BIENNIAL REPORT

OF THE

NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

ON THE

POLICE AND FIRE PUBLIC INTEREST ARBITRATION REFORM ACT, N.J.S.A. 34:13A-14, et seq., AS AMENDED BY P.L. 2014, c. 11

AUGUST 2016

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INTRODUCTION

The Police and Fire Public Interest Arbitration Reform Act ("Reform Act" or "interest arbitration law"), P.L. 1995, c. 425, N.J.S.A. 34:13A-14, et seq. took effect on January 10, 1996. P.L. 2010, c. 105, effective January 1, 2011, enacted the first major amendments to the Reform Act. Those changes included the establishment of a 2% cap on arbitration awards and fast-tracking of the interest arbitration and appeals processes, and are outlined in more detail in the overview section of the Commission's 2014 Biennial Report, which can be found on the Commission's website.[1] On March 19, 2014, the Police and Fire Interest Arbitration Task Force ("Task Force") issued its final report as required by the 2010 amendments to the Reform Act. The Task Force's final report with recommendations can be found on the Commission website[2] and in the 2014 Biennial Report at Tab 3 of the Appendix.

Certain provisions of P.L. 2010, c. 105 expired on April 1, 2014. On June 24, 2014, the Governor signed P.L. 2014, c. 11, which continued certain provisions of P.L. 2010, c. 105 and amended others. (Appendix, Tab 1). The amended interest

[1] http://www.nj.gov/perc/Biennial%20Report%20January%202014.pdf

[2] http://www.nj.gov/perc/IATaskForceFinalReport.pdf

arbitration law was effective retroactive to April 2, 2014. The law continued the Task Force as an eight-member body that is charged with reporting annually on the implementation and impacts of the amended law's salary cap and procedures. The Task Force's first report since the new amendments (2016 Annual Report) can be found in the Appendix at Tab 3 as well as on the Commission's website.[3] The final report of the Task Force is due December 31, 2017.

To assist the labor relations community in understanding the 2014 law and adapting to its substantive and procedural changes, the Commission developed Frequently Asked Questions - Interest Arbitration Procedures and posted them to the Commission's website.[4] (Appendix, Tab 2).

This report, the first submitted after the adoption of P.L. 2014, c. 11, the third report submitted since the P.L. 2010, c. 105 revisions, and the tenth report submitted under the 1995 Reform Act, reviews Commission actions in implementing and administering the statute and provides information concerning interest arbitration petitions, settlements, awards, and appeals. It is submitted pursuant to Section 7 of the Reform Act, N.J.S.A. 34:13A-16.4, which directs the Commission to:

> [S]ubmit biennial reports to the Governor and the Legislature on the effects of this amendatory and supplementary act on the negotiations and settlements between local governmental units and their public police departments and public fire departments and to include with that report any recommendations it may have for changes in the law. The

[3] http://www.nj.gov/perc/Final%202016%20IA%20Task%20Force%20Report%20&%20Tabs%20A-G%20(2).pdf

[4] http://www.nj.gov/perc/FAQs%20on%20IA%20Processing_71014.pdf

> reports required under this section shall be submitted in January of even numbered years.

In undertaking this charge, the Commission is mindful that interest arbitration has often been the focus of intense discussion by the parties to a specific case and the interest arbitration community as a whole. The Legislature has given interest arbitrators the authority to set contract terms that may significantly affect both management and labor, and participants in the process may at times voice their opinions about the interest arbitration statute. The Commission considers and responds to constituent concerns as appropriate within the existing statutory framework. Substantive policy discussions about the interest arbitration statute are the province of the Legislature, the Task Force, labor and management representatives, and the public in general. As the agency charged with administering the statute, the Commission has not initiated statutory amendments or taken positions on proposals by others that might compromise the Commission's neutrality. This report describes the Commission's actions to implement and administer the Reform Act and P.L. 2010, c. 105 and P.L. 2014, c. 11 in an impartial manner and in accord with the Legislature's direction.

IMPLEMENTATION AND ADMINISTRATION OF THE REFORM ACT

Overview

The 2010 Biennial Report sets forth the changes made in the 1996 Reform Act, while the 2012 and 2014 Biennial Reports set forth the changes made by P.L. 2010, c. 105. These reports are all available on the Commission's website in the Reference section.

P.L. 2014, c. 11 made the following changes to the Reform Act:

- Interest arbitrators must conduct an initial mediation session before commencing interest arbitration in order to try to effect a voluntary resolution of the impasse;

- The interest arbitration opinion and award must be issued within ninety (90) days after an arbitrator is appointed (previously 45 days);

- Any appeal of an interest arbitration award must be filed with the Commission within fourteen (14) days after the issuance of the award (previously 7 days);

- The Commission must issue a written decision within sixty (60) days after it receives an appeal (previously 30 days);

- The total cost of services of an interest arbitrator shall not exceed $1,000 per day or $10,000 per case (previously $7,500 per case);

- In the first year of the award, base salary items may not increase by more than 2.0% of the aggregate amount expended on base salary items in the twelve months preceding the award, but in each subsequent year the award may increase base salary items by up to 2.0% more than the previous year, thus allowing for compounding (compounding of the 2.0% annual increase was not previously allowed);

- After December 31, 2017, the 2% interest arbitration cap shall become inoperative for all parties except those whose collective negotiations agreements expired prior to or on December 31, 2017 but for whom a final settlement has not been reached (the previous version of the 2% cap expired on April 1, 2014).

Special Panel of Interest Arbitrators

One of the Commission's most important responsibilities under the Act is maintaining a panel of highly qualified and experienced interest arbitrators. The Act makes it critical for the Commission to have an extremely competent panel, because it fundamentally changed the manner in which interest arbitrators are selected to hear cases. The statute requires that the Commission randomly select an arbitrator from its Special Panel of Interest Arbitrators. Thus, any member of the Special Panel may

be assigned to the most complex and demanding interest arbitration. In recognition of this fact, the Commission continues to require that the Special Panel be composed of only those labor relations neutrals who, in the judgment of the Commission, have the demonstrated ability and experience to decide the most demanding interest arbitration matters in the most professional, competent and neutral manner. Thus, Commission rules have and will continue to require that a member of the panel must have: (1) an impeccable reputation for competence, integrity, neutrality and ethics; (2) the demonstrated ability to write well-reasoned decisions; (3) a knowledge of labor relations and governmental and fiscal principles relevant to dispute settlement and interest arbitration proceedings; (4) substantial experience as a mediator and an arbitrator; and (5) a record of competent performance on the Commission's mediation, fact-finding, and grievance arbitration panels. Panel members serve for fixed three-year terms and are eligible for reappointment. In February 1996, the Commission appointed the initial panel of 17 interest arbitrators who met these criteria. In 2010, the panel consisted of 25 members. The current panel consists of 6 members who meet the Commission's high standards.

The Commission continues to utilize its computer program to randomly select arbitrators. A description of the Commission's computer program is included in the Appendix, Tab 4, along with an April 28, 2014 recertification by the Commission's expert consultant, confirming that the program makes appointments in a random manner.

Continuing Education Programs for Special Panel Members

As part of its responsibility to administer the Reform Act, the Commission has conducted regular continuing education programs for the Special Panel, which have included updates by Commission staff on interest arbitration developments and interest arbitration appeals. N.J.S.A. 34:13A-16.1. The Commission's most recent programs have focused on the new interest arbitration law, the property tax levy cap, benefits issues, and municipal finances. Specifically, the 2014 and 2015 programs included presentations on local government budgets, levy caps, the cap base, pensions, health care costs, and revenue issues including ratables, collections, and the State deficit. These trainings also included review of interest arbitration procedures per the most recent amendments, salary guide construction, interest arbitration award appeals to the Commission and courts, and scope of negotiations issues that arose in interest arbitration cases. Finally, the Commission's continuing education programs provide the annual ethics training required of interest arbitrators by N.J.S.A. 34:13A-16(e)(4).

In addition to providing continuing education for current Special Panel members, the Commission has an ongoing commitment to identifying talented and experienced labor relations neutrals who have the potential to become excellent interest arbitrators. It provides supplemental education to these neutrals.

Private Sector Wage Report

In May 1996, the Commission arranged to have the New Jersey Department of Labor and Workforce Development, Division of Labor Market and Demographic Research ("NJLWD"), prepare the annual private sector wage report required by the

Reform Act, N.J.S.A. 34:13A-16.6. The first report, prepared in September 1996, shows calendar year changes, through December 31, 1995, in the average private sector wages of individuals covered under the State's unemployment insurance system. Statistics are broken down by county and include a statewide average. For calendar years 1997 through 2015, the reports also show changes in average wages by industry group. Beginning with the 2002 report, the NJLWD uses the North American Industry Classification System ("NAICS") to assign and tabulate economic data by industry.[5] The three most recent annual reports reflect wage data for calendar years 2012-2013 (2014 report), 2013-2014 (2015 report), and 2014-2015 (2016 report), and are included in the Appendix, Tab 5.[6] The 2015 and 2016 reports also include a chart depicting the changes in average annual wages for the four sectors of New Jersey workers (private, federal, state, and local) since 2003.

