

NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION

Case No: IA-2024-008

In the Matter of the Interest Arbitration between:

COUNTY OF ESSEX,

PUBLIC EMPLOYER

And

PBA, LOCAL 183 – RANK & FILE

EMPLOYEE ORGANIZATION

INTEREST ARBITRATION
DECISION AND AWARD

BEFORE: Ira Cure, Esq.
Interest Arbitrator

APPEARANCES

For the Employee Organization:
Valerie Palma Deluisi, Esq.
Nicholas J. Palma, Esq. Valerie
Palma DeLuisi, Esq. & Associates

For the Public Employer:
Angelo J. Genova, Esq.
Joseph M. Hannon, Esq.
Sydney M. Schubert, Esq.
Genova Burns LLC

I. PROCEDURAL BACKGROUND

On February 21, 2024, the PBA, Local 183 ("Local 183" or "Union") filed a Petition to Initiate Compulsory Interest Arbitration ("Petition") with New Jersey's Public Employment Relations Commission ("PERC"). By filing the Petition, Local 183 asked PERC to appoint an interest arbitrator pursuant to Police and Fire Interest Arbitration Reform Act, *N.J.S.A. 34:13-16(e)(1)* to issue an award concerning a successor collective negotiation agreement or "CNA" with the County of Essex ("County"). On March 19, 2024, I was appointed to serve as interest arbitrator. This proceeding bears index number IA-2024-008.

As will be discussed below, Local 183 represents the rank-and-file officers employed by the County's Sheriff's Department. On March 26, 2024, I was also assigned to be the interest arbitrator to issue an award concerning a successor CNA between the County and PBA Local 183A. ("Local 183A" or "Superiors Unit"). Local 183A represents the Sergeants, Lieutenants and Captains employed by the County's Sheriff's Department. That proceeding bears index number IA-2024-009. Because the issues underlying both petitions are intertwined with the parties' agreement, the matters were consolidated for hearing, with the understanding that separate awards would be issued, and that both awards would be due on June 24, 2024. Except where noted, this document concerns the rank-and-file petition IA-2024-008.

Pursuant to *N.J.S.A. 34:13-16(b)(3)*, on April 10, 2024, I conducted a mediation session with the parties in order to "effect a voluntary resolution of the impasse." At the conclusion of the mediation session, it was determined that the impasse should proceed to interest arbitration. On April 26, 2024, the parties exchanged final offers. I conducted

arbitration hearings on May 6, 2024, and May 21, 2024. The hearings were conducted at the Essex County Hall of Records at 465 Dr. Martin Luther King Jr. Boulevard, Newark, New Jersey.

The Union offered the testimony of: (1) Sergeant Michael Capodanno a Vice-President of Local 183A. ("Capodanno"); (2) Officer Robert Slater, President of Local 183 ("Slater"); (3) Union Expert Timothy Piotrowski a member of the accounting firm of Petrucelli, Piotrowski and Company ("Piotrowski"); and (4) Captain Edward Esposito President of Local 183A ("Esposito"). The County offered the testimony of: (1) the County's Director of Administration and Finance – Treasurer Hossam Mohamed ("Mohamed"); 2) Chief of the Sheriff's Department James Spango ("Spango"); and 3) County Administrator Robert Jackson ("Jackson").

Valerie Palma Deluysi, Esq. of the firm, Nicholas J. Palma, Esq., and Valerie Palma Deluysi, Esq. and Associates represented the Union. Angelo J. Genova, Esq. Joseph M. Hannon, Esq. and Sydney M. Schubert, Esq., of the firm of Genova Burns, LLC, represented the County.

Both parties were afforded a full opportunity to examine and cross-examine witnesses, submit evidence, and present arguments in support of their respective positions. Both parties submitted briefs on June 5, 2024, and the record was closed at that time. The evidence adduced and the positions and arguments set forth by the parties have been fully considered in the preparation and issuance of this Interest Arbitration Decision and Award.

II. PROPOSALS

A. FINAL UNION PROPOSALS

The Union's final offer is summarized as follows.

PBA Local 183 (U 19)

1. Term of Contract: Two years (January 1, 2018-December 31, 2019);
2. Wage Increases: 0% for both years

B. FINAL COUNTY PROPOSALS

The County's Final Offer (E34) is summarized as follows.

