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# Interest Arbitration Developments – 2005

## Public Employment Relations Commission

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What follows is a review of interest arbitration developments since the April 2004 Annual Conference. Also included are statistics on the number of interest arbitration appeal decisions since 1996.

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| <b>Interest Arbitration Appeal Decisions</b> |
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| <b>Commission Decisions</b> |
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In *Essex Cty. and Essex Cty. Sheriff*, P.E.R.C. No. 2005-52, 31 *NJPER* \_\_\_\_ (¶\_\_\_\_ 2005), *app. pending*, App. Div. Dkt. No. A-002812-04T5, the Commission affirmed an award involving a unit of approximately 358 sheriff's officers. The primary issue in the arbitration was salary increases, and the arbitrator concluded that the statutory factors and the record as a whole supported increases for 2002-2005 well above the average annual 1.75% base salary increases proposed by the County and Sheriff (County) and well below the more than 5% annual increases proposed by the PBA.

On appeal, the County contended that its wage proposal should have been awarded

in light of what it described as an internal settlement pattern and its dire financial circumstances. The County also objected to some of the arbitrator's procedural rulings, including his denial of its motion to dismiss the PBA's interest arbitration petition at the close of the PBA's case. In addition, it contended that the Police and Fire Public Interest Arbitration Reform Act (Reform Act) was unconstitutional.

In affirming the award, the Commission held that the arbitrator duly considered the County's financial arguments; reached a reasonable determination of the issues; and fashioned an overall award supported by substantial credible evidence. Based on the record as a whole, including reports from financial analysts, the arbitrator reasonably viewed the County as an entity with some positive financial indicators that was moving towards fiscal stability. However, the arbitrator did not disregard the County's financial problems and did not simply award the average increases included in public safety settlements and awards.

Instead, based on financial and other factors, he awarded what he found to be lower than average increases for 2002 and 2003 and deferred the effective dates of the 2002, 2003 and 2004 increases.

With respect to the arbitrator's comparability analysis, the arbitrator's discussion of the settlements involving eight of the County's 29 negotiations units comported with the Reform Act and the Commission's case law, including *Union Cty.*, P.E.R.C. No. 2003-33, 28 *NJPER* 459 (¶33169 2002) and *Union Cty.*, P.E.R.C. No. 2003-87, 29 *NJPER* 250 (¶75 2003). As contemplated by those decisions, the arbitrator recognized that, in appropriate cases, arbitral adherence to settlement patterns fosters labor relations stability and encourages future settlements. However, the *Union Cty.* decisions did not require that an arbitrator follow internal settlements in all instances. Instead, they underscored that the arbitrator should specify the reasons for adhering or not adhering to internal settlements and should consider the impact of deviating from an alleged settlement pattern on the continuity and stability of employment. The arbitrator followed these principles when he concluded that the eight settlements, covering at most

one-third of the County's employees, were out of line with all of the other comparability data submitted. Further, he found that the County's offer would erode officers' real earnings and undermine the continuity and stability of employment by impairing the County's ability to attract and retain sheriff's officers.

The Commission did not address the County's constitutional claims because it does not have jurisdiction to rule on the constitutionality of a statute that it is charged with implementing. However, it noted that the New Jersey Supreme Court had upheld the constitutionality of the interest arbitration section of the County Improvement Authorities Law, *N.J.S.A.* 40:37A-96.

*Essex Cty.* also affirmed the arbitrator's denial of the County's motion to dismiss the PBA's petition and accepted his analysis. Absent a mutually agreeable settlement, the filing of an interest arbitration petition initiates a compulsory impasse procedure that entitles the parties to a final and binding award. Interest arbitration is a labor relations process, not a civil action, and the Legislature did not intend that the process could be terminated by a motion to dismiss for insufficient evidence – or that it could proceed

based only on the evaluation of one party's evidence.

*Essex Cty.* made the following additional points about the Reform Act and the arbitrator's analysis.

#### *Financial Impact Analysis*

- The Reform Act does not specify a formula for arriving at an award. The Legislature rejected proposals that would have amended the predecessor statute to limit increases to the statutory CAP rate, or otherwise set a numerical standard for arriving at an award. Instead, the Legislature directed that disputes be resolved by conventional arbitration, thereby vesting arbitrators with the responsibility and discretion to weigh the evidence and fashion an award.
- In enacting both the interest arbitration law and local finance statutes, the Legislature understood that negotiations and interest arbitration would require public officials to consider and plan for settlements and awards that might require budget adjustments. An employer must plan for potential retroactive payments under an interest arbitration award, just as it must anticipate other potential expenses in the budget planning process. This is particularly so given that the employer would have had an obligation to pay any negotiated salary increases that might have been agreed to earlier.