AGENCY INITIATIVES

Interest Arbitration Resources and Information

As part of its statutory responsibility to administer the Reform Act, the Commission has aimed to provide the parties with a range of information enabling them to effectively participate in the interest arbitration process. In 2000, all interest arbitration awards issued after January 1996 were posted on the Commission's website, as were the Commission's interest arbitration appeal decisions. In 2006,

[5] NAICS is the product of a cooperative effort on the part of the statistical agencies of the United States, Canada, and Mexico. A NJLWD document attached to the 2002 through 2012 reports describes the system and how it differs from its predecessor, the 1987 Standard Industrial Classification System

[6] The 2014 report was issued on September 21, 2014, the 2015 report was issued on June 6, 2016, and the 2016 report was issued on July 12, 2016.

responding to suggestions from members of the labor relations community, the Commission began posting on its website all collective negotiations agreements and summary forms filed pursuant to a public employer's statutory obligation to file contracts with the Commission. Contracts are searchable by employer or employee organization name, employer type, and county.

The Division of Local Government Services in the Department of Community Affairs has assisted the Commission in collecting collective negotiations agreements by circulating notices to every municipal and county employer reminding them of their obligation, pursuant to N.J.S.A. 34:13A-8.2, to "file with the Commission a copy of any contracts it has negotiated with public employee representatives following consummation of negotiations." In addition, pursuant to N.J.S.A. 34:13A-16.8(d)(2) and the recommendations of the Task Force, the Commission designed a form which summarizes all costs and their impact associated with newly negotiated agreements. In the case of police and fire units, the form distinguishes between costs for base salary items, costs for other economic items, and medical insurance costs. The Police and Fire Collective Negotiations Agreement Summary Form[7] and Instructions[8] for completing it can be downloaded from the Commission's website. A copy of the summary form and instructions can be found in the Appendix, Tab 6.

In 2012, the Commission introduced a pilot program where, in limited cases, it will issue expedited scope of negotiations determinations on issues that are actively

[7] http://www.nj.gov/perc/New%202016%20Police%20&%20Fire%20Contract%20Summary%20Form.pdf

[8] http://www.nj.gov/perc/Police%20Fire%20CNA%20Summary%20Form%20Instructions%208-17-16%20B.pdf

in dispute in interest arbitration proceedings subject to the processing deadlines contained in the 2010 and 2014 interest arbitration reforms (formerly 45 days and now 90 days). The decision of whether to issue an expedited scope of negotiations ruling during the pendency of an interest arbitration proceeding is within the discretion of the Commission Chair. If the Commission Chair determines not to issue an expedited scope of negotiations ruling, then any scope of negotiations issues pending in interest arbitration shall be within the jurisdiction of the interest arbitrator and either party may challenge a negotiability ruling as part of an appeal from an interest arbitration award. N.J.A.C. 19:16-5.7(l). The Pilot Program Notice containing the procedures for expedited scope petitions is on the Commission's website and a copy can be found in the Appendix, Tab 7. Currently, the procedures require that expedited scope petitions be filed within five days of the interest arbitration filing (for the interest arbitration respondent), or within five days of the response to the interest arbitration filing (for the interest arbitration filing party). The Commission plans to update the Pilot Program in the near future in order to reflect the extended interest arbitration timeline of 90 days, which may result in slightly longer filing and response timelines for such expedited scope petitions. From 2012 through 2013, the Commission considered only one scope of negotiations petition on an expedited basis under the pilot program. From 2014 through 2015, the Commission considered three expedited scope of negotiations petitions under the pilot program.

Impasse Procedures for Police and Fire Contract Negotiations

Parties may petition for mediation whenever negotiations reach an impasse. N.J.S.A. 34:13A-16(a)(2). After either party files a Notice of Impasse, a mediator is

assigned and the Commission, rather than the parties, pays for the services. The mediator assigned is an experienced and capable neutral but is most likely not one of those individuals who is routinely involved in interest arbitration proceedings. Mediation allows parties to reach a successor agreement more quickly and less expensively than interest arbitration, but even if it does not result in an agreement, it can reduce the number of issues to be resolved in interest arbitration, potentially saving the parties time and money in that forum. Either party may choose to invoke factfinding if mediation is unsuccessful, and retains its right to file for interest arbitration after expiration of the previous contract. N.J.S.A. 34:13A-16(b). The filing of an interest arbitration petition will end any mediation or factfinding. N.J.S.A. 34:13A-16(b)(2).

From 2014-2015, 34 impasse petitions were filed (27 police, 7 fire). That is similar to the previous two-year period, as 37 impasse petitions were filed in 2012-2013 (35 police, 2 fire). There was 1 factfinding in 2014-2015 and 1 factfinding in 2012-2013. Of the 71 total impasse petitions filed from 2012-2015, 48 contracts were settled without filing for interest arbitration (68%), while 23 eventually resulted in one of the parties filing for interest arbitration (32%). The 2014 amendments also now require the interest arbitrator to conduct an initial mediation session, regardless of whether the parties attempted voluntary mediation. N.J.S.A. 34:13A-16(b)(3).

INTEREST ARBITRATION PETITIONS AND AWARDS

Statistical Overview

The following statistics reflect the number of petitions filed by calendar year, arbitrators appointed, and awards issued under the interest arbitration law since 2006[9]: In the following charts, cases may be filed, appealed, decided or withdrawn in different calendar years. Cases are reported in the year which the event occurred.

Year	2006*	2007*	2008*	2009*	2010*	2011	2012	2013	2014	2015
IA Petitions Filed	104	104	107	117	121	23	48	28	88	20
Arbitrators Appointed	82	107	100	114	110	34	46	22	26	22
Mutual Selection	81	106	99	112	104	11^	0**	0**	0**	0**
By Lot Appointment	1	1	1	2	1	23	46	22	26	22
Awards Issued	13	14	15	19	14	34	36	27	12	6
IA Voluntary Settlements	51	44	58	43	45	38	29	8	16	9
Terminal Procedure Used:										
Conventional	12	13	15	18	13	34	36	27	12	6
Final Offer	1	1	0	1	1	0***	0***	0***	0***	0***

* Prior to 2011, in some cases, a settlement was reached after a petition was filed but before an arbitrator was appointed. In others, the parties asked that the appointment of an arbitrator be held in abeyance pending negotiations.

** The option to mutually select an arbitrator ended for petitions filed in 2011 and after. Arbitrators are now randomly selected.

^ These petitions were filed before 2011 for contracts which had expired on or before December 31, 2010 thereby permitting mutual selection of an arbitrator.

*** Prior to 2011, parties were permitted to mutually agree to final offer arbitration in which the arbitrator chooses between the parties' final proposals. Since 2011, final offers are to be used by the arbitrator for the purposes of determining a conventional arbitration award in which the arbitrator weighs the evidence and fashions an award pursuant to the statutory criteria. N.J.S.A. 34:13A-16(f)(1).

[9] For interest arbitration statistics for the years 1995-1999 and 2000-2005, see the 2010 and 2012 Biennial Reports, respectively: http://www.nj.gov/perc/Biennial_Report_2010.pdf and http://www.nj.gov/perc/2012_NJ_PERC_Biennial_Report_With_Appendices.pdf.

In the five years since the January 1, 2011 effective date of the initial 2% cap law, the number of interest arbitration petitions filed has decreased significantly compared to the five-year period before the cap. Although still lower than pre-cap years, 2014 stands as an outlier with 88 petitions filed compared with just 28 in 2013 and 20 in 2015. The anomalous spike in 2014 may be attributed to the April 1, 2014 expiration of the initial 2% cap law before the 2014 amendments were enacted, which apparently prompted public employers to file for interest arbitration to ensure preservation of their rights. The data indicate that 74 of the 88 interest arbitration petitions filed in 2014 were filed within a few days of the April 1, 2014 expiration of P.L. 2010, c. 105, and 71 of those were filed by employers. A list of those "IA 74" cases and their disposition status as of March 31, 2015 can be found in the Appendix, Tab 8 and in the 2016 Task Force Report.

As of December 31, 2015, the "IA 74" cases were disposed of as follows: 42 were withdrawn; 24 were settled; and eight resulted in an interest arbitration award (of which one is on appeal to the Appellate Division).

The number of awards issued over the last two years (2014-2015) decreased markedly compared to the previous three calendar years (2011-2013). In the initial three years in which the 2% cap law was in effect, the average number of awards was approximately 32, while the average has decreased to nine in the last two years (12 awards in 2014 and six in 2015). Therefore, the number of interest arbitration awards issued, which had significantly increased in the initial years of the 2% cap law, has now decreased to levels even below those seen in the five years prior to the initial cap

law (2006-2010). Numbers of voluntary settlements made after filing for interest arbitration have remained significantly lower than they were prior to 2011, with 16 such settlements in 2014 and nine in 2015. In the five years prior to the initial 2% cap law, there were an average of 48 IA voluntary settlements per year.

