

**NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION**

**Case No: IA-2021-005**

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

**PASSAIC COUNTY SHERIFF'S OFFICE,**

**PUBLIC EMPLOYER**

**and**

**POLICEMEN'S BENEVOLENT ASSOCIATION, LOCAL 197,**

**EMPLOYEE ORGANIZATION**

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**REMAND AWARD**

**BEFORE:**

**Ira Cure, Esq.  
Interest Arbitrator**

**APPEARANCES**

For the Employee Organization:

Frank M. Crivelli, Esq.  
Donald C. Barbati, Esq.  
Crivelli & Barbati, L.L.C.

For the Public Employer:

Lester E. Taylor, Esq.  
David I Solomon, Esq.  
Florio Perrucci Steinhardt  
Cappelli Tipton & Taylor, L.L.C.

## I. PROCEDURAL BACKGROUND

On September 3, 2020, the Policemen's Benevolent Association, Local 197 on behalf of the unit of County Correctional Officers and Correctional Officer Recruits ("Local 197" or "Union") employed by the Passaic County Sheriff's Office filed a Petition to Initiate Compulsory Interest Arbitration ("Petition") with New Jersey's Public Employment Relations Commission ("PERC"). By filing the Petition, Local 197 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 County of Passaic ("County"). On September 16, 2020, I was appointed to serve as interest arbitrator.

Pursuant to *N.J.S.A. 34:13-16(b)(3)*, on October 8, 2020, I conducted a mediation session with the parties to "effect a voluntary resolution of the impasse." At the conclusion of the October 8, 2020 mediation session, it was determined that the impasse should proceed to interest arbitration. I conducted arbitration hearings on October 27, 2020, and October 29, 2020. The hearings were conducted via Zoom teleconferencing.

Local 197 offered the testimony of: (1) Union President, Correctional Police Officer John Welsh; (2) Donald Barbati, Esq.; and (3) municipal finance, budgeting, property tax and local government policy and practice expert, Dr. Raphael Caprio. The County offered the testimony of: (1) self-insurance expert, Michael Atkinson; (2) County Finance Director Richard Cahill; (3) division head for payroll and pensions Jason Mitchell; and (4) County Undersheriff Joseph Dennis.

On December 21, 2020, I issued the interest arbitration award ("Initial Award"). On January 12, 2021, The Union appealed the Initial Award on the following grounds: 1) that

the Initial Award failed to properly consider and/or apply the criteria specified in *N.J.S.A.* 34:13a-16(g)(6) and violated the standards set forth in *N.J.S.A.* 2a:24:-8 and 9.

On March 15, 2021, the Public Employment Relations Commission (“Commission”) issued an Order remanding the proceeding to me. The Commission’s Order provides:

- A. The interest arbitration award is remanded for the arbitrator to provide clarification as to the cost-out of the award of the net annual economic changes including the annual costs of all base salary items in compliance with *N.J.S.A.* 34:13a-16(d) and *N.J.S.A.* 19:16-5.9(c).
- B. The interest arbitrator shall provide the cost-out and clarification described in Section A of this Order within 60 days of receipt of this decision.
- C. We retain jurisdiction. Following receipt of the arbitrator’s remand award, the [Union] shall have seven days to file a supplementary brief with the Commission and limited to responding to the cost-out and clarification provided by the arbitrator on remand. The [County] shall then have seven days from receipt of the [Union’s] supplementary brief limited to five pages and limited to responding to the cost-out and clarification provided by the arbitrator on remand.

Following the issuance of the Commission’s Order, on March 19, 2021, I conducted a conference call with counsel for the County and the Union and urged the parties to try to resolve the issues. These discussions were unsuccessful. It was determined that the parties would submit proposed cost-outs of the award on or before April 16, 2021, and that the parties would have the opportunity to respond to the proposed cost-outs by April 23, 2021.

Frank M. Crivelli, Esq., Donald C. Barbati, Esq. and Michael DeRose of the firm of Crivelli & Barbati, L.L.C. represented the Union. Lester E. Taylor, Esq. and David I.