Term of Agreement. 8 years (January 1, 2018 through December 31, 2025)

Wage Increases. Effective January 1 of each calendar year wages shall be increased by the following percentages for individuals who are currently active or former eligible PBA 183A members who retired from the County on or after January 1, 2018, in good standing¹:

- a. Effective and retroactive to 2018: 0.00%
- b. Effective and retroactive to 2019: 0.00%
- c. Effective and retroactive to 2020: 0.00%
- d. Effective and retroactive to 2021: 0.00%
- e. Effective and retroactive to 2022: 0.00%
- f. Effective and retroactive to 2023: 0.00%
- g. Effective and retroactive to 2024: 0.00%
- h. Effective and retroactive to 2025: 1.70%

Health Insurance. Effective January 1, 2017, the County switched to the State Health Benefits Program. The language necessary to effect this change shall be made

¹ Proposal and the amounts set forth for wages is pursuant to the 2% interest arbitration hard cap due to increments that have already been paid pursuant to law.

to the Collective Negotiations Agreement. Chapter 78 contributions remain unchanged at Tier 4 levels as set by P.L. 2011, c.78.

III. STIPULATIONS OF THE PARTIES

The parties did not present any formal stipulations concerning the contents of the successor CNA.

IV. STATUTORY CRITERIA

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

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

- (1) The interests and welfare of the public. Among the items the arbitrator shall assess when considering this factor are the limitations imposed upon the employer by P.L.1976, c.68 (C. 40A:4-45.1 et seq.).
- (2) Comparison of the wages, salaries, hours and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally:
 - (a) In private employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.
 - (b) In public employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.

- (c) In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L. 1995, c.425 (C. 34:13A-16.2); provided, however, that each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.
 - (d) In comparative private employment.
 - (e) In public and private employment in general
- (3) The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received.
 - (4) Stipulations of the parties.
 - (5) The lawful authority of the employer. Among the items the arbitrator shall assess when considering this factor are the limitations imposed upon the employer by P.L.1976, c.68 (C. 40A:4-45.1 et seq.).
 - (6) The financial impact on the governing unit, its residents, the limitations imposed upon the local unit's property tax levy pursuant to section 10 of P.L.2007, c. 62 (C.40A:4-45.45), and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take into account, to the extent that evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element or, in the case of a county, the county purposes element, required to fund the employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers of the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in a proposed local budget.
 - (7) The cost of living.
 - (8) The continuity and stability of employment including seniority rights and such other factors not confined to the foregoing which are ordinarily or

traditionally considered in the determination of wages, hours, and conditions of employment through collective negotiations and collective bargaining between the parties in the public service and in private employment.

- (9) Statutory restrictions imposed on the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the Employer by Section 10 of P.L. 2007, c. 62 (C.40A:4-45.45).

V. BACKGROUND

Essex County is approximately 127 square miles, which comprises only 1.7% of the land area in New Jersey. (Employer Ex. 33, ¶4). While comprising a relatively small landmass, the County has almost 10% (9.29%) of the State's population, or 863,728 residents. Id. The County's population has declined over the years. In fact, in 1970, the County had a population of 933,179. Id. at ¶5.

Essex County had a 2020 median family income of \$67,568 compared to \$89,703 for the entire State of New Jersey. (Employer Ex. 33, ¶7). The County's unemployment rate in 2022 (3.8%) was higher than the State of New Jersey (3.4%) and United States (3.5%) (Employer Ex. 33, ¶6). As the average per capital personal income data from the Bureau of Labor Statistics shows:

YEAR	ESSEX COUNTY	% OF NEW JERSEY	NEW JERSEY
2018	\$54,277	55.78%	\$97,300
2019	\$59,302	74.72%	\$79,363
2020	\$63,368	77.52%	\$81,740
2021	\$61,510	74.52%	\$82,545
2022	\$67,826	75.96%	\$89,296

These findings were also made in the Interest Arbitration Award of Arbitrator Dean Burrell, *The County of Essex and FOP LODGE 106*, IA-2024-004 (February 15, 2024) (Burrell Award).²

The County has approximately 3600 employees employed in twenty-six collective bargaining units. All twenty-six bargaining units have collective negotiations agreements which expired on December 31, 2017. In 2016, the County attempted to revise the manner in which the County provided health insurance to all of its employees. The County's goal was to move each employee into the State Health Benefits Plan ("SHBP"). Twenty-two of the twenty-six unions representing the County's employees consented to the move to the SHBP. As an inducement, the County agreed to pay an additional .02% raise for 2017, even though the wages for 2017 were set in a 2014 collective negotiations agreement. In addition, those twenty-two unions had their collective negotiations agreements extended until 2019. The twenty-two bargaining unit employees received wage increases of 2.25% in both 2018 and 2019. Four unions did not consent to the move to the SHBP. Those unions are PBA Local 382; FOP 106 (the subject of the Burrell Award); Local 183A, the Superiors Unit; and Local 183 (the subject of this Award).

