Coronavirus, all of Preakness’ employees were granted the opportunity to work additional hours and/or receive overtime work.

On or about on March 31, 2020, it was reported that various Preakness residents and employees were exhibiting COVID-19 symptoms and were being tested for the virus. Additionally, it was reported that Nurse’s Aides at Preakness had tested positive for COVID-19.

As of March 30, 2020, there were sixteen thousand six hundred and thirty-six (16,636) known cases of COVID-19 in New Jersey and one thousand and ninety-one (1,091) positive cases in Passaic County, New Jersey. At that same time, Preakness was forced to quarantine thirty two (32) employees and three (3) nursing units, for a total of 140 quarantined residents, due to residents on the units being symptomatic. That constituted over one quarter of the entire Preakness facility.

During the instant matter, Local 286 testified to what they considered to be “hazardous conditions,” the majority of which constituted nothing more than general patrol duties and moderate supervision of COVID-19 testing sites. Alternatively, the nurses of Preakness, were at times tasked with feeding, bathing, and personally caring for individuals who had either been infected with COVID-19 or, alternatively, quarantined as presumptive positive cases. Thus, they

were performing services which were substantially dedicated to mitigating or responding to the COVID-19 public health emergency. Additionally, there were substantial concerns with respect to the staffing levels of the nurse's units, as well as their reduction in compensation due to being precluded from working any outside job. In the instant matter, there has been no testimony that the Union suffered any semblance of a staffing shortage or that their income levels were being altered in any way,

Notwithstanding the lack of testimony, any determination relating to hazard pay would be beyond the scope of the instant Interest Arbitration. The statutory criteria set forth in N.J.S.A. 34:13A-16g does not provide for any consideration of hazard pay as an issue. Moreover, hazard pay is not mentioned or referenced in any part of the underlying CNAs or MOAs, nor has any other law enforcement unit in the County been awarded hazard pay. Therefore, the consideration of this proposal is contrary to both public policy and the best interests of the taxpayer. Moreover, as elicited in the testimony, no other law enforcement or corrections unit in Passaic County has received hazard pay, nor does any other civilian unit, other than those employed by Preakness.

Additionally, the Union's proposals related to hazard pay and/or CARES Act funding neglect to include any sunset provision. Therefore, if the pay was awarded, it would be put into place for an indefinite period of time, or until it could be renegotiated. However, it is important to note that, not only is the County running out of available CARES Act funds, there has been no extension of CARES Act funding. Accordingly, when the CARES Act expires on after December 31, 2020, there will no longer be funding for any such increase. Therefore, hazard pay must not be awarded.

This Arbitrator has considered and weighed heavily the circumstances that has brought about this proposal by PBA 286. Several concerns remain unanswered. First, the Cares Act was

set to expire on December 31, 2020, which means that money from Congress is not a stable or reliable source of income. Second, the County has already suffered losses of revenue due to the Pandemic with not real certainty of when this Pandemic will be over and the collections of revenue are back to where they were pre COVID to know whether they are able to continually fund such a premium pay. Third, the hazard duty payments given to the employees at the Preakness Healthcare Facility was due to their close relationship to their patients/residences and the mitigation of the virus for which they had to undertake in very close proximity to one and other. As such this Arbitrator does not award this proposal as the PBA failed to demonstrate the proposed new language is necessary or advisable at this time.

#### **APPLICATION OF THE STATUTORY CRITERIA**

This award is in the public interest because it will allow the County to continue to maintain its fiscal responsibility to the taxpayers. This award provides a fair and reasonable increase which is in the public interest since it will boost the morale of the PBA membership.

This Award also serves the interests and welfare of the public through a thorough weighing of all statutory criteria as discussed throughout this decision.

Since this Arbitrator is primarily adopting the County's salary proposal, with some modifications and which is less than the amounts the County agreed to with PBA 286A, this Award will not have an adverse impact on the County, its taxpayers, and residents and it will not prohibit the County from meeting its statutory obligations or cause the County to exceed its lawful authority.

This award also meets with the statutory criteria related to internal and external comparables. This Arbitrator has compared the salary and benefits to those of other law enforcement



groups in Passaic County and where possible or appropriate the County's other bargaining units as well as taking into consideration the overall compensation presently received.

This Arbitrator's decision will allow the PBA members to keep pace with the cost of living.

The issue of continuity of employment as well as any stipulations were discussed and/or presented throughout this decision.

Based upon the above, this Arbitrator, hereby awards the following:

### **AWARD SECTION SUMMARY**

1. Term of the Agreement:

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

2. Wages/Salaries

Effective and retroactive to January 1, 2019, employees will move one (1) step on the Salary Guide and the top step of the salary guide shall be increased by (2%). For all employees that are currently "off guide", each employee shall receive a (2%) cost of living increase in his/her salaries.