The trend in the reduction of open interest arbitration cases has continued . The Commission averaged 136 open cases at the start of the year from 2006 through 2010 and began 2011 with 187 open cases. The number of open cases was reduced to 85 in 2012, 65 in 2013, 37 in 2014, and 42 in 2015. This reflects a 78% decrease in open cases over the past four years.

The thrust of many of the changes in the Reform Act, as amended in 2010 and revised in 2014, addressed the compensation components of interest arbitration awards. Besides the obvious 2% cap on annual increases in base salary, a significant aspect of the 2% cap laws is how "base salary" items were defined to include salary increments and longevity pay. In contrast, for awards issued to which the cap did not apply, these salary items were typically not calculated into the cost of the award. Thus any comparative analysis of pre- and post-cap awards must be adjusted by these figures, a task beyond the scope of this report.[10]

For 2006-2015, the average annual salary increases in interest arbitration awards were:

[10] The Task Force's 2014 final report at the expiration of the first 2% cap law endeavored to compare pre- and post-cap awards by adding contractual increment and longevity costs to the reported salary increases from prior to the 2% cap in order to arrive at true "base salary" increases as they are now defined under the cap law. (See pp. 9-12 and Tabs J and K of the 2014 Task Force final report).

Year	IA Awards
2006	3.95%
2007	3.77%
2008	3.73%
2009	3.75%
2010	2.88%
2011	2.05%
2012*	1.98%
2013*	1.89%
2014*	1.69%
2015*	1.71%

* Includes only IA Awards subject to the 2% cap. For the average annual percentage increases of IA Awards since 2012 that were not subject to the 2% cap (based on the expiration date of their previous contract), see the Commission's full Interest Arbitration Salary Increase Analysis chart at Tab 9 of the Appendix.

As noted in the 2014 Biennial Report, the average salary increases in interest arbitration awards decreased significantly from the years prior to 2011 as compared to the first several years after the 2% cap was enacted. The average salary increases in awards subject to the 2% cap further declined to 1.69% in 2014 and 1.71% in 2015. (See Appendix, Tab 9). Overall the average of 3.62% for awards over the 5-year period of 2006 through 2010 compared to the average of 1.86% for awards over the 5-year period from 2011 through 2015 represents an approximately 49% decrease in average annual salary increases. (See Appendix, Tabs 9-10). And, as discussed above, the 3.62% figure from pre-cap awards does not even take into account the added costs of increments and longevity, so the true reduction in salary increases was greater than 49%.

As for voluntary settlements made after filing for interest arbitration, the average annual salary increases from 2006-2015 were:

Year	IA Voluntary Settlements
2006	4.09%*
2007	3.97%*
2008	3.92%*
2009	3.60%*
2010	2.65%*
2011	1.87%*
2012	1.82%*
2013	1.96%*
2014	1.61%*
2015	1.73%*

* These percentages may or may not include salary increases due to increments and longevity.

The average salary increases in IA voluntary settlements declined to 1.61% in 2014 and 1.73% in 2015. (See Appendix, Tab 9). Overall, IA voluntary settlements have seen a 51% decrease from an average of 3.65% from 2006 through 2010 to an average of 1.80% from 2011 through 2015. (See Appendix, Tabs 9-10). It must be noted that voluntary settlements are not subject to the 2% cap or the statutory definition of base salary items subject to the cap, so they might not include the costs of increments and longevity. Therefore, just as pre- and post-cap awards are difficult to compare, an “apples-to-apples” comparison cannot be made between post-2010 IA voluntary settlements and IA awards.

INTEREST ARBITRATION APPEALS

The following statistics pertain to interest arbitration appeals filed since the 1996 adoption of the Reform Act through December 31, 2015. Some cases may be appealed and disposed in different calendar years.

APPEALS DATA	From 1996 to 12/31/2009	As of 12/31/2010	As of 12/31/2011	As of 12/31/2012	As of 12/31/2013	As of 12/31/2014	As of 12/31/2015
Number of Appeals Filed with Commission	51	14	13	21	12	5	3
Number of Appeals Withdrawn	20	5	4	1	1	0	0
Number of Awards Affirmed*	17	3	8	9	6	2	2
Number of Awards Affirmed with Modification	2	1	1	0	1	1	1
Number of Awards Remanded	14	2	4	9	3	1	1
Leave to Appeal Denied	3	0	1	0	0	0	1
Number of Appeals Dismissed	-	-	-	3	1	0	0
Number of Appeals Pending before Commission	-	-	-	-	0	0	0
Number of Appeals to Appellate Division	5	2	5	7	5	2	2
Number of Appeals Pending before Appellate Division	-	-	-	-	8	3	3
Number of Appeals to Supreme Court	1	0	0	0	0	0	1
Number of Appeals Pending before Supreme Court	-	0	0	0	0	0	0

* Includes affirmance of appealed awards issued after a Commission remand of the initial award.

Several appeals were filed in 1997 and in 1998, resulting in a series of Commission decisions that set forth the Commission's standard of review; interpreted Reform Act provisions; and provided guidance for arbitrators concerning the analysis required by the Reform Act. After this series of initial decisions, the number of

appeals declined from 1999 through 2009, but increased significantly from 2010 through 2013. From 1999 through 2009, the Commission decided between zero and five appeals per year. In 2010, there were 14 appeals filed, followed by 13 appeals in 2011, 21 in 2012, and 12 in 2013. Put another way, there were 51 total appeals filed in the first 14 years of the Reform Act (1996-2009) and 60 total appeals in the following 4 years (2010-2013). However, the flurry of appeals following the 2% cap and other reforms set forth in P.L. 2010, c. 105 has subsided in recent years. In 2014 there were just five interest arbitration appeals filed with the Commission, and in 2015 there were only three appeals. The decreased number of appeals might be attributable to the following two factors: 1) Commission and court precedent from the many appeals following the passage of P.L. 2010, c. 105 has settled the majority of issues and questions arising from the new reforms; and 2) the overall number of interest arbitration filings has also decreased significantly in the last two years.

Only two of the eight interest arbitration appeals to the Commission in 2014-2015 were from awards issued under the amended 2% cap law, P.L. 2014, c. 11, suggesting that the 2014 modifications have not produced significant questions or uncertainty regarding their interpretation and implementation that would spur the surge in appeals seen in the years following the enactment of the initial 2% cap law, P.L. 2010, c. 105.

Since 2010, the Commission affirmed 31 awards and affirmed five awards with modification. Of the 20 awards that have been remanded since 2010, 15 were remanded to the original arbitrator and five were remanded to a new arbitrator.

In 2014 and 2015, the courts issued four decisions reviewing the Commission's interest arbitration appeals decisions. One 2016 decision is also discussed below.

In County of Union and PBA Local No. 108, P.E.R.C. No. 2013-4, 39 NJPER 83 (¶32 2012), aff'd 40 NJPER 453 (¶158 App. Div. 2014), the Commission affirmed the award holding that the arbitrator evaluated all of the statutory criteria, explained why she gave more weight to some factors and less to others, and reasonably determined the issues supported by substantial credible evidence in the record. The employer appealed the Commission's decision to the Appellate Division and the Appellate Division affirmed the Commission's decision. (Appendix, Tab 12).

In Borough of Tenafly and PBA Local 376, P.E.R.C. No. 2013-87, 40 NJPER 90 (¶34 2013), aff'd 41 NJPER 257 (¶84 App. Div. 2015), certif. den. 222 N.J. 310 (2015), the Commission affirmed the award holding that the arbitrator was not required to provide a cost analysis for provisions affecting new hires because it was not known how many new employees would be hired during the term of the new contract. The Commission also found that the arbitrator addressed all of the N.J.S.A. 34:13A-16(g) statutory factors and adequately explained the relative weight given. The union appealed to the Appellate Division and the Appellate Division affirmed the Commission's decision, holding that it was consistent with the decisions in New Milford[11] and Ramsey[12] interpreting how to calculate base salary and cost-out

[11] Borough of New Milford, P.E.R.C. No. 2012-53, 38 NJPER 340 (¶116 2012).

[12] Borough of Ramsey, P.E.R.C. No. 2012-60, 39 NJPER 17 (¶3 2012).

increases to base salary items within the 2% cap pursuant to P.L. 2010, c. 105. The Supreme Court denied the union's petition for certification. (Appendix, Tab 12).