Each of the four unions which did not consent to the move to the SHBP filed unfair practice charges with PERC. PBA Local 382 settled with the County. PERC found for FOP 106 and decided that "the County failed to engage in proper negotiations before changing carriers." PERC also ordered that the members of FOP 106 be reimbursed. The Appellate Division affirmed PERC's decision. *In the Matter of the County of Essex*, A-3809-22 (App. Div. 2024). The charges filed by Local 183 and Local 183A, although

² As will become apparent throughout this Award, Arbitrator Burrell's decision concerned many issues that are relevant if not identical to this proceeding.

related to the charges filed by FOP 106 remain pending at PERC.³ The refusal of both Local 183 and Local 183A to accept the change in carriers hovers over this proceeding, and despite its lack of success at PERC, the County asks that I modify the CNA to direct that the members of the Local 183 bargaining unit be placed in the SHBP in a manner consistent with the other bargaining units⁴.

This proceeding and the consolidated proceeding governing the Superior Officers employed by the County's Sheriff's Department may be among the final interest arbitration proceedings governed by the 2% Hard Cap. *N.J.S.A., 34:13A-16 et. seq.* In 2010, the state legislature passed amendments to the Police and Fire Public Interest Arbitration Reform Act, which limited the discretion of interest arbitrators to award wage increases in excess of 2% of base salary over the life of a collectively negotiated agreement. Collectively negotiated agreements that were imposed by interest arbitrators for contracts in effect from January 1, 2011 until December 31, 2017, were, upon renegotiation subject to the 2% Hard Cap.

The statute provides:

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

³ As the Appellate Division noted:

After the parties filed their appellate briefs the County and PBA 382 executed a stipulation of dismissal regarding PBA 382's unfair practice claims. Previously, in its June 29, 2023 decision, PERC denied the motions and cross-motions for summary judgment regarding the unfair practice claims asserted by PBA Local 183 and PBA Local 183A. The County, PBA Local 183, and PBA Local 183 A did not move for leave to appeal from those denials. Accordingly, we confine our review to the contentions between the County and FOP 106, but we discuss the three other unions where applicable.

⁴ The majority of the twenty-six unions are not public safety unions and therefore are not subject to the Police and Fire Interest Arbitration Reform Act.

the collective negotiation agreement subject to arbitration. In each subsequent year of the agreement awarded by the arbitrator, base salary items shall not be increased by more than 2.0 percent of the aggregate amount expended by the public employer on the base salary items for the members of the affected employee organization in the immediately preceding year of the agreement awarded by the arbitrator.

The parties may agree, or the arbitrator may decide, to distribute the aggregate monetary value of the award over the term of the collective negotiation agreement in unequal annual percentage increases, which shall not be greater than the compounded value of a 2.0 percent increase per year over the corresponding length of the collective negotiation agreement. An award of an arbitrator shall not include base salary items and non-salary economic issues which were not included in the prior collective negotiations agreement." N.J.S.A. 34:13A-16.7 (emphasis added)

The term "base salary" is defined in N.J.S.A. 34:13A-16.7(a) as

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

The Local 183 bargaining unit consists of approximately three hundred and thirty-seven (337) bargaining unit members.(1T 14, Employer Ex. 2)⁵. The Recognition Clause of the Local 183 Contract provides at Article II:

The County recognizes New Jersey State Policeman's Benevolent Association, Local 183, as the exclusive representative of all Sheriff's Officers, Court Attendants, Identification Officers, Sheriff's Officers (Bilingual), and Sheriff's Investigator employed by the County for all purposes under and pursuant to the New Jersey Employer-Employee Relations Act (N.J.S.A. 34:13A-1 et sq.) as amended. As used herein, the terms "Sheriff's Officer" or "Employee" shall include all Employees, who are recognized as being

⁵ References to the transcript shall be denoted as (#T page #).

represented by the PBA pursuant to this Article. The said New Jersey Policemen's Benevolent Association, Local 183, shall serve as the exclusive representative for the purpose of collective negotiations as aforesaid for all such employees during the term of this Agreement.

(E31).

As of December 31, 2017, employees in the Local 183 bargaining unit were paid pursuant to a salary guide, and they advanced one step on the anniversary of their date of hire. The salary guide set forth the following salaries:

Top Step	\$93,144
Sixth Step	\$86,375
Fifth Step	\$79,608
Fourth Step	\$72,832
Third Step	\$66,059
Second Step	\$59,287
First Step	\$52,514

Although members of the bargaining unit who had not reached the top step of the salary guide during the life of the previous Contract received annual wage increases, those who were at the top step of the salary guide as of December 31, 2017 and thereafter, have not received a wage increase since those employees reached the top step of the salary guide. Some members of the bargaining unit have not received a wage increase for almost seven years.