- While it is not the role of the Commission or that of an arbitrator to direct an entity as to how to fund an award, *see New Jersey State PBA, Local 29 v. Irvington*, 80 N.J. 271, 293 (1979), the planning process for salary increases includes budgeting for reserves and contingencies within the current operating fund. *Essex Cty.*, citing Robert Benecke, *Municipal Finance Administration in New Jersey* (July 2004). An employer has an obligation to use such standard budget practices and to anticipate that the interest arbitration statute might result in an award above its offer.

- The arbitrator reasonably concluded that the County had the capability to fund an award above its offer for 2002 and 2003, as well as for 2004 and 2005. The record showed that, in addition to the current operating fund, the County had other funds and accounts that, consistent with accepted budget practices, could be used as either a direct source of funds for retroactive or current year salary increases or as a resource for non-salary expenses, thereby allowing other monies to be used for salaries. While the sheriff's officers unit was not automatically entitled to draw on those resources, *Essex Cty.* found that the awarded increases were supported by the record and by the arbitrator's analysis of the non-financial statutory criteria.

#### *Comparability Analysis*

- The arbitrator did not err in stating that he would have given more weight

to the internal settlements if they had also involved law enforcement units. The *Union Cty.* decisions did not address the distinction between settlements involving uniformed units vis-a-vis those involving non-uniformed employees, given that the alleged pattern in that case involved both types of units – as well as a majority of the County’s employees. However, interest arbitrators have traditionally found that internal settlements involving other uniformed employees are of special significance, a position set forth in one of the awards cited by the County.

- The arbitrator's comment that pattern bargaining is most appropriate among units with a common relationship – *e.g.*, rank and file and superior units; police and fire units; and multiple county public safety units – reflects the common arbitral view that settlements are of particular significance when they involve units that traditionally have been aligned for negotiations purposes. Since interest arbitration is an extension of the negotiations process, *City of Clifton*, P.E.R.C. 2002-56, 28 *NJPER* 201 (¶33071 2002), the arbitrator’s articulation of this approach provided no basis to disturb the award. Interest arbitrators have also considered that public safety settlements reflect the parties’ own distillation of the statutory factors. That analysis is also consistent with the common arbitral

view that public safety settlements are of particular significance.

- The Reform Act requires an analysis of a range of statutory factors and expressly mandates comparisons with other County employees eligible for interest arbitration -- *e.g.*, "employees performing the same or similar services" in the same jurisdiction. *N.J.S.A.* 34:13A-16g(2) and g(2)c). These components of *N.J.S.A.* 34:13A-16g(2) would be read out of the statute if the interest arbitrator were necessarily compelled to follow settlements involving only non-uniformed employees – especially if, as here, those settlements pertained to at most one-third of the jurisdiction’s employees and only eight out of its 20 civilian units.
- The Commission would not endorse an analysis that automatically disregarded internal settlements because they had not been tested in interest arbitration or did not involve public safety units. That approach would negate the requirement to compare employees involved in the proceeding with other employees generally in the same jurisdiction, *see N.J.S.A.* 34:13A-16g(2) and g(2)c; and, to the extent it emphasized interest arbitration awards, would also run counter to the overall importance of settlements in labor relations. In this case, however, the arbitrator did consider the County’s internal settlements and did not automatically discount them. Indeed, he awarded the prescription drug component of the settlements.

- The Reform Act requires a careful balancing of multiple factors and establishes no rigid formula or test as to how to weigh internal civilian settlements, internal public safety settlements, external comparables, and financial considerations. Thus, an arbitrator may ultimately decide, after an analysis of the statutory factors and a range of comparability considerations, *see N.J.A.C. 19:16-5.14*, that internal civilian settlements are entitled to comparatively little weight in one case. In another, he or she may find that civilian settlements, perhaps coupled with financial and other considerations, outweigh external public safety comparisons. The key is that the arbitrator's analysis should be free of any improper presumptions that a civilian settlement pattern should never – or always – be extended to public safety units.

#### *Analysis of Other Statutory Factors*

- The arbitrator explained how the award was shaped by the overall compensation criterion when he reasoned that the award would maintain the unit's overall compensation and would come close to maintaining its relative standing vis-a-vis other sheriff's officers units. The latter objective was an appropriate one. Relative standing is one of the concepts traditionally considered by arbitrators, *see N.J.S.A. 34:13A-16g(8)*, and absent unusual circumstances, they aim not to significantly change it, given that a salary and benefit structure has been

negotiated over time and with consideration to the overall compensation received by comparable units.