In County of Morris, Morris County Sheriff's Office and PBA Local 298, P.E.R.C. No. 2014-69, 40 NJPER 503 (¶162 2014), aff'd 41 NJPER 362 (¶114 App. Div. 2015), the Commission affirmed a remand award, holding that the arbitrator complied with the Commission's directive on remand and was correct in considering the entire award and all aspects of the interest arbitration statute when formulating her award, rather than solely considering a change to step increments in a single year of the award. The Commission found that the arbitrator issued a well reasoned award that complied with the relevant statutes and was supported by substantial credible evidence in the record as a whole. The employer appealed to the Appellate Division and the Appellate Division affirmed the Commission's decision, holding that under the terms of the remand, the arbitrator could re-examine the entire reward and re-evaluate the N.J.S.A. 34:13A-16(g) statutory factors. (Appendix, Tab 12).

In City of Camden and Camden Organization of Police Superiors, P.E.R.C. No. 2013-81, 39 NJPER 503 (¶160 2013), aff'd 41 NJPER 378 (¶119 App. Div. 2015), the Commission affirmed a remand award, holding that the arbitrator properly applied the N.J.S.A. 34:13A-16(g) statutory factors and explained the weight afforded each factor, and that he responded to the issues identified in the remand order. In cross-appeals to the Appellate Division, the union appealed the decision on the remand award while the employer appealed the Commission's initial decision remanding the award back to the arbitrator. The Appellate Division dismissed the employer's appeal as interlocutory and made moot by the subsequent decision in its favor. The Appellate

Division affirmed the Commission's decision affirming the remand award. (Appendix, Tab 12).

In State of NJ and New Jersey Law Enforcement Supervisors Association, P.E.R.C. No. 2014-60, 40 NJPER 495 (¶160 2014), aff'd 443 N.J. Super. 380 (App. Div. 2016), certif. den. 225 N.J. 221 (2016), the Commission affirmed the award, holding that the arbitrator's use of the State's scattergram and decision not to credit the unit with the State's actual savings in the first two years of the award is consistent with N.J.S.A. 34:13A-16.7(b) and the New Milford and Ramsey decisions. The Commission held that whether speculative or known, any changes in financial circumstances benefitting the employer or union are not contemplated by the statute and should not be considered by the arbitrator. The union appealed to the Appellate Division and the Appellate Division affirmed, holding that the Commission's decision fully comported with precedent and the Reform Act's 2% salary cap. The Supreme Court denied the union's petition for certification. (Appendix, Tab 12). Although the court decisions in this case were issued in early 2016, which is after the 12/31/2015 reporting period for this 2016 Biennial Report, they are noted here because the Appellate Division's decision was the first published, and thus precedential, court decision affirming the Commission's application of the 2% cap law and the base salary and salary increase calculation methods established in New Milford.

Currently there are two Commission interest arbitration appeal decisions pending in the Appellate Division.[13] They can be found in the Appendix, Tab 11.

[13] Borough of Oakland, P.E.R.C. No. 2015-75, 42 NJPER 30 (¶7 2015); and State of New Jersey, P.E.R.C. No. 2016-11, 42 NJPER 168 (¶42 2015).

CONCLUSION

The 2010 amendments to the Reform Act were in place until April 1, 2014 and were then extended with modifications by the 2014 amendments. The 2014 amendments have been in place approximately two years. Some of the challenges of the 2010 reforms noted in the 2014 Biennial Report have been ameliorated given the 2014 Act's extended timelines for issuing awards and considering appeals. The Commission is not recommending any statutory changes as that is the purview of the Task Force. The Task Force has issued its 2016 Annual Report (Appendix, Tab 3), and is required to submit a Final Report by December 31, 2017, when certain provisions of the Act (the 2% cap) are set to expire. In administering the Act, the Commission will promulgate new interest arbitration rules as necessary; will continue to encourage pre-arbitration mediation; will maintain a highly qualified Special Panel of Interest Arbitrators; will continue to provide panel members with pertinent continuing education; and will process interest arbitration appeals within 60 days.

APPENDIX

TAB

BIENNIAL REPORT

TAB 1

Police and Fire Public Interest Arbitration Reform Act

§ 34:13A-14. Findings, declarations relative to compulsory arbitration procedure

The Legislature finds and declares:

a. Recognizing the unique and essential duties which law enforcement officers and firefighters perform for the benefit and protection of the people of this State, cognizant of the life threatening dangers these public servants regularly confront in the daily pursuit of their public mission, and fully conscious of the fact that these public employees, by legal and moral precept, do not enjoy the right to strike, it is the public policy of this State that it is requisite to the high morale of such employees, the efficient operation of such departments, and to the general well-being and benefit of the citizens of this State to afford an alternate, expeditious, effective and binding procedure for the resolution of disputes; and

b. It also is the public policy of this State to ensure that the procedure so established fairly and adequately recognizes and gives all due consideration to the interests and welfare of the taxpaying public; and

c. Further, it is the public policy of this State to prescribe the scope of the authority delegated for the purposes of this reform act; to provide that the authority so delegated be statutorily limited, reasonable, and infused with stringent safeguards, while at the same time affording arbitrators the decision making authority necessary to protect the public good; and to mandate that in exercising the authority delegated under this reform act, arbitrators fully recognize and consider the public interest and the impact that their decisions have on the public welfare, and fairly and reasonably perform their statutory responsibilities to the end that labor peace between the public employer and its employees will be stabilized and promoted, and that the general public interest and welfare shall be preserved; and, therefore,

d. To that end the provisions of this reform act, providing for compulsory arbitration, shall be liberally construed.

L. 1977, c. 85, § 1; amended 1995, c. 425, § 2.

§ 34:13A-14a. Short title

This act shall be known and may be cited as the "Police and Fire Public Interest Arbitration Reform Act."

L. 1995, c. 425, § 1.

§ 34:13A-15. Definitions

"Public fire department" means any department of a municipality, county, fire district or the State or any agency thereof having employees engaged in firefighting provided that such firefighting employees are included in a negotiating unit exclusively comprised of firefighting employees.

"Public police department" means any police department or organization of a municipality, county or park, or the State, or any agency thereof having employees engaged in performing police services including but not necessarily limited to units composed of State troopers, police officers, detectives and investigators of counties, county parks and park commissions, grades of sheriff's officers and investigators; State motor vehicle officers, inspectors and investigators of the Alcoholic Beverage Commission, conservation officers in Fish, Game and Shell Fisheries, rangers in parks, marine patrolmen; correction officers, keepers, cottage officers, interstate escort officers, juvenile officers in the Department of Corrections and patrolmen of the Human Services and Corrections Departments; patrolmen of Capitol police and patrolmen of the Palisades Interstate Park Commission.

L. 1977, c. 85, 2, eff. May 10, 1977.

§ 34:13A-16. Negotiations between public fire, police department and exclusive representative; unfair practice charge; negotiation; factfinding; arbitration.

a. (1) Negotiations between a public fire or police department and an exclusive representative concerning the terms and conditions of employment shall begin at least 120 days prior to the day on which their collective negotiation agreement is to expire. The parties shall meet at least three times during that 120-day period. The first of those three meetings shall take place no later than the 90th day prior to the day on which their collective negotiation agreement is to expire. By mutual consent, the parties may agree to extend the period during which the second and third meetings are required to take place beyond the day on which their collective negotiation agreement is to expire. A violation of this paragraph shall constitute an unfair practice and the violator shall be subject to the penalties prescribed by the commission pursuant to rule and regulation.

Prior to the expiration of their collective negotiation agreement, either party may file an unfair practice charge with the commission alleging that the other party is refusing to negotiate in good faith. The charge shall be filed in the manner, form and time specified by the commission in rule and regulation. If the charge is sustained, the commission shall order that the respondent be assessed for all legal and administrative costs associated with the filing and resolution of the charge; if the charge is dismissed, the commission shall order that the charging party be assessed for all legal and administrative costs associated with the filing and resolution of the charge. The filing and resolution of the unfair practice

charge shall not delay or impair the impasse resolution process.

(2) Whenever those negotiations concerning the terms and conditions of employment shall reach an impasse, the commission, through the Division of Public Employment Relations shall, upon the request of either party, or upon its own motion take such steps, including the assignment of a mediator, as it may deem expedient to effect a voluntary resolution of the impasse.

b. (1) In the event of a failure to resolve the impasse by mediation, the Division of Public Employment Relations, at the request of either party, shall invoke factfinding with recommendation for settlement of all issues in dispute unless the parties reach a voluntary settlement prior to the issuance of the factfinder's report and recommended terms of settlement. Factfindings shall be limited to those issues that are within the required scope of negotiations unless the parties to the factfinding agree to factfinding on permissive subjects of negotiation.

(2) Notwithstanding the provisions of paragraph (2) of subsection a. of this section or paragraph (1) of this subsection, either party may petition the commission for arbitration on or after the date on which their collective negotiation agreement expires. The petition shall be filed in a manner and form prescribed by the commission. The party filing the petition shall notify the other party of its action. The notice shall be given in a manner and form prescribed by the commission.