VI. THE PARTIES' DISCUSSION OF THE COMPETING ECONOMIC PROPOSALS

A. The Union's Position

Local 183 acknowledges that this proceeding is governed by the 2% Hard Cap. The Union concedes that because the step increments paid to members of the bargaining

unit consumed the available funds, I am without power to award an increase in wages to the bargaining unit.⁶ The Union seeks an award of 0% for 2018 and 0% for 2019. In sharp contrast to the County, the Union contends that the duration of the CNA should only be for two years. The Union reasons that such an award would bring its CNA in line with twenty-three of the County's other bargaining units.⁷ The Union posits that an award of a two-year contract will permit the Union to negotiate an agreement for 2020-2023 as did the vast majority of the other bargaining units. The Union contends that it would be unfair and essentially a punishment to award a CNA with a term in excess of two years, because such an award would reward the County for bargaining in bad faith regarding the health insurance provision.

The Union points out that I have the obligation to cost out the amount of any award I make. (Union Brief at 11-12, citing *Borough of New Milford and PBA Local 83*, PERC No. 2012-53 and *In the Matter of Atlantic City and Atlantic City Police Benevolent Association, Local 24*, 39 NJPER ¶ 161 (2013)). The Union posits that, because it is asking for zero salary increases for both 2018 and 2019, there is no cost to the County awarding its proposal.

Local 183 next contends that the length of the CNA should be for two years from January 1, 2018 through December 31, 2019. The Union notes that PERC recognizes that the pattern of settlement is an important element to fashioning an award. Recognizing that its request that I award a two-year CNA is opposed by the County, Local 183 contends that such an award would be consistent with the negotiated agreements

⁶ Employees progressing through the salary steps still receive annual wage increases.

⁷ As will be discussed, Arbitrator Burrell awarded a three-year term in the proceeding concerning FOP 106

reached between the County and twenty-two other bargaining units. The Union also rejects the County's proposal that the duration of the Local 183 CNA be extended for eight years.⁸ The Union posits that there is no requirement that an arbitrator must award a CNA term for a particular length of time.

The Union also discusses the Burrell Award, and points out that in the Burrell Award, it was the County that sought interest arbitration and asked Arbitrator Burrell to award a six-year agreement (for a superior officers' unit) which included wage increases. In this proceeding, it is the Union that has petitioned for interest arbitration. The Union also notes that the duration of a collectively negotiated agreement is arbitrable. (Union Brief at 15, citing *City of Union*, 7 NJPER ¶ 12222 (1981)).

Noting that any CNA in excess of two years would subject the members of the bargaining unit to a statutory scheme well beyond the expiration date of the statute. The Union contends that it would be unjust to impose a CNA in excess of two years. The Union points out that the County remains the subject of an unfair practice proceeding and that the County was found to have violated the law with regard to FOP 106. The Union notes that Arbitrator Burrell recognized that FOP 106 chose not to relinquish its statutory rights and that he concluded that the County "should not be allowed to benefit from its unlawful conduct." (Union Brief at 15, citing Burrell Award at p. 51). The Union also notes that Arbitrator Burrell reasoned that "A contract of short duration will permit the ability to return to the table with greater flexibility to negotiate over base salary issues." (Union Brief at 15, citing Burrell Award at p. 53).

⁸ The County's proposal for Local 183A is to extend the CNA for six years.

The Union asserts that awarding a two-year agreement in this proceeding will prevent the County from receiving a windfall for its illegal conduct. The Union also notes that the County's position, in which it is seeking an eight-year agreement for Local 183 and a six-year agreement for Local 183A, is a departure from a long pattern of both Unions negotiating in tandem.

The Union cites the testimony of Sergeant Capodanno who stated that he believed granting the County's request would have a deleterious effect on morale. Sergeant Capodanno stated that he believed a number of officers in the Local 183 bargaining unit have chosen not to take promotional exams because taking a promotion would result in their taking home less pay. (1T-38). Local 183 President Slater testified that he too believed that morale would suffer if the County's proposal were awarded and said the members of the bargaining unit considered the County's offer to be disrespectful. President Slater also pointed to statements by County officials that the finances of the County are sound. (1T-55).

The Union contends that the County's proposal, which would require me to force the members of the bargaining unit into the SHBP, is outside the scope of this arbitration proceeding and should be decided by PERC.

The Union also reviews the statutory factors that I am required to apply in issuing my award. The first factor is the "interests and welfare of the public." The Union posits that there is a public interest in having well compensated public safety employees but concedes that such compensation is subject to budgetary constraints. The Union notes that, under its proposal, where members of the Local 183 bargaining unit will not receive a wage increase for two years, there will be no impact on the County's budget.

