

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

INTERNATIONAL ASSOCIATION OF :  
FIREFIGHTERS LOCAL 840 :  
 :  
v. : Case No. PF-C-16-46-E  
 :  
LARKSVILLE BOROUGH :

**PROPOSED DECISION AND ORDER**

On May 2, 2016, the International Association of Firefighters Local 840 (Association or Union) filed with the Pennsylvania Labor Relations Board (Board) a charge of unfair labor practices, under the Pennsylvania Labor Relations Act (PLRA), as read **in pari materia** with Act 111, and therein alleged that Larksville Borough (Borough) violated Section 6(1)(e) of the PLRA by refusing to sign a contract that Borough Council publicly voted to accept because the contract allegedly contained a previously negotiated minimum manning provision, which was never discussed during contract negotiations. On May 17, 2016, the Secretary of the Board issued a letter refusing to process the charge unless the Union amended its charge to include the date it learned that the Borough refused to sign the contract. On May 25, 2016, the Union filed an amended charge which included the date that the Union learned of the Borough's refusal to sign the contract.

On June 15, 2016, the Secretary of the Board issued a complaint and notice of hearing directing that a hearing be held on August 19, 2016, in Harrisburg, Pennsylvania. On July 12, 2016, I granted the Association's request for a continuance and rescheduled the hearing for October 28, 2016. During the hearing on that date, both parties in interest were afforded a full and fair opportunity to present testimonial and documentary evidence and to cross-examine witnesses. Both parties elected to present oral argument at the close of the hearing in lieu of filing post-hearing briefs. I left the record open for the submission of an audio recording, designated as Borough Exhibit 1. The Board received the notes of testimony on November 14, 2016. The Board received Borough Exhibit 1 on December 7, 2016.

The examiner, based upon all matters of record, makes the following:

**FINDINGS OF FACT**

1. The Borough is a public employer and political subdivision pursuant to Act 111 and the PLRA. (N.T. 38)
2. The Association is a labor organization pursuant to Act 111 and the PLRA. (N.T. 38)
3. The Union and the Borough were parties to a collective bargaining agreement that was effective from January 1, 2012 through December 31, 2015 (CBA). The parties are currently operating under the status quo of the expired CBA. (N.T. 13-14; Complainant's Exhibit 1)
4. Article 21 of the CBA provides as follows: "**Section E. Safety Staffing.** The vehicle and equipment safety manning complements, which are currently maintained, shall continue to be maintained at those levels." (Complainant's Exhibit 1, § E)
5. Article 26 of the CBA provides for the wages of the Chief Engineer (i.e., firefighter) and two other engineers. (N.T. 14; Complainant's Exhibit 1, Article 26, § A)
6. George Tomasak is the President of Local 840. On May 28, 2015, Mr. Tomasak sent a letter to Borough Council President Joseph Romanoskey requesting the commencement of collective bargaining negotiations pursuant to Act 111 for the firefighters. (N.T. 41; Complainant's Exhibit 12)

7. On August 31, 2015, Union negotiator, Thomas Kohn, Esquire, issued an Act 111 impasse letter to Borough Council President, Joseph Romanoskey declaring impasse after thirty days of bargaining with no contract. In the letter, Mr. Kohn also informed the Borough that the Union selected him as its partial arbitrator, asked the Borough to select its partial arbitrator and asked to have that person contact Mr. Kohn. Also, attached to the letter were the Union's issues in dispute. (N.T. 16; Complainant's Exhibit 2)

8. The Specification of Issues in Dispute, submitted to the Borough by the Union provided, in relevant part, as follows:

1. UNAFFECTED PROVISIONS

Except as specifically amended by these Specifications, all terms and conditions of the January 1, 2012 to December 31, 2015 collective bargaining agreement between Fire Fighters Local 840 IAFF (Larksville Fire Fighters) and the Borough of Larksville (hereinafter the "collective bargaining agreement") shall remain in full force and effect for the duration of a collective bargaining agreement that shall first become effective January 1, 2016.