Any mediation or factfinding invoked pursuant to paragraph (2) of subsection a. of this section or paragraph (1) of subsection b. of this section shall terminate immediately upon the filing of a petition for arbitration.

(3) Upon the filing of a petition for arbitration pursuant to paragraph (2) of this subsection, an arbitrator selected pursuant to paragraph (1) of subsection e. of this section shall conduct an initial meeting as a mediation session to effect a voluntary resolution of the impasse.

c. (Deleted by amendment, P.L.2010, c.105)

d. The resolution of issues in dispute shall be binding arbitration under which the award on the unsettled issues is determined by conventional arbitration. The arbitrator shall determine whether the total net annual economic changes for each year of the agreement are reasonable under the nine statutory criteria set forth in subsection g. of this section and shall adhere to the limitations set forth in section 2 of P.L.2010, c.105 (C.34:13A-16.7). The non-petitioning party, within five days of receipt of the petition, shall separately notify the commission in writing of all issues in dispute. The filing of the written response shall not delay, in any manner, the interest arbitration process.

e. (1) The commission shall take measures to assure the impartial selection of an arbitrator or arbitrators from its special panel of arbitrators. On the first business day following receipt of an interest arbitration petition, the commission shall, independent of and without any participation by either of the parties, randomly select an arbitrator from its special panel of arbitrators. The selection by the commission shall be final and shall not be subject to review or appeal.

(2) Applicants for initial appointment to the commission's special panel of arbitrators shall be chosen based on their professional qualifications, knowledge, and experience, in accordance with the criteria and rules adopted by the commission. Such rules shall include relevant knowledge of local government operations and budgeting. Appointment to the commission's special panel of arbitrators shall be for a three-year term, with reappointment contingent upon a screening process similar to that used for determining initial appointments. Arbitrators currently serving on the panel shall demonstrate to the commission their professional qualification, knowledge and experience, in accordance with the criteria and rules adopted by the commission, within one year of the effective date of this act. Any arbitrator who does not satisfactorily demonstrate such to the commission within the specified time shall be disqualified.

(3) Arbitrators serving on the commission's special panel shall be guided by and subject to the objectives and principles set forth in the "Code of Professional Responsibility for Arbitrators of Labor-Management Disputers [Disputes]" of the National Academy of Arbitrators, the American Arbitration Association, and the Federal Mediation and Conciliation Service.

(4) Arbitrators shall be required to complete annual training offered by the State Ethics Commission. Any arbitrator failing to satisfactorily complete the annual training shall be immediately removed from the special panel.

The commission may suspend, remove, or otherwise discipline an arbitrator for a violation of P.L.1977, c.85 (C.34:13A-14 et seq.), section 4 of P.L.1995, c.425 (C.34:13A-16.1) or for good cause. An arbitrator who fails to render an award within the time requirements set forth in this section shall be fined $ 1,000 for each day that the award is late.

f. (1) At a time prescribed by the commission, the parties shall submit to the arbitrator their final offers on each economic and non-economic issue in dispute. The offers submitted pursuant to this section shall be used by the arbitrator for the purposes of determining an award pursuant to subsection d. of this section.

(2) In the event of a dispute, the commission shall have the power to decide which issues are economic issues. Economic issues include those items which have a direct relation to employee income including wages, salaries, hours in relation to earnings, and other forms of compensation such as paid vacation, paid holidays, health and medical insurance, and other economic benefits to employees.

(3) Throughout formal arbitration proceedings the chosen arbitrator may mediate or assist the parties in reaching a mutually agreeable settlement.

All parties to arbitration shall present, at the formal hearing before the issuance of the award, written estimates of the financial impact of their last offer on the taxpayers of the local unit to the arbitrator with the submission of their last offer.

(4) Arbitration shall be limited to those subjects that are within the required scope of collective negotiations, except that the parties may agree to submit to arbitration one or more permissive subjects of negotiation.

(5) The decision of an arbitrator or panel of arbitrators shall include an opinion and an award, and shall be rendered within 90 calendar days of the commission's assignment of that arbitrator.

Each arbitrator's decision shall be accompanied by a written report explaining how each of the statutory criteria played into the arbitrator's determination of the final award. The report shall certify that the arbitrator took the statutory limitations imposed on the local levy cap into account in making the award.

Any arbitrator violating the provisions of this paragraph may be subject to the commission's powers under paragraph (3) of subsection e. of this section. The decision shall be final and binding upon the parties and shall be irreversible, except:

(a) Within 14 calendar days of receiving an award, an aggrieved party may file notice of an appeal of an award to the commission on the grounds that the arbitrator failed to apply the criteria specified in subsection g. of this section or violated the standards set forth in N.J.S.2A:24-8 or N.J.S.2A:24-9. The appeal shall be filed in a form and manner prescribed by the commission. In deciding an appeal, the commission, pursuant to rule and regulation and upon petition, may afford the parties the opportunity to present oral arguments. The commission may affirm, modify, correct or vacate the award or may, at its discretion, remand the award to the same arbitrator or to another arbitrator, selected by lot, for reconsideration. The commission's decision shall be rendered no later than 60 calendar days after the filing of the appeal with the commission.

Arbitration appeal decisions shall be accompanied by a written report explaining how each of the statutory criteria played into their determination of the final award. The report shall certify that in deciding the appeal, the commission took the local levy cap into account in making the award.

An aggrieved party may appeal a decision of the commission to the Appellate Division of the Superior Court.

(b) An arbitrator's award shall be implemented immediately.

(6) The parties shall share equally the costs of arbitration subject to a fee schedule approved by the commission. The fee schedule shall provide that the cost of services provided by the arbitrator shall not exceed $ 1,000 per day. The total cost of services of an arbitrator shall not exceed $ 10,000. If the parties cancel an arbitration proceeding without good cause, the arbitrator may impose a fee of not more than $ 500. The parties shall share equally in paying that fee if the request to cancel or adjourn is a joint request. Otherwise, the party causing such cancellation shall be responsible for payment of the entire fee.

g. 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 or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by P.L.1976, c.68 (C.40A:4-45.1 et seq.).

(2) Comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally:

(a) In private employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.

(b) In public employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.

(c) In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L.1995, c.425 (C.34:13A-16.2); provided, however, that each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.

(3) The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received.

(4) Stipulations of the parties.

(5) The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by 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).

h. A mediator, factfinder, or arbitrator while functioning in a mediatory capacity shall not be required to disclose any files, records, reports, documents, or other papers classified as confidential received or prepared by him or to testify with regard to mediation, conducted by him under this act on behalf of any party to any cause pending in any type of proceeding under this act. Nothing contained herein shall exempt such an individual from disclosing information relating to the commission of a crime.

L. 1977, c. 85, § 3; amended 1995, c. 425, § 3; 1997, c. 183, § 1; 2007, c. 62, § 14, eff. Apr. 3, 2007; 2010, c. 105, § 1, eff. Jan. 1, 2011; 2014, c. 11, § 1, eff. June 24, 2014, retroactive to April 2, 2014.

§ 34:13A-16.1. Annual continuing education program for arbitrators

The commission shall establish an annual continuing education program for the arbitrators appointed to its special panel of arbitrators. The program shall include sessions or seminars on topics and issues of relevance and importance to arbitrators serving on the commission's special panel of arbitrators, such as public employer budgeting and finance, public management and administration, employment trends and labor costs in the public sector, pertinent court decisions, employment issues relating to law enforcement officers and firefighters, and such other topics as the commission shall deem appropriate and necessary. In preparing the curriculum for the annual education program required under this section, the commission shall solicit suggestions from employees' representatives and public employers concerning the topics and issues each of those parties deem relevant and important.

Every arbitrator shall be required to participate in the commission's continuing education program. If a mediator or an arbitrator in any year fails to participate, the commission may remove that person from its special panel of arbitrators. If an arbitrator fails to participate in the continuing education program for two consecutive years, the commission shall immediately remove that individual from the special panel.

L. 1995, c. 425, § 4.

§ 34:13A-16.2. Guidelines for determining comparability of jurisdictions

a. The commission shall promulgate guidelines for determining the comparability of jurisdictions for the purposes of paragraph (2) of subsection g. of section 3 of P.L.1977, c.85 (C.34:13A-16).

b. The commission shall review the guidelines promulgated

under this section at least once every four years and may modify or amend them as is deemed necessary; provided, however, that the commission shall review and modify those guidelines in each year in which a federal decennial census becomes effective pursuant to R.S.52:4-1.

L. 1995, c. 425, § 5.

§ 34:13A-16.3. Fee schedule; commission's costs

The commission may establish a fee schedule to cover the costs of effectuating the provisions of P.L.1977, c.85 (C.34:13A-14 et seq.), as amended and supplemented; provided, however, that the fees so assessed shall not exceed the commission's actual cost of effectuating those provisions.