The Union also contends that there is also a public interest in my issuing an award limited to two years' duration. The Union recognizes that the Hard Cap applies to this proceeding, and that it is willing to accept a 0% increase in salaries in each of those two years. The Union maintains a CNA for a longer period would result in a decline in morale and increase the number of officers who will decide to leave the service.

The next factor concerns the comparison of the wages, salaries, hours, and conditions of employment to other bargaining units. The Union points to record evidence that shows that employees in 22 of the 26 labor unions in the County received wages of 2.25% in 2018 and 2.25% in 2019. (Union Ex. 22). In addition, among these twenty-two bargaining units, two law enforcement bargaining units which chose not to file for interest arbitration. They are FOP Lodge 205 (Essex County Prosecutor's Office Superior Officers) and PBA Local 325 (Essex County Investigators). Local 183 is willing to accept lower increases than the increases received by these twenty-two other unions. In addition, the Union states that when compared to Essex County municipalities, Local 183 ranks at or near the bottom of the pay scale.

The third factor is "Overall Compensation." The Union argues that since Local 183 is not seeking a raise, this factor is irrelevant.

The fourth factor is stipulations between the parties. The Union notes that the parties did not make any stipulations.

The fifth and ninth factors concern the lawful authority of the employer. The Union recognizes that this factor refers to the tax levy cap, which limits salary increases above 2% based upon the tax levy. Again, since the Union is not seeking a raise for 2018 and 2019, this factor is not applicable to the Local 183 bargaining unit.

Regarding the Financial Impact, the Union posits that by seeking 0% wage increases for two consecutive years, there is no fiscal impact on the County.

The seventh factor is the cost of living. The Union notes that the Social Security Administration provided cost of living adjustments of 2% in 2018 and 2.5% in 2019. The Union claims were I to grant the County's proposal, members of the Local 183 bargaining unit would, over the life of the Contract, fall behind the cost of living by 23.8%. Local 183 is seeking 0% wage increases for 2018 and 2019, and while it recognizes the requirements of the Hard Cap, it posits that members of the bargaining unit will fall behind as a result of inflationary pressures. The Union contends that, applying the seventh factor, it would be unjust to permit the members of the bargaining unit to fall further behind the cost of living. Local 183 maintains that its proposal satisfies the seventh factor.

The final factor is continuity of employment, and the Union reiterates its argument that if a CNA in excess of two years were to be imposed, there would likely be a turnover in employment, and that it would be difficult to maintain officers in the ranks.

The Union asks that its Final Offer be awarded.

B. The County's Position

The County vigorously takes the position that my discretion is limited and that I must award its final proposal consisting of no wage increases for seven years, and in the eighth year, 2025, that I only award a 1.7% wage increase. In addition, the County asks me to award its health insurance proposal, which would require the members of the Local 183 bargaining unit to be placed in the SHBP.

The County notes that there has been no contract between the parties since December 31, 2017, and that either party could have petitioned for interest arbitration at

any time in the period after the CNA's expiration. The County points out that I am obligated to cost out any award that I make, and that I must demonstrate that the award is within the 2% Hard Cap. The County reasons that, because the members of the Local 183 bargaining unit continued to receive step increases in the period since the CNA expired, and since those step increases exceed the 2% Hard Cap, I am powerless to award a CNA of at than an eight-year term. The County asserts that I cannot award the Union's proposal because such an Award would mean ignoring the requirements of the 2% Hard Cap. The County maintains that because employees represented by the Union received step increments since 2017 the employees received the benefit of the bargain and should have filed for interest arbitration earlier.

The County cites to the statute which provides in part that "annual percentage increases . . . shall not be greater than the compounded value of a 2.0 percent increase per year over the compounding length of the collective negotiations agreement. . . ." *N.J.S.A. 34:13A-16.7(b)*. The County asserts that the Award in this matter must not be greater than 2 percent per year over the length of the Contract. The County notes that, under the statute, aggregate salary increases are not required to be evenly distributed over the life of the CNA but must average out to 2% or less. The County also notes that base salary which is the foundation for any monetary increase, consists not only of wages but also longevity payments, shift differentials and education incentives. In support of its position, the County cites PERC's decision in *In the Matter of the Borough of New Milford and PBA Local 83*, 38 NJPER 340 (¶116 2012). (County Brief at 20-21).

The County also notes that the base salary calculation is to be determined as of the final day of the CNA. (County Brief at 21- 22 citing, *In the Matter of Atlantic City and Atlantic City Police Benevolent Association, Local 24*, 39 NJPER ¶¶161 (2013)).