Solomon, Esq. of the firm of Florio, Perrucci, Steinhardt, Cappelli Tipton and Taylor, L.L.C. represented the County.

Both parties were afforded a full opportunity to submit evidence, and present arguments in support of their respective positions. The evidence adduced and the positions and arguments set forth by the parties have been fully considered in preparation and issuance of this Remanded Interest Arbitration Decision and Award.

## II. SUMMARY OF THE INITIAL AWARD

As noted, PERC's Order directs me to cost-out the Initial Award. The Initial Award provided for the following term and salaries:

### **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

### **Article 7 – Salaries:**

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 and retroactive to January 1, 2019 or July 1, 2019<sup>1</sup>, employees will move one (1) step on the Salary Guide and the top step of the salary guide shall be increased by one percent (1%). For all employees that are currently "off guide", each employee shall receive a one percent (1%) cost of living increase in his/her salaries.
- Effective and retroactive to January 1, 2020 or July 1, 2020, employees will move one (1) step on the Salary Guide and the top step of the salary guide shall be increased by one percent (1%). For all employees that are currently "off guide", each employee shall receive a one percent (1%) cost of living increase in his/her salaries.
- Effective and retroactive to January 1, 2021 or July 1, 2021, employees will move one (1) step on the Salary Guide and the top step of the salary guide shall be

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<sup>1</sup> Under the terms of the CNA, step movement occurs twice a year depending on the anniversary date of the employee.

increased by one percent (1%). For all employees that are currently “off guide”, each employee shall receive a one percent (1%) cost of living increase in his/her salaries.

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

#### SCHEDULE A

STEP	2018 BASE YEAR	2019	2020	2021	2022	2023
1	\$38,301	\$38,301	\$38,301	\$38,301	\$38,301	\$38,301
2	\$41,397	\$41,397	\$41,397	\$41,397	\$41,397	\$41,397
3	\$47,420	\$47,420	\$47,420	\$47,420	\$47,420	\$47,420
4	\$53,443	\$53,443	\$53,443	\$53,443	\$53,443	\$53,443
5	\$60,807	\$60,807	\$60,807	\$60,807	\$60,807	\$60,807
6	\$67,708	\$67,708	\$67,708	\$67,708	\$67,708	\$67,708
7	\$75,607	\$75,607	\$75,607	\$75,607	\$75,607	\$75,607
8	\$84,735	\$84,735	\$84,735	\$84,735	\$84,735	\$84,735
9	\$92,513	\$92,513	\$92,513	\$92,513	\$92,513	\$92,513
10	\$98,175	\$99,156.75	\$100,148.30	\$101,498.8	\$102,161.3	\$103,182.9

The wage increases for those at the top-step shall be applied as follows:

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.

### **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:
  - 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;
  - 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;

### III. 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).

**IV. COST OUT AND CLARIFICATION OF THE NET ECONOMIC CHANGES PURSUANT TO N.J.S.A. 34:13a-16(d) and N.J.S.A. 19:16-5.9(c).**

**A. The Statutory Criteria as Applied to the Initial Award**

The Commission has directed me to cost out and clarify the economic provisions of the Initial Award. In the Initial Award, having reviewed the economic proposals of both the Union and the County, I concluded that neither the proposal of the Union nor of the County should be granted in its entirety, however, I largely granted the County's wage proposal. Initially, I shall discuss the reasoning underlying the Initial Award.

The Union's final wage proposal was:

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.**

	2018	2019	2020	2021	2022	2023
<b>Step</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	\$47,420	\$47,420	\$47,420	\$47,420	\$47,420	\$47,420
Step 4	\$53,443	\$53,443	\$53,443	\$53,443	\$53,443	\$53,443
Step 5	\$60,807	\$60,807	\$60,807	\$60,807	\$60,807	\$60,807
Step 6	\$67,708	\$67,708	\$67,708	\$67,708	\$67,708	\$67,708
Step 7	\$75,607	\$75,607	\$75,607	\$75,607	\$75,607	\$75,607
Step 8	\$84,735	\$84,735	\$84,735	\$84,735	\$84,735	\$84,735
Step 9	\$92,513	\$92,513	\$92,513	\$92,513	\$92,513	\$92,513
Step 10	\$98,175	\$101,365	\$104,660	\$108,061	\$111,573	\$115,199

The County’s final wage proposal was:

- **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 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.