2. DURATION

- . . . .
- DISABILTIY AND SICK LEAVE
- . . . .
- HOLIDAYS
- . . . .
- SALARIES
- . . . .
- NEW HIRES

(Complainant's Exhibit 2)

9. The Union's salary proposals contained in the Specifications of Issues in Dispute explicitly included salary proposals for the Chief and two fire fighters, which was the current staffing at the time. (N.T. 20; Complainant's Exhibit 2)

10. Joel Barras, Esquire, contacted Mr. Kohn and informed Mr. Kohn that he would be acting as the Borough's collective bargaining representative and thereafter engaged in negotiations with Mr. Kohn. Negotiations were never face-to-face meetings. Negotiations were telephone conversations and emails. (N.T. 16-17)

11. On November 5, 2015, Mr. Kohn memorialized his telephone offer to Mr. Barras. The offer addressed only uniform allowance, sick leave and salaries. (N.T. 18-19; Complainant's Exhibit 3)

12. Changing the minimum manning provisions of the expired CBA was not included in the issues in dispute, any of the Union's proposals or any of the Borough's counterproposals at any time during negotiations. At no time did the Borough provide the Union with its own issues in dispute. (N.T. 19-21; Complainant's Exhibits 4,5,6,7&8)

13. During negotiations, Mr. Barras and Mr. Kohn both expressed their understanding that any proposals or tentative agreements would have to be ratified and approved by Borough Council as a package. (N.T. 33; Complainant's Exhibits 5,6,7&8)

14. Mr. Barras authored and provided a tentative agreement on behalf of the Borough. The tentative agreement lists only those matters negotiated and agreed to by the parties and does not address changes to the manning provisions in the expired CBA. This tentative agreement was subject to Borough Council ratification. (N.T. 27-28; Complainant's Exhibit 9)

15. Borough Council convened for a public meeting on March 15, 2016. The meeting minutes and the audio recording for the March 15, 2016 meeting provide that Borough Solicitor John Haley, Esquire, was present at the meeting and provided a report to Council wherein he expressly stated that "Fire union collective bargaining will be discussed at executive session." The minutes and audio recording also reveal that Borough Council adjourned into executive session and returned to reconvene the public meeting. After reconvening following executive session, the minutes provide, under new business, in relevant part, as follows: "Motion to accept Fire Dept. Contract and settle grievance by Mr. Austra, second Mr. Gimble. Motion carried." (N.T. 58, 67; Complainant's Exhibit 10; Borough Exhibit 1)

16. Neither the minutes nor the audio recording show that anyone on Borough Council conditioned approval of the tentative agreement on Solicitor Haley's review and approval after Council's approval. The audio recording corroborates the meeting minutes showing that Council approved the Teamsters union contract for another bargaining unit. The audio recording also contains a statement from an unidentified Council Member, before Council voted, that approval of the Teamsters contract was conditioned upon review by the Borough Solicitor. (Complainant's Exhibit 10; Borough Exhibit 1)

17. The audio recording also demonstrates that, after Council voted to approve the Teamsters contract and the Fire contract was next for approval, at least one Council Member was confused and thought that Council already approved the Fire contract when it was the Teamsters contract that Council had already approved. (Borough Exhibit 1)

18. The audio recording of the March 15, 2016 Borough Council meeting has one Council member making a motion to accept the Fire Department's contract and then the audio recording became inaudible and then went blank. The audio recording contains the sound of someone extracting, overturning and re-engaging a cassette tape. The audio then continues with the conclusion of the public Council meeting.<sup>1</sup> (Borough Exhibit 1)

19. When Council voted to approve the tentative agreement on March 15, 2016, Council Member Austra understood that there were other terms and conditions of employment included in the expired CBA that were not expressly included in the tentative agreement that would remain the same. (N.T. 65-66)

20. After the March 15, 2016 Borough Council public meeting, Mr. Barras informed Mr. Kohn that Council approved the agreement, and Mr. Tomasak prepared a consolidated collective bargaining agreement including the minimum manning provision, and all other undisputed provisions, from the expired CBA. (N.T. 29-30, 39)

21. On April 21, 2016, Mr. Barras informed Mr. Tomasak that Council would not sign the agreement because it contained a minimum manning provision. At no time before April 21, 2016, were the minimum manning provisions discussed. (N.T. 29-32)