- *Essex Cty.* declined to disturb the arbitrator's labor relations judgment that his award would maintain continuity and stability of employment while award of the County's offer would jeopardize it. The arbitrator's judgment was rooted in his concern that a sharp decrease in unit members' maximum salaries vis-a-vis other sheriff's officers could lead to turnover, which could ultimately prove more expensive to the County and result in a deterioration in services. That concern in turn was based in part on the arbitrator's experience with another sheriff's officers unit, where comparatively low salaries had led to officers leaving the department for municipal police forces.

The Commission denied the County's motion to stay the decision in P.E.R.C. No. 2005-52 pending appeal to the Appellate Division. *Essex Cty. and Essex Cty. Sheriff*, P.E.R.C. No. 2005-56, 31 *NJPER* \_\_\_\_ (¶\_\_\_\_ 2005). The County did not show that it had a substantial likelihood of prevailing in its appeal or that it would be irreparably harmed by implementing the award. Further, a balancing of the equities favored immediate implementation of the award. The possibility

that an employer might have to recoup payments made under an award that is vacated in a court appeal does not, absent special circumstances, constitute irreparable harm. The Reform Act automatically stays awards appealed to the Commission but does not extend the automatic stay to awards that are affirmed by the Commission and appealed to the courts. The Commission therefore concluded that the Legislature did not intend that public safety employees should have their wages and benefits frozen until the end of post-agency litigation unless the strict standards for obtaining a stay are satisfied.

In *Borough of Surf City*, P.E.R.C. No. 2004-80, 30 *NJPER* 214 (¶81 2004), the Commission denied the Borough's motion to file a late appeal and answered the question left open by *Borough of Cliffside Park*, P.E.R.C. No. 98-71, 24 *NJPER* 15 (¶29010 1997): does the Commission ever have authority to entertain an appeal filed after the 14-day period specified in *N.J.S.A.* 34:13A-16f(5)(a)? Following the approach set out in recent court cases, the Commission examined the text and legislative history of the interest arbitration statute in order to discern the Legislature's intent on this point.

*Surf City* held that the 14-day appeal period directed by *N.J.S.A.* 34:13A-16f(5)(a) was the product of careful legislative consideration and part of the Legislature's design to establish an effective, binding, and final procedure. Given the exceptionally strong statutory language stating that an award shall be final, binding and "irreversible" except where a party files an appeal in 14 days, the Commission held that the Legislature intended to give the Commission authority to relax the deadline only in exceptional and extraordinary circumstances.

This standard was not met in *Surf City*, where the appeal was filed three days late because the Borough believed it had 30 days to appeal. *Pequannock Tp.*, P.E.R.C. No. 2004-66, 30 *NJPER* 134 (¶51 20004) also denied a motion to file a late appeal. The Commission found that the union had not explained why it did not seek to file an appeal until more than one year after the award had issued and more than five months after a dispute had arisen over one of the award's provisions. The Commission also declined the union's request to refer the matter to the Director of Arbitration for appointment of a new interest arbitrator. The union's post-award interpretation question did not trigger

the right to invoke a new compulsory interest arbitration proceeding.

In *Union Cty.*, P.E.R.C. No. 2004-58, 30 *NJPER* 97 (¶38 2004), an appeal by the PBA, the Commission affirmed an award involving a corrections officers' unit. The award was issued by a second arbitrator after earlier awards by the original arbitrator had been appealed by the County and vacated and remanded by the Commission. See *Union Cty.*, P.E.R.C. No. 2003-33, and *Union Cty.*, P.E.R.C. No. 2003-87.

The second arbitrator awarded a four-year contract with the wage increases, health benefits changes and the clothing allowance proposed by the County, together with the County's proposed enhancements to sick leave, vacation, and retiree benefits. The County had linked those enhancements to award of its health benefits changes. In addition, the arbitrator awarded the PBA's proposals with respect to the grievance procedure and eye care and orthodontic coverage.