Effective and retroactive to January 1, 2020, employees will move one (1) step on the Salary Guide and the top step of the salary guide shall be increased by (2%). For all employees that are currently "off guide", each employee shall receive a (2%) cost of living increase in his/her salaries.

Effective and retroactive to January 1, 2021, employees will move one (1) step on the Salary Guide and the top step of the salary guide shall be increased by (2%). For all employees that are currently "off guide", each employee shall receive a (2%) cost of living increase in his/her salaries.

Effective and retroactive to January 1, 2022, employees will move one (1) step on the Salary Guide and the top step of the salary guide shall be increased by (2%). For all employees that are currently "off guide", each employee shall receive a (2%) cost of living increase in his/her salaries.

Effective and retroactive to January 1, 2023, employees will move one (1) step on the Salary Guide and the top step of the salary guide shall be increased by (2%). For all employees that are currently “off guide”, each employee shall receive a (2%) cost of living increase in his/her salaries.

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

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

3. Work Week- Hours of Work

A. Starting July 5, 2021, all Employees employed in the continuous operation of the Patrol Unit shall work a continuous Twelve (12) Hour Shift. Time worked shall be divided into work cycles consisting of twenty-eight (28) consecutive calendar days. During each work cycle all employees of the unit shall work tours of duty which in the aggregate total one hundred and sixty eight (168) hours.

B. All employees assigned to Patrol will work a steady, non-rotating scheduled twelve (12) hour tour for the twenty eight (28) day cycle that shall consist of either a “day shift” or a “night shift” that will follow the rotation of the attached twenty eight (28) day work cycle (See Exhibit A). During each twenty eight (28) day work cycle, no matter if an officer is assigned to the day or the night shift, each officer shall receive two “weekends” off from work that consists of a consecutive Friday, Saturday and Sunday.

C. Tours will run from 7:00AM to 7:00PM, followed by 7:00PM to 7:00AM. A Tour of Duty shall be considered the same as a “work shift” or “work day” as the terms may be used interchangeably throughout this agreement.

D. The work year for all employees shall consist of 2,080 hours. Each employee whose planned work schedule results in he or she working in excess of 2,080 hours shall receive compensatory time off at the rate of one (1) hour for one (1) hour for the excess time scheduled. Due to the nature of the planned schedule, officers will be credited with the excess hours scheduled to work on January 1st of that year in anticipation of continued employment. This will be referred to as "Pitman Adjustment Time (PAT Time)". The utilization of PAT Time off from work must be pre-scheduled and used in the calendar year in which it was earned and may not be carried over unless specifically approved by the Sheriff.

Overtime shall be paid for any time worked in excess of an employee's normal workday and/or for any work on a scheduled day off.

As to the remainder of the parties changes, modifications and proposals for which this Arbitrator has thoroughly reviewed, considered, and have examined all supporting testimony and evidence provided, to include but not limited to: PBA's proposals for Article 6 and Article 14; The County's proposals for Article 7C; Article 9; Article 11- A, B, C E, and F; Article 14B; and Article 16 - I, M and S, this Arbitrator finds, based on insufficient evidence, that the parties have failed to justify their demands

All proposals by the Policemen's Benevolent Association, Local 286 and Passaic County not awarded or discussed herein are considered denied and dismissed as there was insufficient evidence to award or discuss. All provisions of the existing Collectively Negotiated Agreements shall be carried forward except for those which have been modified by the terms of this Award and any prior agreements and stipulations between the parties.

The testimony given and the evidence provided at the Hearings as well as contained in the post-hearing briefs supports the above conclusions.

CERTIFICATION

This Arbitrator has given due weight to the statutory criteria set forth in *N.J.S.A.* 34:13A-16(g), and have conclude that the terms of this Award represent a reasonable determination of the issues as justified by the evidence and testimony provided.

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Marc A. Winters  
Interest Arbitrator

April 27, 2021  
Seven Fields, Pennsylvania

State of Pennsylvania

County of Butler:

On this     day of                   2021, before me personally came and appeared Marc A. Winters to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same.

CERTIFICATION

This Arbitrator has given due weight to the statutory criteria set forth in *N.J.S.A.* 34:13A-16(g), and have conclude that the terms of this Award represent a reasonable determination of the issues as justified by the evidence and testimony provided.



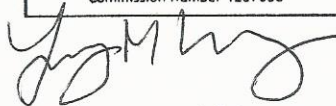
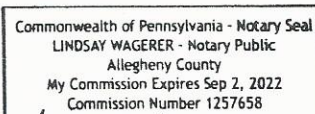
Marc A. Winters  
Interest Arbitrator

April 27, 2021  
Seven Fields, Pennsylvania

State of Pennsylvania

County of ~~Butler~~:

Allegheny



On this 27 day of April 2021, before me personally came and appeared Marc A. Winters to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same.