- Effective January 1, 2021, employees will not move on the Salary Guide. Those employees at maximum will receive a one percent (1%) cost of living adjustment. Employees shall receive \$3,000 on top of base salary effective July 1, 2021.

- Effective January 1, 2022, employees will not move on the Salary Guide. Those employees at maximum will receive a one percent (1%) cost of living adjustment. Employees shall receive \$3,000 on top of base salary effective July 1, 2022.

My Award provided for the following change in salary:

**Article 7 – Salaries:**

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 and retroactive to January 1, 2019 or July 1, 2019<sup>2</sup>, employees will move one (1) step on the Salary Guide and the top step of the salary guide shall be increased by one percent (1%). For all employees that are currently “off guide”, each employee shall receive a one percent (1%) cost of living increase in his/her salaries.
- Effective and retroactive to January 1, 2020 or July 1, 2020, employees will move one (1) step on the Salary Guide and the top step of the salary guide shall be increased by one percent (1%). For all employees that are currently “off guide”, each employee shall receive a one percent (1%) cost of living increase in his/her salaries.
- Effective and retroactive to January 1, 2021 or July 1, 2021, employees will move one (1) step on the Salary Guide and the top step of the salary guide shall be increased by one percent (1%). For all employees that are currently “off guide”, each employee shall receive a one percent (1%) cost of living increase in his/her salaries.

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<sup>2</sup> Under the terms of the CNA, step movement occurs twice a year depending on the anniversary date of the employee.

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

**SCHEDULE A**

STEP	2018 BASE YEAR	2019	2020	2021	2022	2023
1	\$38,301	\$38,301	\$38,301	\$38,301	\$38,301	\$38,301
2	\$41,397	\$41,397	\$41,397	\$41,397	\$41,397	\$41,397
3	\$47,420	\$47,420	\$47,420	\$47,420	\$47,420	\$47,420
4	\$53,443	\$53,443	\$53,443	\$53,443	\$53,443	\$53,443
5	\$60,807	\$60,807	\$60,807	\$60,807	\$60,807	\$60,807
6	\$67,708	\$67,708	\$67,708	\$67,708	\$67,708	\$67,708
7	\$75,607	\$75,607	\$75,607	\$75,607	\$75,607	\$75,607
8	\$84,735	\$84,735	\$84,735	\$84,735	\$84,735	\$84,735
9	\$92,513	\$92,513	\$92,513	\$92,513	\$92,513	\$92,513
10	\$98,175	\$99,156.75	\$100,148.30	\$101,498.8	\$102,161.3	\$103,182.9

Under the Initial Award there was step movement in each year of the contract, and the top step increased by 1% in each year, and those off-guide also received a 1% salary increase. Employees who move through the salary guide below the top step will receive annual wage increases ranging from \$3,096 to \$9,128. Those moving from the penultimate ninth step to the tenth or top step will receive the following wage increases: \$6,643.75 in 2019; \$7635.3 in 2020; \$8,985.90 in 2021; \$9648.30 in 2022; and

\$10,669.90 in 2023. In addition, those off-guide will receive a wage increase of 1% in each year of the CNA.