22. The Council Members have a practice of approving contracts after the Borough Solicitor approves them. Council has never before approved a contract without first obtaining the Solicitor's approval. The Council members knew there was an expired CBA when they reviewed the tentative agreement. (N.T. 75-76; Complainant's Exhibit 11)

23. The Borough has not implemented any of the terms of the tentative agreement. (N.T. 79)

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<sup>1</sup> I am suspicious of the fact that there is an audio recording of the tape being extracted, overturned and restarted when that very cassette tape recording the meeting was itself unable to record any audio during its own extraction. There is no evidence or claim of a backup cassette tape or secondary recording device. But, if there were a secondary recording device, it would have continued recording the Council Members at the meeting. It appears to be a sound effect dubbed into the recording at a later time, and the recording appears to have been deliberately altered. I also find it suspect that the individual supposedly operating the tape machine did not stop Council members from talking until restarting the tape or ask Council to repeat what was said while the tape was not recording. For this reason, I considered disregarding the audio recording in its entirety, however, the Association has not objected to the recording. Accordingly, I have made findings based on the audio recording.

## DISCUSSION

The Borough argues that there never was a ratification vote because Council placed a condition of subsequent approval on its vote and a subsequent vote would have to be taken during the next Council meeting. (N.T. 85, 108) The Borough maintains that Council is not bound by any ratification vote when the ratification vote is expressly made contingent on some other event, like the Solicitor's approval. (N.T. 92). The Borough asserts that "it had a ratification vote that had a caveat . . . . [i]t had a condition. . . . [i]f that condition was not met, there was no ratification." (N.T. 98). The Borough maintains that "it is not the obligation of the Borough to say ratification is conditioned on [Solicitor approval] or pending ratification." (N.T. 109). The law requires ratification, argues the Borough, and a Council vote conditioned upon subsequent Solicitor approval is not ratification. (N.T. 108-109). The Borough emphasizes that at all times during negotiations, it informed the Union that any agreements required Council ratification which did not occur here. (N.T. 109).

The Union argues that the Borough's bargaining representative did not communicate to the Union at any time that Council's approval of the contract was subsequently subject to the Solicitor's approval until after the condition was not met. (N.T. 99). The Union also contends that the Borough's bargaining representative had the burden of informing the Union of the condition and any planned unilateral changes to the non-mandatory bargaining subjects contained in the expired CBA before the Council's March 15, 2016 public vote. Without such notification, the Union reasonably believed and expected a customary ratification, i.e., a majority vote of Council members at a public meeting, without conditions.

Initially, I have not credited the testimony of Council Member Austra that he, or any other Council member, voted to ratify the Fire contract with the understanding that the ratification was conditioned upon the subsequent approval of Solicitor Haley. The record contains substantial evidence that the Solicitor approves all contracts, but there is no evidence that Council customarily votes to accept those contracts **before** he approves them. The record demonstrates, and logic dictates, that Council normally seeks Solicitor Haley's approval before it takes a ratification vote. To the extent that the audio recording contains a statement from an unidentified Council member that the Teamsters contract would be accepted subject to Solicitor approval, I cannot conclude that the Fire contract was approved subject to the same condition, where there was confusion by at least one Council member as to which contract was being approved. Accordingly, on this record, it would be speculative at best to conclude that Council members wished to apply the same irregular condition to the Fire contract as it did the Teamster contract.

Additionally, the record shows that Council reviewed the Fire contract with its Solicitor during executive session. The speculation further fueling the uncertainty (regarding Council's conditional ratification of the Fire contract) becomes manifest when considering that Council did not need to condition ratification upon **subsequent** Solicitor approval because he already reviewed it with Council during executive session and everyone involved had access to the terms of the expired CBA containing the minimum manning provision. The following factors have caused me to reject the position that the record or Mr. Austra credibly establish that Council conditioned ratification on subsequent Solicitor approval: (1) The Council members were confused over which contract was being ratified; (2) the Solicitor had access to the expired CBA and reviewed the Fire contract during pre-ratification executive session on March 15, 2016; (3) the lack of Council members' statements, their voting or the alleged post-ratification conditions on the audio recording; and (4) the probability that the audio recording was altered, thereby undermining all credibility in establishing the existence of a condition for which there is no substantial evidence to support. Accordingly, I will not credit Mr. Austra's testimony, and the Borough's assertion, that the Fire contract was ratified with the condition that it be subsequently approved by Solicitor Haley. Therefore, the existence of a pre-ratification condition that Solicitor Haley provides post-ratification approval of the contract is not supported by substantial, competent evidence and I reject the Borough's position that such a condition did in fact exist.