L. 1995, c. 425, § 6.

§ 34:13A-16.4. Biennial reports

The commission shall submit biennial reports to the Governor and the Legislature on the effects of this amendatory and supplementary act on the negotiations and settlements between local governmental units and their public police departments and public fire departments and to include with that report any recommendations it may have for changes in the law. The reports required under this section shall be submitted in January of even numbered years.

L. 1995, c. 425, § 7.

§ 34:13A-16.5. Rules, regulations

The commission, in accordance with the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall promulgate rules and regulations to effectuate the purposes of this act.

L. 1995, c. 425, § 8.

§ 34:13A-16.6. Survey of private sector wage increases

Beginning on the July 1 next following the enactment of P.L.1995, c.425 (C.34:13A-14a et al.) and each July 1 thereafter, the New Jersey Public Employment Relations Commission shall perform, or cause to be performed, a survey of private sector wage increases for use by all interested parties in public sector wage negotiations. The survey shall include information on a Statewide and countywide basis. The survey shall be completed by September 1 next following enactment and by September 1 of each year thereafter. The survey shall be a public document and the commission shall make it available to all interested parties at a cost not exceeding the actual cost of producing the survey.

L. 1995, c. 425, § 9.

§ 34:13A-16.7. Definitions relative to police and fire arbitration; limitation on awards

a. As used in this section:

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

"Non-salary economic issues" means any economic issue that is not included in the definition of base salary.

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

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

L. 2010, c. 105, § 2, eff. Jan. 1, 2011; amended 2014, c. 11, § 2, eff. June. 24, 2014, retroactive to April 2, 2014.

§ 34:13A-16.8. Police and Fire Public Interest Arbitration Impact Task Force

a. There is established a task force, to be known as the Police and Fire Public Interest Arbitration Impact Task Force.

b. The task force shall be comprised of eight members as follows:

(1) four to be appointed by the Governor;

(2) two to be appointed by the Senate President; and

(3) two to be appointed by the Speaker of the General Assembly.

c. All appointments shall be made within 30 days of the effective date of P.L.2010, c.105 (C.34:13A-16.7 et al.). Vacancies in the membership shall be filled in the same manner as the original appointments. The members of the task force shall serve without compensation but may be reimbursed, within the limits of funds made available to the task force, for necessary travel expenses incurred in the performance of their duties.

d. (1) The task force shall organize as soon as is practicable upon the appointment of a majority of its members and shall select a chairperson from among the appointees of the Governor and a vice chairperson from among the appointees of the Legislature. The Chair of the Public Employment Relations Commission shall serve as non-voting executive director of the task force.

(2) The task force shall meet within 60 days of the effective date of P.L.2010, c.105 (C.34:13A-16.7 et al.) and shall meet thereafter at the call of its chair. In furtherance of its evaluation, the task force may hold public meetings or hearings within the State on any matter or matters related to the provisions of this act, and call to its assistance and avail itself of the services of the Public Employment Relations Commission and the employees of any State department, board, task force or agency which the task force determines possesses relevant data, analytical and professional expertise or other resources which may assist the task force in discharging its duties under this act. Each department, board, commission or agency of this State is hereby directed, to the extent not inconsistent with law, to cooperate fully with the task force and to furnish such information and assistance as is necessary to accomplish the purposes of this act. In addition, in order to facilitate the work of the task force, the Public Employment Relations Commission shall post on its website all collective negotiations agreements and interest arbitration awards entered or awarded after the date of enactment, including a summary of contract or arbitration award terms in a standard format developed by the Public Employment Relations Commission to facilitate comparisons. All collective negotiations agreements shall be submitted to the Public Employment Relations Commission within 15 days of contract execution.

e. (1) It shall be the duty of the task force to study the effect and impact of the arbitration award cap upon local property taxes; collective bargaining agreements; arbitration awards; municipal services; municipal expenditures; municipal public safety services, particularly changes in crime rates and response times to emergency situations; police and fire recruitment, hiring and retention; the professional profile of police and fire departments, particularly with regard to age, experience, and staffing levels; and such other matters as the members deem appropriate and necessary to evaluate the effects and impact of the arbitration award cap.

(2) Specifically, the task force shall study total compensation rates, including factors subject to the arbitration award cap and factors exempt from the arbitration award cap, of police and fire personnel throughout the State and make recommendations thereon. The task force also shall study the interest arbitration process and make recommendations concerning its continued use in connection with police and fire labor contracts disputes. The task force shall make findings as to the relative growth in total compensation cost attributable to factors subject to the arbitration award cap and to factors exempt from the arbitration award cap, for both collective bargaining agreements and arbitration awards.

f. The task force shall annually report its findings, along with any recommendations it may have, to the Governor and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature. The task force's final report due on or before December 31, 2017 shall include, in addition to any other findings and recommendations, a specific recommendation for any amendments to the arbitration award cap. Upon the filing of its final report on or before December 31, 2017, the task force shall expire.

L. 2010, c. 105, § 3, eff. Jan. 1, 2011; amended 2014, c. 11, § 3, eff. June 24, 2014, retroactive to April 2, 2014.

§ 34:13A-16.9. Effective date

This act shall take effect January 1, 2011; provided however, section 2 of P.L.2010, c.105 (C.34:13A-16.7) shall apply only to collective negotiations between a public employer and the exclusive representative of a public police department or public fire department that relate to negotiated agreements expiring on that effective date or any date thereafter until or on December 31, 2017, whereupon, after December 31, 2017, the provisions of section 2 of P.L.2010, c.105 (C.34:13A-16.7) shall become inoperative for all parties except those whose collective negotiations agreements expired prior to or on December 31, 2017 but for whom a final settlement has not been reached.

L. 2010, c. 105, § 4, eff. Jan. 1, 2011; amended 2014, c. 11, § 4, eff. June 24, 2014, retroactive to April 2, 2014.

§ 34:13A-17. Powers of arbitrator

The arbitrator may administer oaths, require the attendance of

witnesses, and the production of such books, papers, contracts, agreements and documents as he may deem material to a just determination of the issues in dispute, and for such purpose may issue subpenas. If any person refuses to obey a subpena, or refuses to be sworn or to testify, or if any witness, party or attorney is guilty of any contempt while in attendance at any hearing, the arbitrator may, or the Attorney General if requested shall, invoke the aid of the Superior Court within the county in which the hearing is being held, which court shall issue an appropriate order. Any failure to obey the order may be punished by the court as contempt.

L. 1977, c. 85, 4, eff. May 10, 1977.

§ 34:13A-18. Limitations on finding, opinion, order of arbitrator

The arbitrator shall not issue any finding, opinion or order regarding the issue of whether or not a public employer shall remain as a participant in the New Jersey State Health Benefits Program or any governmental retirement system or pension fund, or statutory retirement or pension plan; nor, in the case of a participating public employer, shall the arbitrator issue any finding, opinion or order regarding any aspect of the rights, duties, obligations in or associated with the New Jersey State Health Benefits Program or any governmental retirement system or pension fund, or statutory retirement or pension plan; nor shall the arbitrator issue any finding, opinion or order reducing, eliminating or otherwise modifying retiree benefits which exist as a result of a negotiated agreement, ordinance or resolution because of the enactment of legislation providing such benefits for those who do not already receive them.

L. 1977, c. 85, § 5; amended 1997, c. 330, § 4.

§ 34:13A-19. Decision; enforcement; venue; effective date of award; amendment or modification

The decision of the arbitrator may be enforced at the instance of either party in the Superior Court with venue laid in the county in which the dispute arose. The commencement of a new public employer fiscal year after the initiation of arbitration procedures under this act, but before the arbitration decision, or its enforcement, shall not be deemed to render a dispute moot, or to otherwise impair the jurisdiction or authority of the arbitrator or his decision. Increases in rates of compensation awarded by the arbitrator shall take effect on the date of implementation prescribed in the award. The parties, by stipulation, may at any time amend or modify an award of arbitration.

L. 1977, c. 85, 6, eff. May 10, 1977.

§ 34:13A-21. Change in conditions during pendency of proceedings; prohibition without consent

During the pendency of proceedings before the arbitrator, existing wages, hours and other conditions of employment shall not be changed by action of either party without the consent of the other, any change in or of the public employer or employee representative notwithstanding; but a party may so consent without prejudice to his rights or position under this supplementary act.

L. 1977, c. 85, 8, eff. May 10, 1977.

BIENNIAL REPORT

TAB 2

Frequently Asked Questions
Interest Arbitration Procedures

Dated posted on PERC's website: July 10, 2014

On June 24, 2014, Governor Christie signed into law A3424, a bill that revises police and fire interest arbitration law, N.J.S.A. 34:13A-16 through N.J.S.A. 34:13A-16.9. The amended law, L. 2014, c. 11, became effective immediately, is retroactive to April 2, 2014 and expires on December 31, 2017. You can obtain a copy of A3424 (L. 2014, c. 11) at this link: http://www.njleg.state.nj.us/2014/Bills/A3500/3424_I1.PDF. The following are answers to questions regarding the 2014 amendments.