During the hearing, the Union consistently pointed to the history of collective bargaining in the County and noted that its contracts have always been closely tied to the wage increases of the other collective bargaining units: Local 197A which represents the Superior Correction officers, Local 286A which represents the Superior Sheriff Officers and Local 286 the rank-and-file Sheriff Officers. These four bargaining units had traditionally bargained in tandem, and the terms of their respective CNAs were similar if not identical. In 2007, all four units petitioned for an interest arbitration award in the same proceeding. The contract that resulted from that proceeding expired on December 31, 2014. For the period January 1, 2015 to December 31, 2018, all four bargaining units bargained separately, but each of the four unions reached similar contracts. The most recent CNA for all four bargaining units expired on December 31, 2019. However, of the four bargaining units only Local 286A was able to reach a voluntary agreement with the County. The CNA between Local 286A and the County was ratified on or about January 30, 2020. This agreement was reached before the effects of the COVID-19 Pandemic arrived in the United States. Subsequently, the remaining three bargaining units petitioned PERC and requested interest arbitration.

At the time I issued the Initial Award in this proceeding, I also issued an interest arbitration award on behalf of the Superior Officers represented by Local 197A. In that Award, I found that the Superior Officers in Local 197A were directly comparable to the Superior Officers in Local 286A and I awarded that unit a wage increase, which was identical to the Local 286A bargaining unit. The wage award stated:

- Effective and retroactive to January 1, 2019, employees will move one (1) step on the Salary Guide, and all of those employees at maximum will receive a four percent (4%) cost of living adjustment in his/her salaries.
- Effective and retroactive to January 1, 2020, employees will move one (1) step on the Salary Guide, and all of those employees at maximum will receive a four percent (4%) cost of living adjustment in his/her salaries.
- Effective and retroactive to January 1, 2021, employees will move one (1) step on the Salary Guide, and all of those employees at maximum will receive a three percent (3%) cost of living adjustment in his/her salaries.
- Effective and retroactive to January 1, 2022, employees will move one (1) step on the Salary Guide, and all of those employees at maximum will receive a three percent (3%) cost of living adjustment in his/her salaries.
- Effective and retroactive to January 1, 2023, employees will move one (1) step on the Salary Guide, and all of those employees at maximum will receive a three percent (3%) cost of living adjustment in his/her salaries.<sup>3</sup>

In addition, Local 286 also petitioned for interest arbitration. Following the issuance of my Initial Award, Arbitrator Winters issued his award in *IMO Passaic County Sherriff's Office and PBA, Local 286, IA-2021-004*. Arbitrator Winters awarded:

- Effective and retroactive to January 1, 2019, employees will move one (1) step on the Salary 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% increase in his/her salaries.
- Effective and retroactive to January 1, 2020, employees will move one (1) step on the Salary 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% increase in his/her salaries.
- Effective and retroactive to January 1, 2021, employees will move one (1) step on the Salary 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% increase in his/her salaries.

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<sup>3</sup> The Wage increases awarded to Local 197A are significantly higher than the wage increases awarded to Local 197. However, the impact increases are significantly reduced in a superior officers' bargaining unit because there is only limited step movement within the ranks of superior officers.

- Effective and retroactive to January 1, 2022, employees will move one (1) step on the Salary 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% increase in his/her salaries.
- Effective and retroactive to January 1, 2023, employees will move one (1) step on the Salary 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% increase in his/her salaries.<sup>4</sup>

In making its salary proposal in this proceeding, Local 197 also asked me to recognize that because of the 2% Hard Cap coupled with the required health insurance payments mandated by Chapter 78, the members of the bargaining unit have seen their net wages reduced. As part of the stipulations in this proceeding the parties agreed to eliminate a costly traditional healthcare plan, which Local 197 established would generate significant if unquantifiable savings for the County.

On the other hand, the County asked me to take arbitral notice of the fact that since the Local 286A agreement was reached in January 2020, the County’s economy has been harmed by the COVID-19 Pandemic, resulting in a shortfall in revenues, and an increase in county-wide unemployment.<sup>5</sup>

Among the statutory criteria that I am obligated to examine, is the question of comparability. *N.J.S.A. 34:13-16(g)(2)* provides:

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:

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<sup>4</sup> In light of Arbitrator Winters Award, the Union, over the objection of the County, has asked that I take his Award into consideration in this Remand Award, however, PERC’s Order has directed me to cost-out the Initial Award. Therefore, I will not include Arbitrator Winters Award in my analysis.