In May 2015, Union President, George Tomasak, contacted Borough Council President, Joseph Romanoskey, to commence collective bargaining negotiations on behalf of the Chief Fire Fighter and two fire fighters. After thirty days, the Union's bargaining representative declared impasse under Act 111. He also attached a list of issues in dispute which did not mention the minimum manning provisions contained in Article 26 of the expired CBA. The Borough selected Mr. Barras as its collective bargaining representative, and Mr. Barras engaged in negotiations with Mr. Kohn, in lieu of interest arbitration. At no time during negotiations did the Union or the Borough mention changing the minimum manning provisions in Article 26. More importantly, the Union expressly included in its issues in dispute the following language:

***Except as specifically amended by these Specifications, all terms and conditions of the January 1, 2012 to December 31, 2015 collective bargaining agreement between Fire Fighters Local 840 IAFF (Larksville Fire Fighters) and the Borough of Larksville (hereinafter the "collective bargaining agreement") shall remain in full force and effect for the duration of a collective bargaining agreement that shall first become effective January 1, 2016.***

(F.F. 8) (emphasis added).

At the hearing, the Borough asserted that the minimum manning provision is an overall employer complement provision that is a managerial prerogative and, as such, it is a permissive subject over which the Borough is not obligated to bargain. In **International Association of Fire Fighters, Local 669 v. City of Scranton**, 429 A.2d 779 (Pa. Cmwlth. 1981), the Commonwealth Court opined as follows:

The courts that have dealt with this issue have drawn a very fine line in distinguishing between the total number of persons on the force (not arbitrable), and the number of persons on duty at a station, or assigned to a piece of equipment, or to be deployed to a fire (all arbitrable because they are rationally related to the safety of the firefighters). However, this Court finds merit in that distinction, because the result still leaves in the municipality the ultimate decision concerning what level of fire protection it wishes, or can afford, to provide to the citizens.

**City of Scranton**, 429 A.2d at 781.

Regardless of whether the minimum manning provision constitutes a permissive subject of bargaining, as overall complement, or a mandatory subject, as a safety requirement of employes deployed on duty, per call or per apparatus, the Borough had an obligation to inform the Union during negotiations of its interest in changing the manning provision because the Union reasonably believed that it would carry over from the previous contract if not raised, given the first paragraph of the issues in dispute, which preserves all contractual terms undisputed during negotiations.<sup>2</sup> The Borough was obligated to at least notify the Union that an important economic provision like employe complement was being removed. Such notification would have given the Union an opportunity to give up (or give back) other terms and conditions in the hope of maintaining the employe complement. The Borough may not eliminate the minimum staffing guarantee previously negotiated after ratification without notifying the Union during negotiations of its intent to do so (simply because it was deemed permissive) where the parties understood that any issues not raised during negotiations would remain the same.

The Borough disingenuously claims that it did not have the consolidated contract before it when it voted on the tentative agreement of issues negotiated. However, knowing that a contract previously existed with many terms and conditions of employment, the Borough had an obligation to review that contract and raise any issues it wanted to address during negotiations. Indeed, our Supreme Court addressed a similar issue in

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<sup>2</sup> A review of the Minimum Manning provisions of Article 26 of the expired CBA unambiguously refer to safety manning in and on vehicles and equipment, which the courts have consistently held to constitute a mandatory subject of bargaining. However, I have assumed for purposes of analysis that the provision is permissive because I have not been asked to interpret the expired CBA and Counsel for the Union asserted that the cause of action alleged does not require that determination.

**Pittsburgh Joint Collective Bargaining Committee v. City of Pittsburgh**, 481 Pa. 66, 391 A.2d 1318 (1978), wherein it opined as follows:

To permit an employer to enter into agreements and include terms such as grievance arbitration which raise the expectations of those concerned, and then to subsequently refuse to abide by those provisions on the basis of its lack of capacity would invite discord and distrust and create an atmosphere wherein a harmonious relationship would virtually be impossible to maintain.