1. Q: Under the amended law, are arbitration awards subject to a 2% cap on base salary?
   A: Yes, provided the contract has an expiration date on or after Jan 1, 2011 through December 31, 2017. The 2% cap was extended by operation of L. 2014, c. 11 and applies retroactively to April 2, 2014.

2. Q: If a municipality received an interest arbitration award subject to the 2% cap, would the next petition for interest arbitration be subject to a 2% cap?
   A: Yes, provided the next contract expires on or before December 31, 2017. The 2014 amendment eliminates the 2011 provision that precluded a municipality from being eligible to receive an award with a 2% cap more than once.

3. Q: Can the 2% cap be compounded from year to year?
   A: Yes. The parties may agree, or the arbitrator may decide, to compound the value of the 2% increase after the first year of the new agreement and may distribute the aggregate monetary value of the award over the term of the collective negotiations agreement in unequal amounts.

4. Q: Are the parties required to have a mediation session once a petition is filed to initiate compulsory interest arbitration?
   A: Yes. The amended law requires the arbitrator to conduct the first meeting as a mediation session to obtain a voluntary resolution of the parties' impasse and continues the provision that the arbitrator may mediate at any time during arbitration proceedings.

5. Q: How much time does an arbitrator have to issue an opinion and award?
   A: The amended law extends the period of time in which an arbitrator is to issue a decision from 45 to 90 calendar days from the Commission's assignment of the arbitrator.

6. Q: How much time does an aggrieved party have to file an appeal of an opinion and award?
   A: The amended law extends the period of time in which an aggrieved party may appeal to the Commission from seven to 14 calendar days.

7. Q: How much time does the Commission have to issue a decision on an appeal of an opinion and award?

   A: The amended law extends the Commission's time to issue its decision from 30 to 60 calendar days.

8. Q: How much can an interest arbitrator charge for his or her services?

   A: The maximum cost for an arbitrator's fee has been increased from $7,500 to $10,000 under the amended law. The parties will continue to share equally the costs of the arbitration services.

9. Q: Will the Police and Fire Public Interest Arbitration Impact Task Force issue reports?

   A: The amended law requires the Task Force to report its findings and recommendations annually, with its last report due on or before December 31, 2017, the expiration date of L. 2014, c. 11.

10. Q: How will a petition to initiate compulsory interest arbitration be processed?

    A: Example #1. If a petition is filed on July 1, 2014 and the collective negotiations agreement expired on June 30, 2014, the 2014 amendments will apply, including, e.g., mandatory mediation at first arbitration session, 90 days for arbitrator to issue an opinion and award, 2% cap on base salary with ability to compound, and the arbitrator's cost of services cannot exceed $10,000.

    A: Example #2. If a petition is filed on March 31, 2014 and the collective negotiations agreement expired on December 31, 2013, the 2014 amendments will not apply to the petition; rather, the 2011 amendments will apply, including, e.g., 45 days for the arbitrator to issue an award, 2% hard cap on base salary, and the arbitrator's cost of services cannot exceed $7,500.

    A: Example #3. If a petition is filed on April 5, 2014 and the collective negotiations agreement expired on December 31, 2013, the 2014 amendments will apply, including, e.g., mandatory mediation at first arbitration session, 90 days for arbitrator to issue an opinion and award, 2% cap on base salary with ability to compound, and the arbitrator's cost of services cannot exceed $10,000.

11. Q: How will appeals of an arbitrator's opinion and award be processed by the Commission?

    A: All appeals filed on or after April 2, 2014, regardless of whether the 2% hard cap on base salary applied to the award, will be processed under the timelines for appeals in the 2014 amended law, i.e., the parties will have 14 days to file an appeal and the Commission will have 60 days to issue a decision.

BIENNIAL REPORT

TAB 3

2016 ANNUAL REPORT

OF THE

POLICE AND FIRE PUBLIC INTEREST

ARBITRATION IMPACT TASK FORCE

TO THE GOVERNOR AND LEGISLATURE

April 19, 2016

Police and Fire Interest Arbitration Impact Task Force

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APPENDIX

POLICE AND FIRE PUBLIC INTEREST ARBITRATION TASK FORCE MEMBERS

Members

Ronald Bakley
NJ State Fraternal Order of Police - Appointee of the Legislature

Timothy Cunningham, Esq.
Director, Division of Local Government Services
Department of Community Affairs
State of New Jersey - Appointee of the Governor

Robert M. Czech, Esq.
Chair & CEO, Civil Service Commission
State of New Jersey - Appointee of the Governor

Michael Dee, Esq.
Director - Governor's Office of Employee Relations
State of New Jersey - Appointment of the Governor

Edwin Donnelly
NJFMBA President - Appointee of the Legislature

Dominick Marino
Professional Firefighters Association of New Jersey
International Association of Fire Fighters - Appointee of the Legislature

George O'Brien
New Jersey State PBA - Appointee of the Legislature

Hon. Declan O'Scanlon, Jr.
Assemblyman - District 13 - Appointee of the Governor

Staff

P. Kelly Hatfield, Ph.D.
Chair
Public Employment Relations Commission
Task Force Executive Director (non-voting)

Daisy Barreto, Esq.
Director of Conciliation & Arbitration
Public Employment Relations Commission
PERC Staff Liaison to Task Force

Frank Kanther, Esq.
Deputy General Counsel
Public Employment Relations Commission
PERC Staff Liaison to Task Force

Kathleen Vogt
Mediator
Public Employment Relations Commission
PERC Staff Liaison to Task Force

POLICE AND FIRE
INTEREST ARBITRATION
IMPACT TASK FORCE
REPORT

The report below is hereby submitted pursuant to N.J.S.A. 34:13A-16.8, on behalf of the Police and Fire Public Interest Arbitration Impact Task Force (hereinafter referred to as the "Task Force"). The Task Force initially was established by P.L. 2010, c.105, which took effect on January 1, 2011. In that legislation, it provided that the Task Force shall be comprised of eight members as follows:

(1) four to be appointed by the Governor;
(2) two to be appointed by the Senate President; and
(3) two to be appointed by the Speaker of the General Assembly.

A chairperson is selected from among the appointees of the Governor and a vice chairperson from among the appointees of the Legislature. The Chair of the Public Employment Relations Commission ("Commission") serves as the non-voting executive director of the Task Force.

The Task Force was to be dissolved as of the filing of its final report in 2014. P.L. 2014, c. 11, continued certain provisions of P.L. 2010, c. 105, with modifications, through December 31, 2017. One such provision that was continued beyond April 1, 2014, is the Task Force which is now reconstituted. This first report of the reconstituted Task Force includes data through calendar year 2015, the first full calendar year following the 2014 amendments.

Role of the Task Force

> *It shall be the duty of the task force to study the effect and impact of the arbitration award cap upon local property taxes; collective bargaining agreements; arbitration awards; municipal services; municipal expenditures; municipal public safety services, particularly changes in crime rates and response times to emergency situations; police and fire recruitment, hiring and retention; the professional profile of police and fire departments, particularly with regard to age, experience, and staffing levels; and such other matters as the members deem appropriate and*

> *necessary to evaluate the effects and impact of the arbitration award cap. Specifically, the task force shall study total compensation rates, including factors subject to the arbitration award cap and factors exempt from the arbitration award cap, of police and fire personnel throughout the state and make recommendations thereon. The task force also shall study the interest arbitration process and make recommendations concerning its continued use in connection with police and fire labor contracts disputes. The task force shall make findings as to the relative growth in total compensation cost attributable to factors subject to the arbitration award cap and to factors exempt from the arbitration award cap, for both collective bargaining agreements and arbitration awards.*

N.J.S.A. 34:13A-16.8(e).

The Task Force is required to report its findings, along with any recommendations it may have, to the Governor and the Legislature annually. The Task Force's final report, due on or before December 31, 2017, shall include, in addition to any other findings and recommendations, a specific recommendation for any amendments to the arbitration award cap. Upon the filing of its final report on or before December 31, 2017, the Task Force shall expire.

2014 Amendments

On June 24, 2014, the Governor signed P.L. 2014, c. 11, amending various provisions of the interest arbitration statute applicable to police and fire negotiations as follows:

1. Requiring an initial mandatory mediation session with the appointed arbitrator before any interest arbitration hearing commences in order to effect a voluntary resolution of the impasse (N.J.S.A. 34:13A-16(3)(b)(3));

2. Extending the time period for the issuance of the arbitrator's award from forty-five days to ninety days from the date of the Commission's assignment of an arbitrator (N.J.S.A. 34:13A-16(3)(f)(5));

3. Extending the time for filing an appeal with the Commission of an interest arbitration award from seven days from the date the award is issued to fourteen days (N.J.S.A. 34:13A-16(3)(f)(5)(a));

4. Extending the time for the Commission to render a decision on any appeal of an interest arbitration award from thirty days to sixty days (N.J.S.A. 34:13A-16(3)(f)(5)(a));

5. Increasing the total cost an arbitrator can charge for his or her services from $7,500 to $10,000 (N.J.S.A. 34:13A-16(3)(f)(6));

6. Providing for compounding of the percentage increases under the two percent cap (N.J.S.A. 34:13A-16.7(2)(b))

7. Extending the expiration date of the two percent cap from April 1, 2014 to December 31, 2017 (N.J.S.A. 34:13A-16.9(4)).