The second arbitrator summarized the two prior *Union Cty.* decisions and made factual findings concerning the County's health benefits costs and the working conditions in the negotiations unit after an

April 2001 layoff. She also reviewed the testimony presented at the hearing before the first arbitrator, including testimony concerning settlements reached with six other County negotiations units. In addition, the arbitrator considered supplemental material submitted, including two interest arbitration awards that had granted the County's salary, health benefits and related proposals. She stated that her review of the various settlements and awards showed that, except for minor differences, "the essence of the deals is the same as the one offered here." The arbitrator reasoned that the substantial similarities among the settlements and awards created a "strong presumption a comparable result was warranted in this case." After reviewing the various criteria, she concluded that they supported an award consistent with the County's wage and health benefits proposals.

On appeal, the PBA contended that the arbitrator did not apply the principles of conventional arbitration; placed too much weight on an alleged pattern of settlement among other County negotiations units; did not adequately consider the PBA's senior officer stipend and non-salary proposals; and did not calculate the total net annual economic changes for each year of the agreement.

The Commission held that the arbitrator's overall approach was consistent with the principles in the prior *Union Cty.* decisions -- pattern is an important labor relations concept; deviation from a pattern can affect the continuity and stability of employment; and an employer-wide pattern on a particular issue must be carefully considered in assessing whether a party has met its burden of justifying a proposal consistent with the pattern.

The Commission recognized that *Union Cty.*, P.E.R.C. No. 2003-87, had also stated that evaluation of whether a pattern should be followed with respect to a particular unit should take into account any unique considerations pertaining to that unit. The arbitrator made such an assessment when she discussed the post-layoff conditions that the PBA had highlighted. She found that circumstances had stabilized by the time of the hearing and, therefore, did not warrant departure from what she had found was a pattern with respect to wages and health benefits. In sum, the arbitrator's overall approach to analyzing the statutory factors and the parties' arguments concerning the alleged settlement pattern was consistent with the Reform Act. While conventional arbitrators

usually issue awards in between the parties' proposals, there is no requirement that they do so and no prohibition against a conventional arbitrator awarding one or the other party's proposal on one or more issues.

The PBA also challenged the arbitrator's conclusion that awards involving the County's police superiors and prosecutor's detectives supported her own award. The arbitrator recognized that those awards included senior officer stipends but noted that the stipends were the same as those that the corrections officers' unit had obtained in their prior agreement. Therefore, she declined to award the PBA's proposal to enhance corrections officers' stipends. The Commission found no basis to disturb her analysis.

The Commission also deferred to the arbitrator's rulings on the PBA's non-salary proposals. The arbitrator stated her reasons for denying the proposals and the PBA did not question her findings; provide any particularized challenge to her analysis; or point to any evidence that the arbitrator did not consider or to which she could have applied the statutory factors. Finally, the Commission declined to require the arbitrator to expressly calculate the total net annual

economic changes for each year of the agreement. The arbitrator identified the total net economic changes resulting from the award when she calculated the annual costs of the County wage and clothing allowance proposals that she awarded, together with the projected savings from the County's proposed health benefits changes. She effectively found that those changes were reasonable when she concluded, first, that there would be no adverse financial impact on the County and, second, that the award would result in an overall compensation package that was consistent with that received by other County employees and other corrections officers. No purpose would be served by remanding the award to require the arbitrator to expressly state that the total net annual economic changes were reasonable.

**Interest Arbitration Appeal Statistics  
Since January 1996**

Since the Reform Act went into effect, the Commission has issued 25 decisions reviewing final interest arbitration awards. It has affirmed thirteen awards; affirmed two with a modification; and vacated and remanded ten awards, including one limited remand. The Commission has also denied

three motions to file late appeals and four requests to review interim procedural rulings by interest arbitrators. One decision, *Teaneck Tp. and Teaneck FMBA Local No. 42*, P.E.R.C. No. 2000-33, 25 *NJPER* 450 (¶30199 1999), aff'd in part, rev'd and remanded in part, 353 *N.J. Super.* 289 (App. Div), aff'd o.b. 177 *N.J.* 560 (2003) has been reviewed by the Appellate Division and Supreme Court. An Appellate Division appeal has also been filed in *Essex Cty.*, P.E.R.C. No. 2005-52. Two other decisions were appealed to the Appellate Division, but the appeals were withdrawn.

**Continuing Education for Special  
Panel Members**

In October 2004, the Commission held its annual continuing education program for its special panel of interest arbitrators. Representatives from the Department of Community Affairs, Local Government Services Division, presented a review of the revised Local Government Cap Law, *N.J.S.A.* 40A:4-45.1, and discussed the 2004 amendments to the statute. The program also included a review of interest arbitration developments; Court and Commission interest

arbitration appeal decisions; and other Court  
and Commission decisions of note.