Good faith bargaining would require that questions as to the legality of the proposed terms of a collective bargaining agreement should be resolved by the parties to the agreement at the bargaining stage. For instance, the section 703 question should have been raised by the City during the 1973 contract negotiations.

**City of Pittsburgh**, 481 Pa. at 74-75, 391 A.2d at 1322-1323.

Although the minimum manning provision is not herein alleged to be illegal, the Borough bargains in bad faith when it fails to review the expired contract in its entirety and fails to raise issues of concern during negotiations only to destroy employees' expectations that undisputed issues would be carried over. By way of example, the Borough could ratify tentative agreements on issues raised by both parties only to nullify ratification by asserting that some term in the expired contract was not brought to their attention at the negotiating table. This process could play out to the absurd month after month, in perpetuity, as the Solicitor discovers terms in the expired CBA of which he was unaware before each monthly ratification vote. The Borough's defense that Borough Council could have believed that the minimum manning provision was negotiated out of the contract when it approved the tentative agreement and that it was not included in the carried-over terms from the expired contract defies credulity. As emphasized by counsel for the Union during the examination of Mr. Austra, Council members and their bargaining representative were well aware that there were other terms and conditions of employment in the expired contract that would carry over even though they were not expressly included in the tentative agreement.

The Borough's bargaining representative repeatedly informed the Union that an agreement was a package deal and must be ratified as a package by Borough Council. The Union reasonably understood that the package contained those issues on the proverbial table during negotiations and ratification was a vote of approval of the package by a majority of Council members. At no time did Mr. Barras represent to the Union or Mr. Kohn that a ratification vote would have a contingency or condition that would permit the Borough a back-door escape from its legal obligations, a nullification of ratification or the existence of a fiction that ratification never really occurred. Moreover, Mr. Barras authored the tentative agreement "package" on behalf of both parties. Mr. Barras was obligated by that time to present any changes in the carryover provisions from the expired CBA.

Moreover, the Borough Council voted to approve the contract after it reviewed the tentative agreement with its Solicitor during executive session. Council already had its Solicitor's pre-ratification approval of the tentative agreement and access to all undisputed provisions contained in the expired CBA. The Borough now wants to renege on a ratified agreement because it neglected to raise an issue during bargaining. In support of its contract disavowal, the Borough is now creating an incredulous fiction that ratification never occurred. Furthermore, Mr. Barras informed the Union that the Borough ratified the agreement. He did not mention that ratification at that time remained subject to Mr. Haley's review and approval which, in addition to the lack of substantial evidence in the record, belies the claim that such a condition was ever placed on the Borough Council's ratification.

The record in this case lacks substantial competent evidence that Council conditioned its ratification vote of the tentative agreement on a post-ratification approval by Solicitor Haley. The substantial evidence does establish, by way of the Council meeting minutes from March 15, 2016, that Council voted to approve the "Fire Dept. Contract." The record also clearly establishes that, after the March 15, 2016

Council ratification vote on the Fire contract, Mr. Barras informed the Union's attorney that the Borough Council approved the agreement. Ratification of a tentative agreement in collective bargaining by the majority of the members of the governing body of a municipality has legal significance. Once Borough Council voted to approve the tentative agreement and its representative informed the Union that the agreement was approved, it was legally obligated to sign the agreement and implement its terms. The record shows that the Borough has neither signed the agreement nor implemented the agreed upon terms, in derogation of its bargaining obligations.

Accordingly, the Borough bargained in bad faith by failing to inform the Union that it wished to remove minimum manning from the new contract before its ratification vote. The Borough deprived the Union of an opportunity to change the Borough's position on minimum manning, it raised expectations of employes when both Council and Union members voted to ratify the agreement that would later be deflated, the effects of which are contrary to the principles of bargaining in good faith under the PLRA and Act 111.

### CONCLUSIONS

The hearing examiner, therefore, after due consideration of the foregoing and the record as a whole, concludes and finds as follows:

1. The Borough is a public employer and a political subdivision within the meaning of the PLRA as read **in pari materia** with Act 111.
2. The Union is a labor organization within the meaning of the PLRA as read **in pari materia** with Act 111.
3. The Board has jurisdiction over the parties hereto.
4. The Borough has committed unfair labor practices within the meaning of Section 6(1)(e) of the PLRA as read **in pari materia** with Act 111.