<sup>5</sup> With recent improvements in the national economy, and expected financial support from the Federal government, the actual shortfall in revenue may not be as dire as predicted by the County, however, the record is closed, and additional evidence of the County’s finances are not ripe for consideration.

- (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

As Arbitrator Mastriani stated:

the first step is to determine whether there is a presence of internal settlements that either follow strict terms or terms that are so reasonably consistent with one another that an award must fall within that reasonable consistency. If a "pattern" is not found, the arbitrator is nevertheless required to consider evidence of internal prior settlements under the criterion of internal comparability. [N.J.S.A. 34:13A-16(g)(2)]. If a pattern is found, the arbitrator must either find that there should be adherence or explain why a deviation from the pattern is justified.

I/M/O Township of West Windsor and P.B.A. Local Number 271, Docket No.: IA-2019-014 (2019).

Unlike the 197A bargaining unit, Local 197 is not directly comparable to the Local 286A bargaining unit. This is because both Local 197A and Local 286A represent superior officers, who work in smaller units, and whose contracts provide for only limited step



movement. So, while I awarded the identical wage increases to Local 197A, that the County voluntarily agreed to with Local 286A, I found that there were too many differences between Local 197 and Local 286A which made comparison difficult. Local 197 recognized the differences and adjusted its proposal accordingly<sup>6</sup>.

I concluded that comparisons to private sector employees in Passaic County were not relevant to this proceeding since the members of the Local 197 bargaining unit have more difficult and dangerous jobs than do the majority of private sector employees and there is no direct comparison. I also accepted, Local 197's argument that there is only limited utility in comparing the members of the Local 197 bargaining unit with Passaic County civilian employees. As Local 197 noted the civilian employee bargaining units were not governed by the 2% Hard Cap, and the circumstances governing the negotiation of the various CNAs are difficult to parse. Each bargaining unit makes its own tradeoffs. I recognized that the members of the Local 197 bargaining unit are facing additional stresses because of the COVID-19 Pandemic. I also noted that, members of the Local 197 bargaining unit, in comparison to other rank and file correction officers working in county jails in New Jersey, rank sixth from the top when it comes to the top salary step, and that there are only four counties where the top step is less than Passaic County.

I also took notice of the fact that both the County and Local 197 agreed to eliminate the Traditional Healthcare Plan which will engender significant savings for both the County and the members of Local 197 bargaining unit. However, I found that while the savings that will be experienced by the members of the Local 197 bargaining unit are

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<sup>6</sup> As noted, I did not have the benefit of Arbitrator Winters award.

quantifiable because their Chapter 78 contributions are reduced, the County's savings because it is self-insured, are more speculative.

In addition, I considered the revenue shortfalls projected by the County. Dr. Caprio's testimony supported the Union's position that the County is in relatively good financial shape and could raise funds under the tax levy cap. I also found that that in the short-term revenue collections would be reduced and determined that the County could experience a shortfall in collections.

In balancing the various issues, I concluded that the County's final offer with significant modifications was more reasonable. The County's final proposal agreed to a five-year term with either step movement or 1 or 2% wage increases for those at the top step or off guide. Whereas the Local 197's final proposal sought a five-year term with step movement and a 3.25% increase for each year of the contract. I concluded that step movement is important to the continuity and stability of employment. I also concluded that those at the top step and those who are off guide are entitled to a raise. Accordingly, I awarded the following:

- Effective and retroactive to January 1, 2019 or July 1, 2019<sup>7</sup>, employees will move one (1) step on the Salary Guide and the top step of the salary guide shall be increased by one percent (1%). For all employees that are currently "off guide", each employee shall receive a one percent (1%) cost of living increase in his/her salaries.
- Effective and retroactive to January 1, 2020 or July 1, 2020, employees will move one (1) step on the Salary Guide and the top step of the salary guide shall be increased by one percent (1%). For all employees that are currently "off guide", each employee shall receive a one percent (1%) cost of living increase in his/her salaries.
- Effective and retroactive to January 1, 2021 or July 1, 2021, employees will move one (1) step on the Salary Guide and the top step of the salary guide shall be

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<sup>7</sup> Under the terms of the CNA, step movement occurs twice a year depending on the anniversary date of the employee.

increased by one percent (1%). For all employees that are currently "off guide", each employee shall receive a one percent (1%) cost of living increase in his/her salaries.