The County asserts that because of the 2% Hard Cap, the CNA's duration must be in excess of two years. The County notes that the parties have agreed on the identities of the members of the Local 183 bargaining unit.⁹ The County has submitted a demonstration of how the costs of the education incentives, longevity and shift differentials are applied and why these costs must be included in the base salary calculation. The County asserts that this precludes an Award of a wage increase for at least seven years.

The County calculates the Local 183 base salary as of December 31, 2017 to be \$27,865,706.60. (Employer Ex. 1). By next applying the step increases, the County demonstrates that the cost of step movement and other benefits raised the payroll by \$722,137.90 or 2.59% in 2018. Similarly, the County posits that the base salary of the Local 183 bargaining unit increased as follows: 3.57% in 2019; 2.90% in 2020; and 2.17% in 2021. The County concedes that step movement and other salary increments only increased by 1.67% in 2022, but contends that the increase in the aggregate base salary was 12.90% over a five-year period and in excess of the 2% Hard Cap. In 2023, the increase was 0.97% but the aggregate increase was 13.87% which the County argues exceeds the 12% aggregate number permissible under the statute. In 2024, the County notes that the base salary only increased by .43% but argues that because the aggregate increase to base salary was 14.31% it was actually .31% over the 2% Hard Cap.

⁹ There is a dispute concerning the membership in the Local 183A bargaining unit.

The County concedes that, in 2025, the members of the Local 183 bargaining unit would finally be eligible for a wage increase of 1.7% under the 2% Hard Cap requirements. As such, the County contends that the length of the Local 183 bargaining agreement must be eight years.¹⁰

The County notes that twenty-three of the County's collective bargaining units were working under contracts that are in effect until 2023. The only bargaining unit employees that are not working under such a CNA are those employees represented by Local 183, Local 183A and FOP 106, the subject of the Burrell Award. The County notes that the other bargaining units, including those covered by the Interest Arbitration statute, reached voluntary agreements and were not subject to the 2% Hard Cap.

The County reasons that Local 183 is facing the strictures of the 2% Hard Cap because it failed to earlier in time petition for interest arbitration, even though it long had the right to do so. The County is claiming that Local 183 wants another bite at the apple.

The County also contends that language should be awarded that recognizes that Local 183 is in the SHBP, and that Chapter 78 mandates Tier 4 contributions. The County notes that once phased in Tier 4 contributions are to remain in place until changed through collective negotiations. The County also argues that its proposal governing the SHBP should be granted because it would be consistent with the pattern of settlement reached with twenty-three of the twenty-six bargaining units with which the County has a CNA.

The County then analyzed the statutory factors in depth as they applied to Local 183. The first factor is the interest and welfare of the public, which is considered the most important of the nine statutory factors. (County Brief at 45 *citing, Hillsdale PBA Local 2017*

¹⁰ Atypically the County is seeking a CNA of a different length - six years - for Local 183 A.

v. Borough of Hillsdale, 137 N.J. 71, 83 (1994)). The County posits that various amendments to the interest arbitration statute were designed to keep costs down and to recognize that New Jersey residents pay some of the highest property taxes in the country. Thus, the statute requires interest arbitrators to consider tax levy caps when issuing their awards. The County maintains that its proposal is consistent with the public interest.

The next statutory criterion is the fiscal impact of the interest arbitration award. The County provided a review of its finances, positing that although the County engaged in prudent fiscal management, its bond rating was reduced from Aaa to Aa1 in 2022. The County recognizes that it annually utilizes "one shot revenues" and notes that such revenues may not always be relied upon. The County makes it clear that any increase in salary awarded to Local 183 must consider the fiscal impact of such an award.

Interest arbitration awards must also consider the lawful authority of the Employer.

Another major consideration is the comparison of a bargaining unit's wages with that of other county employees, and with employees in both the private and public sectors. The County notes that Local 183's top step wages are higher than the wages of the average New Jersey worker. The County points out that the average New Jersey wage in 2022 was \$78,563, while a Local 183 member at the top step of the salary guide earned \$93,144 in 2022. The County also points out that the wages of Local 183 bargaining unit members compare favorably to those of employees in other County law enforcement bargaining units. When comparing the salaries of the Local 183 bargaining unit employees with those of other county Sheriff departments employees the County concedes that the Local 183 bargaining unit average slightly less than those of other

bargaining unit employees in other New Jersey counties. The County contends that there is nothing in the record which would compel an award raising the salaries of the members of Local 183, especially in light of the 2% Hard Cap.

The County notes that there are no stipulations for me to include in this Award.