### ORDER

In view of the foregoing and in order to effectuate the policies of the PLRA and Act 111, the hearing examiner

### HEREBY ORDERS AND DIRECTS

that the Borough shall

1. Cease and desist from refusing to bargain collectively in good faith with an employe representative which is the exclusive representative of employes in an appropriate unit, including but not limited to the discussing of grievances with the exclusive representative.
2. Take the following affirmative action, which the hearing examiner finds necessary to effectuate the policies of Act 111 as read in **pari materia** with the PLRA:
  - (a) Immediately sign a consolidated collective bargaining agreement that includes the terms of the tentative agreement ratified by Borough Council on March 15, 2016 and all terms from the expired CBA that were not changed by the tentative agreement, including but not limited to the minimum manning provisions of Article 26;
  - (b) Immediately implement all terms and conditions of a consolidated collective bargaining agreement that includes the terms of the tentative agreement ratified by Borough Council on March 15, 2016 and all terms from the expired CBA that were not changed by the tentative agreement, including but not limited to the minimum manning provisions of Article 26;
  - (c) Immediately make the bargaining unit officers whole for any and all losses, including but not limited to, wages, wage increases, overtime pay, pension payments/benefits, vacation or sick leave, out of pocket expenses, and any other

emoluments of employment as a result of not implementing the terms contained in the agreement ratified on March 15, 2016, retroactive to January 1, 2016, which is the effective date of the ratified tentative agreement;

(d) Immediately pay interest at the simple rate of six percent per annum on any and all losses, including but not limited to, wages, wage increases, overtime pay, pension payments/benefits, vacation or sick leave, out of pocket expenses, and any other emoluments of employment, as a result of not implementing the terms contained in the agreement ratified on March 15, 2016;

(e) Post a copy of this decision and order within five (5) days from the effective date hereof in a conspicuous place readily accessible to its employees and have the same remain so posted for a period of ten (10) consecutive days; and

(f) Furnish to the Board within twenty (20) days of the date hereof satisfactory evidence of compliance with this decision and order by completion and filing of the attached affidavit of compliance.

**IT IS HEREBY FURTHER ORDERED AND DIRECTED**

that in the absence of any exceptions filed with the Board pursuant to 34 Pa. Code § 95.98(a) within twenty days of the date hereof, this order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this fourteenth day of December, 2016.

PENNSYLVANIA LABOR RELATIONS BOARD

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JACK E. MARINO  
Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

INTERNATIONAL ASSOCIATION OF  
FIREFIGHTERS LOCAL 840

v.

LARKSVILLE BOROUGH

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Case No. PF-C-16-46-E

**AFFIDAVIT OF COMPLIANCE**

The Borough hereby certifies that it has ceased and desisted from its violations of Section 6(1)(e) of the Pennsylvania Labor Relations Act as read in **pari materia** with Act 111; that it has immediately signed and implemented a consolidated collective bargaining agreement that includes the terms of the tentative agreement ratified by Borough Council on March 15, 2016 and all terms from the expired CBA that were not changed by the tentative agreement, including but not limited to the minimum manning provisions of Article 26 of the CBA; that it has immediately made the bargaining unit fire fighters and Chief whole for any and all losses, including but not limited to, wages, wage increases, overtime pay, pension payments/benefits, vacation or sick leave, out of pocket expenses, as a result of not implementing the terms contained in the agreement ratified on March 15, 2016, retroactive to January 1, 2016; immediately paid interest at the simple rate of six percent per annum on any and all losses, including but not limited to, wages, wage increases, overtime pay, pension payments/benefits, vacation or sick leave, out of pocket expenses, as a result of not implementing the terms contained in the agreement ratified on March 15, 2016; that it has posted a copy of the proposed decision and order in the manner prescribed therein; and that it has served a copy of this affidavit on the Union at its principal place of business.

\_\_\_\_\_  
Signature/Date

\_\_\_\_\_  
Title

SWORN AND SUBSCRIBED TO before me  
the day and year first aforesaid.

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Signature of Notary Public