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

Under this Award with step movement in each year of the agreement and the modest increase of 1% for those at the top step and off-guide for each year of the CNA, the base salary of the bargaining unit will increase from \$24,420,356.60 to \$26,307,642.97 for an average annual increase of 1.52%.

Although I have discussed some of the salient statutory criteria, I will now summarize the requirements of *N.J.S.A. 34:13-16(g)*. The primary statutory requirement is that the Award comports with the interests and welfare of the public. *N.J.S.A. 34:13-16(g)(1)*. This requirement must be read in conjunction with the remaining subsections of *N.J.S.A. 34:13-16(g)*.

As noted, in making this award, I have considered the financial difficulties that the County is projected to face because of the COVID-19 Pandemic.

I have also discussed the comparative financial impact of this award, and I recognize that members of the Local 197 bargaining unit will no longer have salaries directly comparable to the members of the Local 286A bargaining unit. Nonetheless, the

members of the bargaining unit compare favorably with other correction officers employed in other Counties in the State of New Jersey.

In addition, the members of the Local 197 bargaining unit are receiving significantly higher wage increases than Passaic County's civilian employees covered by collective negotiations agreements.

Regarding the lawful authority, since I am largely adopting the County's proposal, there does not seem to be any lawful impediment to implementing this proposal. This Award is based on the County's final proposal, and I would note that the County has voluntarily agreed to a more generous package for the members of the Local 286A bargaining unit. I am also cognizant that Local 197 has vigorously argued that the sunseting of the 2% Hard Cap and the effects of Chapter 78 have freed arbitrators from the restrictions previously placed on their awards. However, the elimination of the Hard Cap and the effects of Chapter 78 do not eliminate the need to apply the statutory criteria, nor does the elimination of the Hard Cap require an interest arbitrator to enhance wage improvements to make up for the smaller wage increases applied during the period when the Hard Cap was in effect or because members of the Local 197 bargaining unit had to make significant contributions for their health insurance.

Regarding the cost-of-living criteria, in 2018-2019, the cost-of-living in Northern New Jersey, increased 1.7%, and for the twelve months ending November 2020, the cost-of-living increased 1.4% - a difference that can be attributed to the COVID-19 Pandemic. I concluded that this Award would allow the members of the Local 197 bargaining unit to keep pace with cost-of living changes.

Finally, I concluded that this Award, while not providing all that Local 197 asked for, will not have a deleterious impact on the stability and continuity of employment. There is no evidence in the record showing that employees in the Local 197 bargaining unit are seeking employment elsewhere or that they are retiring in larger numbers than usual.

**B. The Cost Out**

PERC'S Remand Order directed me to cost-out the Initial Award. As such, I asked both parties to provide a cost-out. The County has calculated the cost of my Award as follows:

Year	Total Payroll	Top Step	Cost	Percentage Increase
Base year 2018	\$23,186,793.00	\$98,175		
2019	\$23,819,519.00	\$99,157	\$632,726	2.729%
2020	\$24,848,389.00	\$100,149	\$1,028,870	4.319%
2021	\$25,858,695.00	\$101,150	\$1,010,306	4.066%
2022	\$26,780,560.00	\$102,162	\$921,865	3.565%
2023	\$27,730,805.00	\$103,184	\$950,245	3.548%

The County calculates the Award as having an average annual increase of 3.645%.