The next statutory criterion to be reviewed is the cost of living. Although conceding that inflation had been high, the County posits that inflation is "returning to normal levels." The County notes that inflation has averaged slightly above 2% since 1999. The County recognizes that it is difficult to predict economic trends and suggests that any inflationary concerns could be addressed in the next round of collective bargaining.

The County then reviewed the stability and continuity of employment factor and contends that there has been continuity and stability in the Local 183 bargaining unit. The County states that only three members of the bargaining unit left in 2017. The County rejects what it considers to be anecdotal statements by Union officers characterizing the unit's morale. The County notes that no members of the bargaining unit have been laid off. The County contends that there is a tremendous amount of continuity and stability in the bargaining unit.

The County asks that I award its proposal.

VII. ANALYSIS OF SALARY PROPOSALS, DURATION OF THE CONTRACT AND COVERAGE UNDER THE SHBP

Having reviewed the economic proposals of both the Union and the County, I conclude that I will award the Union's proposals concerning both the salary and duration of the CNA, and that I will not award the County's proposal concerning the SHBP. These three issues are intertwined and arise from the County's insistence that the members of

the Local 183 bargaining unit submit to its demand that they accept coverage from the SHBP.¹¹

As Arbitrator Burrell found, (and I agree) “this matter is driven by the County’s unlawful act of unilaterally moving [the Local183] unit, along with other units, from a private health care provider into the [SHBP].” Burrell Award, citing *County of Essex and FOP 106 et. seq.*, PERC No. 2023-60 (June 29, 2023) *aff’d In the Matter of the County of Essex*, A-3809-22 (App. Div. 2024). Arbitrator Burrell reasoned that the PERC decision is relevant to the question of wages and duration in the interest arbitration proceedings because FOP 106 like Local 183 (and Local 183A) chose not to relinquish its statutory rights and submit to the unfair practice committed by the County of unilaterally placing members of the bargaining unit into the SHBP. As Arbitrator Burrell stated about FOP 106, Local 183 “should not be forced to accept a lower long-term deal as a result of the County’s illegal act.” I conclude that unless the parties voluntarily agree otherwise, or PERC makes a final decision on the issue of health insurance, I am not empowered to award the County’s proposal to place the members of the Local 183 bargaining unit into the SHBP.

Arbitrator Burrell also had to confront the issue of CNA duration. In the *FOP 106* case, the County proposed a six-year agreement with wage increases of 2% or less for each year of the contract. FOP 106 proposed two contracts, one for the term of 2018-2019 subject to the 2% Hard Cap and one for the period 2020-2023 which would bring it line with other County bargaining units.

¹¹ In the Local 183A proceeding, the Union also asked for an increase in the night-shift differential.

Arbitrator Burrell awarded neither proposal, and instead awarded a three-year agreement, which was a length of time significantly shorter than the County's proposal in that proceeding. Arbitrator Burrell, recognizing the application of the 2% Hard Cap, stated that he agreed with the ruling of Arbitrator James Mastriani in *County of Burlington and FOP Lodge 166*, IA-2021-07 (January 15, 2022), that the 2% Hard Cap applies regardless of both the passage of time and whether the interest arbitration petition was filed before or after CNA expiration. Crucially, Arbitrator Burrell agreed with the reasoning Arbitrator Mastriani applied in awarding a CNA of a shorter duration than sought by the parties. Arbitrator Mastriani stated:

A shorter contract duration than what the parties have proposed is desirable in light of the applicability of the CAP. This would provide the parties with greater flexibility to negotiate over base salary issues earlier and in the absence of CAP applicability and with sufficient available evidence on salaries for years beyond [2020] which have yet to be determined for internal County law enforcement units. The parties can promptly resume negotiations for a new contract . . . for whatever duration that can be agreed to voluntarily or to invoke statutory impasse proceedings in the absence of the CAP if voluntary bargaining efforts do not succeed.

County of Burlington and FOP Lodge 166, at 22.

Both Arbitrator Mastriani and Arbitrator Burrell concluded that the shorter CNA duration would permit the parties to return to the table with greater flexibility.

Where I depart from the reasoning of Arbitrator Burrell is that I conclude that for the Local 183 bargaining unit,¹² a two-year agreement should be awarded. I make this determination based on the pattern of agreements that the County has reached with most of the twenty-two other bargaining units. When the County imposed the SHBP upon the

¹² I reach the same conclusion for the 183A bargaining unit.

other unions, in addition to adding .2% to the 2017 salaries, the County also agreed to pay 2.25% salary increases in 2018 and 2019. The County and the remaining unions are now in negotiations or have concluded negotiations for successor agreements that would have a term from January 1, 2020 to December 31, 2023. By awarding a term of two years, the parties can then negotiate a new agreement, if they choose, consistent with the provisions of the other twenty-two bargaining units.

As to salary, Local 183 recognizes that any CNA it negotiates is subject to the 2% Hard Cap, and therefore it has only proposed 0% wage increases for each year of the proposed two-year contract.

The County vigorously argues that because of step movement, the Local 183 bargaining unit would not be free of the 2% Hard Cap requirements until 2025. The County therefore asks that I award a CNA term of eight years. I reject that position. I am unpersuaded by the County's arguments that because of step movement, I am required to award an eight-year term with no increase in salary for up to seven years, even though the statutory requirements governing the 2% Hard Cap have now expired. I would also note that eight-year terms for any collective negotiations agreements are exceptional. I recognize that because of step movement the aggregate increase in salary exceeds 2% for both 2018 and 2019. Since the 2% Hard Cap statute has expired, the County has not persuaded me that my Award must extend through 2025 in order to comply with the statute. I conclude that Local 183's position acknowledging that its members at the top step cannot receive a raise for two years is reasonable. It allows the County and the Union to return to a pattern of negotiations consistent with the over twenty bargaining units that also negotiate with the County.

The County is unable to cite to any authority which eliminates my discretion regarding the term of the Contract. Therefore, I conclude that the 2% Hard Cap applies, and I award a two-year CNA whose term commences January 1, 2018 and expires December 31, 2019, with no increase in wages for either year of the Contract.

I recognize that I have an obligation to cost out my award. As the Union argued, because there will be no wage increase during the life of the agreement, there is no cost to the County or its taxpayers based on this Award. The only additional costs would be the natural progression arising from the step movement.

I also conclude that this award is consistent with the statutory criteria set forth in *N.J.S.A. 34:13-16(g)*. Given that I am compelled to award no increase for two years of the agreement, I conclude that the Award is in the public interest, and that this Award will not result in higher taxes or borrowing. Consistent with the statutory goals this Award will encourage the parties to resume negotiations of a successor agreement in good faith.

The second criteria require a 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. This analysis requires a comparison to employees in the private sector in general, the public sector in general, public employment in the same or comparable jurisdictions, and public and private employment in general. Because, I am not awarding a wage increase to the members of the Local 183 bargaining unit, comparisons at this juncture are not appropriate.

Generally, because of the nature of law enforcement, private sector comparisons have little utility. The salaries of the members of the Local 183 bargaining unit are on

average below those of comparable bargaining units in the State. In addition, because I am constrained to give zero percent increases, the members of the bargaining unit will fall further behind other County employees in the twenty-two other bargaining units.

There is no issue that this Award is within the lawful authority of the employer, and there will be limited budgetary impact upon the County and its taxpayers. Unfortunately, because this Award provides no increase in salary, the Award will not permit the members of the bargaining unit to keep up with increases in the cost of living.

While, I am concerned that awarding no wage increases for two years would have a deleterious effect on the continuity and stability of employment, I am hopeful that by awarding a two-year term, the effect of the zero percent increase in salary would be mitigated.

VIII. AWARD

Pursuant to my discussion above the Collective negotiations agreement shall be amended as follows:

AMEND THE WAGE PROVISION TO PROVIDE FOR:

0% Wage increase for calendar year 2018.

0% Wage increase for calendar year 2019.

DURATION

This Agreement shall be effective retroactive to January 1, 2018 and shall extend through December 31, 2019

A. Other Proposals

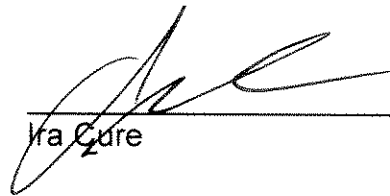
All proposals by the PBA, Local 183 and the County of Essex not awarded herein are denied and dismissed. All provisions of the existing Collectively Negotiated

Agreements shall be carried forward except for those which have been modified by the terms of this Award and any prior agreements between the parties.

XI. CERTIFICATION

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

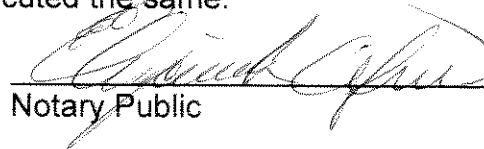
Dated: June 23, 2024
Brooklyn, New York



Ira Cure

State Of New York }
County of Kings }

On this 23rd day of June 2024 before me personally came and appeared Ira Cure to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me he executed the same.



Notary Public

ELIZABETH ORFAN
Notary Public, State of New York
No. 02OR4976601
Qualified in Kings County
Commission Expires April 23, 2027