The Union has calculated the cost of my Award as follows:

Year	Total Payroll	Top Step	Cost	Percentage Increase
2018 Base Year	\$24,420,356.60	\$98,175		
2019	\$24,440,094.80	\$99,157	\$19,738.80	0.08%
2020	\$24,876,907.39	\$100,149	\$436,812.59	1.79%
2021	\$23,769,957.68	\$101,150	(\$1,106,949.71)	(4.45%)
2022	\$24,880,401.49	\$102,162	\$1,110,443.81	4.67%
2023	\$26,097,697.73	\$103,184	\$1,217,291	4.89%

There are significant differences between the cost-outs submitted by the Union and the County. Among the differences between the two cost-outs is the total payroll in the base year. The County contends that the total cost of payroll in the 2018 base year is \$23,186,793, while the Union calculates the cost of payroll to be \$24,420,356.60; a difference of \$1,233,563.60. In addition, there are significant differences in the annual costs of the increase. The Union calculates that the cost of the increases over the life of the CNA would be 6.98%. The County calculates that the cost of the increases over the life of the CNA would be 18.227%. The Union contends that the County failed to properly take into account the salaries of officers who are off guide.

A major difference between the parties' calculations concerns the calculation of breakage. The difference is significant. The County has urged me to follow PERC'S decision in *I/MO Matter of the Borough of New Milford and P.B.A. LOCAL 83, P.E.R.C. No.2012-53*. However, the *New Milford* decision arose under the now expired 2% hard-

cap. The methodology under *New Milford* specifically excluded breakage from an Interest arbitrator's calculations. With the elimination of the 2% hard cap, PERC has determined that a breakage analysis is discretionary with the arbitrator. *IMO Hopewell Township and Hopewell P.B.A. Local 342*, Docket No. IA-2019-016, P.E.R.C. NO. 2020-10 (August 15, 2019). PERC has recently upheld an award in which breakage was specifically taken into account by the arbitrator who determined that recognizing breakage would provide "a more precise calculation of wage costs." *IMO Mercer County Prosecutor's Office and PBA Local 339*, IA-2020-008 (April 29, 2021).

The County points out other differences between its calculations and the calculations of the Union. The County contends that the Union has failed to include two employees in its calculations. The County notes that bargaining unit member Christopher Petrullo ("Petrullo") is listed as "Retired Medical Leave 7/8/2020." However, the County maintains that Officer Petrullo remains employed by the County and will earn \$125,057 in 2021. Assuming that Officer Petrullo remains employed by the County including longevity pay and a differential Officer Petrullo will earn \$125,702.14 in 2022, and \$126,959.16 in 2023. Similarly, the County contends that the Union erroneously listed Christopher Bednarz ("Bednarz") as having resigned. The County maintains that Officer Bednarz remains on the payroll and is earning \$63,847 in 2021.<sup>8</sup> This includes his differential on a base salary of \$60,807. Assuming that Officer Bednarz remains employed by the County he would earn \$73,990 in 2022, and \$81,359 in 2023. This last sum includes a differential and longevity pay of \$1,627.18. Finally, the County contends that the employees at Step 4 of the Salary Guide are earning \$53,443 not \$52,443 as the

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<sup>8</sup> I came to this conclusion by locating employees at the same step of the scattergram and tracing their salary progression.

Union set forth in its cost out. This means that in 2019, the Union's cost-out was reduced by \$5000, and in 2020, the Union's cost-out was reduced by \$18,000.<sup>9</sup>

On balance, I conclude that the Union's calculations which includes breakage is more accurate. However, the County has made valid points regarding the above noted deficiencies in the Union's cost-out and therefore I have revised the Union's cost-out as follows:

Year	Total Payroll	Top Step	Cost	Percentage Increase
2018 Base Year	\$24,420,356.60	\$98,175		
2019	\$24,445,094.80	\$99,157	\$24,738.20	0.10%
2020	\$24,894,907.39	\$100,149	\$449,812.59	1.84%
2021	\$23,836,957.68	\$101,150	(\$1,105,794.71)	(4.44%)
2022	\$25,080,093.63	\$102,162	\$1,243,135.95	5.21%
2023	\$26,307,642.97	\$103,184	\$1,227,549.34	4.89%

Thus, by using the Union's calculations as modified the cost of the contract is 7.6% over the life of the CNA and not 6.98% as originally calculated by the Union. This equals a 1.52 % average increase for each year of the CNA. Although the inclusion of breakage reduces the total payroll in 2021, each member of the bargaining unit will be entitled to step movement or an increase of 1% for those at the top step and for those off guide, for each year of the CNA.

<sup>9</sup> I came to this conclusion by reviewing the scattergram and locating employees whose pay was improperly listed.



## V. AWARD

Pursuant to my discussion set forth above, and in the Initial Award dated December 21, 2020 the CNA shall be amended as follows:

### 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

### Article 3 – Grievances

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.

### Article 5(B) – Work Week-Hours of Work

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

### Article 7 – Salaries:

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 and retroactive to January 1, 2019 or July 1, 2019<sup>10</sup>, employees will move one (1) step on the Salary Guide and the top step of the salary guide shall be increased by one percent (1%). For all employees that are currently "off guide", each employee shall receive a one percent (1%) cost of living increase in his/her salaries.
- Effective and retroactive to January 1, 2020 or July 1, 2020, employees will move one (1) step on the Salary Guide and the top step of the salary guide shall be increased by one percent (1%). For all employees that are currently "off guide", each employee shall receive a one percent (1%) cost of living increase in his/her salaries.
- Effective and retroactive to January 1, 2021 or July 1, 2021, employees will move one (1) step on the Salary Guide and the top step of the salary guide shall be increased by one percent (1%). For all employees that are currently "off guide",

<sup>10</sup> Under the terms of the CNA, step movement occurs twice a year depending on the anniversary date of the employee.

each employee shall receive a one percent (1%) cost of living increase in his/her salaries.

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

### SCHEDULE A

STEP	2018 BASE YEAR	2019	2020	2021	2022	2023
1	\$38,301	\$38,301	\$38,301	\$38,301	\$38,301	\$38,301
2	\$41,397	\$41,397	\$41,397	\$41,397	\$41,397	\$41,397
3	\$47,420	\$47,420	\$47,420	\$47,420	\$47,420	\$47,420
4	\$53,443	\$53,443	\$53,443	\$53,443	\$53,443	\$53,443
5	\$60,807	\$60,807	\$60,807	\$60,807	\$60,807	\$60,807
6	\$67,708	\$67,708	\$67,708	\$67,708	\$67,708	\$67,708
7	\$75,607	\$75,607	\$75,607	\$75,607	\$75,607	\$75,607
8	\$84,735	\$84,735	\$84,735	\$84,735	\$84,735	\$84,735
9	\$92,513	\$92,513	\$92,513	\$92,513	\$92,513	\$92,513
10	\$98,175	\$99,156.75	\$100,148.30	\$101,498.8	\$102,161.3	\$103,182.9

The wage increases for those at the top-step shall be applied as follows:

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.

### **Article 8 – Increments and Longevity**

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

- VI. 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.
- VII. 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.
- VIII. 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.
- IX. Longevity pay shall be determined by length of employment as follows:
  - 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;
  - 10% of base pay at the beginning of twenty-five years.
- X. ~~\*As of January 1, 1992,~~ Length of employment for all new Employees will be determined by length of service with the County of Passaic.
- XI. 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)

### **Article 10(D) – Vacation, Sick, Personal, and Death Bereavement 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.

### **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 Memorandum of Agreement.

### **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.

### **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.

### **Other Proposals**

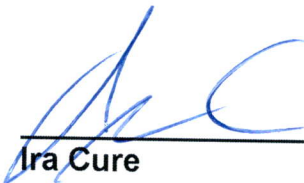
**All proposals by the Policemen's Benevolent Association, Local 197 and Passaic County not awarded herein are denied and dismissed. All provisions of the existing Collectively Negotiated Agreements shall be carried forward except**

for those which have been modified by the terms of this Award and any prior agreements between the parties.

**VI. 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: May 13, 2021  
Brooklyn, New York



Ira Cure

State Of New York }  
County of Kings }

On this 13th day of May 2021 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, 2023