In addition to reviewing and tracking the progress and effect of the interest arbitration process generally, the Task Force will review data provided by the Commission to determine the effect, if any, of the 2014 amendments on process and outcomes.

April 19, 2016 Report of the Task Force

A. Trends in Interest Arbitration and Impact of P.L. 2010 c. 105, as amended

1. Petitions Filed for Interest Arbitration

The Task Force has continued to track the number of Petitions to Initiate Interest Arbitration. As noted in the Task Force's March 19, 2014 Final Report, the number of Petitions

declined precipitously under P.L. 2010, c.105, from 121 Petitions in 2010 (the calendar year immediately prior to the effective date of the arbitration award cap) to 28 in 2013.

In 2014, the number of Petitions increased to 88. That increase appears to be associated with the anticipated expiration of the 2% cap on salary awards as of April 1, 2014. Of those 88 Petitions filed in 2014, 74 were filed within a few days of the April 1 expiration and all but three were filed by employers. **See Tab A.** In 2015, the number of filed cases dropped to 20 which is consistent with the number of cases filed annually prior to the initial expiration of the interest arbitration award cap. Critically, as shown in Point 2 below, even with the sharp increase in the number of cases filed in 2014, the number of pending cases at the beginning of 2015 remained low compared with the number of cases that were pending prior to the effective date of P.L. 2010, c.105. The Task Force will continue to monitor the filings of Petitions to confirm that the 2014 increase was an anomaly.

2. Open Interest Arbitration Cases

P.L. 2010, c.105 established strict deadlines for the issuance of interest arbitration awards (45 days from date of appointment). P.L. 2014, c. 11 extended the deadline for an arbitrator's award from 45 days to 90 days.

As recognized in the Task Force's March 2014 Report, as of the beginning of calendar year 2014, there were 37 pending Interest Arbitration cases. **See also Tab B.** That number represented a significant reduction from 187 open interest arbitration cases as of January 2011, when the initial law took effect. In 2015, the number of pending cases as of the beginning of calendar year 2015 increased slightly to 42. **Id.** That number decreased significantly to 17 pending cases as of the beginning of 2016. Accordingly, despite the nominal increase in 2015, it

appears that the reduction in the number of pending cases realized under the initial cap law has continued under the amended law. The Task Force will continue to monitor the number of open cases to determine if any different or additional trends can be determined.

3. Impasse/Fact-Finding Filings

One of the areas the Task Force stated it would review in its June 2012 Report was the number of impasse and fact-finding filings. Upon the initial passage of P.L. 2010, c. 105, the impasse/fact-finding procedures available through the Commission began to be utilized with significant regularity by the parties. For example, in the five years immediately preceding the effective date of P.L. 2010, c. 105, there were five impasse or fact-finding filings (four of which were filed in 2010). **Tabs C & D.** By comparison, over the five -year period since P.L. 2010, c. 105 (2011-2015), there have been 88 impasse/fact-finding filings. **Id.**

At the same time, the average annual number of Petitions to Initiate Interest Arbitration has declined significantly since the effective date of P.L., 2010, c. 105. Specifically, from 2006 through December of 2010, the average number of annual interest arbitration filings was 111. **Tab E.** From January 2011 through 2015, including the significant increase in filings on the eve of the anticipated expiration of the 2% cap, the average number of filings was down to 41 – a decrease by more than half. If you exclude the 74 Petitions filed in the days leading up to April 1, 2014, that average drops to 27 annually. The Task Force will continue to monitor the number of impasse and fact-finding petitions, and intends to focus future reports on the numbers of such filings that result in voluntary settlements as compared to the number that are followed by interest arbitration.

4. Appeals

Following a spike of 22 appeals in 2012 after the 2010 amendments were passed, the number of appeals has decreased to 9 in 2013, 5 in 2014 and 3 in 2015. **Tab F.** Based on this data, it does not appear that the increased time for filing an appeal with the Commission from 7 to 14 days under the 2014 amendments has had any effect on the number of appeals filed annually. The Task Force will continue to monitor trends associated with the filing of appeals in future reports.

B. Number of Interest Arbitrators Available and Arbitration Costs

Under P.L. 2010, c. 105, the total cost of services of an arbitrator shall not exceed $7,500.00. With the passage of P.L. 2014, c. 11, the maximum cost of service was increased to $10,000.

Prior to the effective date of P.L. 2010, c. 105, the Commission had a total of 21 interest arbitrators on its panel. As of April 2014, that number had decreased to 5. Currently, there are 6 interest arbitrators on the Commission's panel. The Task Force will continue to monitor the number of interest arbitrators available on its panel.

C. Analysis of Base Salary Increases in Awards and Voluntary Settlements.

A primary focus of the initial Task Force was to determine the effect of P.L. 2010, c. 105 on the economic impact of both interest arbitrator awards and voluntary settlements. As reported in the Task Force's Final Report, the average increase to base salary (as defined by N.J.S.A. 34:13A-16.7(a)) in all reported voluntary settlements that would have been subject to the 2% cap was 2.11%. The average increase for those matters that proceeded to interest arbitration but

settled prior to a final award was 1.84%. For those matters that proceeded to interest arbitration, the average increase to base salary awarded was 1.92%. As recognized by the Task Force in its 2014 Final Report, because the cost of increments and longevity was not typically calculated prior to P.L. 2010, c. 105, it is difficult to compare the true economic impact of the law. In order to put the impact into context, however, the 2014 Final Report provided an analysis of twelve interest arbitration awards that were subject to the 2% cap. In that analysis, the Task Force compared the true cost of the twelve arbitration awards to the costs that would have been incurred had the same terms been carried over into the successor agreements. That analysis showed on average a 1.9% annual increase under the 2% cap compared to a 4.69% increase without the cap.

The Task Force will continue to monitor the average increase to base salary for voluntary settlements and for interest arbitration awards. Preliminary data, however, shows that the economic impact of the 2% cap recognized in the 2014 Final Report has continued. **Tab G.** In calendar year 2014, there were 16 reported voluntary settlements after interest arbitration was initiated with an average increase to base salary of 1.61%. During the same period there were 12 arbitration awards with an average increase to base salary of 1.69%. In calendar year 2015, there were 9 reported voluntary settlements after interest arbitration was initiated with an average increase to base salary of 1.73%. During the same period there were 6 interest arbitration awards with an average increase to base salary of 1.71%. As it monitors increases to base salary in future reports, the Task Force will consider the 2014 amendments which allow for compounding in the calculation of the cap.

Tab

TASK FORCE REPORT OF THE IA 74

(as of 3/31/2015)

	Employer	Union	Filed by/on	IA and SM Dkt. Nos.	Status as of March 31, 2015
1	Asbury Park	PBA Loc 6	Employer, 3/31/2014	IA-2014-030 **(SM-2014-008)**	Settled by mediator
2	Asbury Park	PBA Loc 6 (Superiors)	Employer, 3/31/2014	IA-2014-052 **(SM-2014-008)**	Settled by mediator
3	Atlantic Cty	FOP Lodge 34	Employer, 3/26/2014	IA-2014-014	Interest arbitration award issued 10/2/2014
4	Berkeley Tp	PBA Loc 237	Employer, 3/28/2014	IA-2014-019	Withdrawn by petitioner
5	Bernardsville	PBA Loc 365 (Lts/Sgts)	Employer, 3/31/2014	IA-2014-053 **(SM-2014-005)**	Settled by mediator
6	Bernardsville	PBA Loc 365	Employer, 3/31/2014	IA-2014-051 **(SM-2014-004)**	Settled by mediator
7	Camden Cty	FOP Lodge 218	Employer, 3/31/2014	IA-2014-057	Settled by mediator
8	Camden Cty	FOP Lodge 218A	Employer, 3/31/2014	IA-2014-058 **(SM-2014-023)**	Parties negotiating on own Reassess May 1, 2015
9	Camden City	IAFF Loc 2578	Employer, 3/31/2014	IA-2014-068	Settled with assistance of interest arbitrator
10	Camden City	IAFF Loc 788	Employer, 3/27/2014	IA-2014-018	Interest arbitration award issued 8/11/2014
11	E Orange	E Orange SOA, Loc 16	Employer, 3/31/2014	IA-2014-063	Withdrawn by petitioner
12	E Orange	E Orange Fire Officers Assn	Employer, 3/31/2014	IA-2014-041	Parties negotiating on own
13	E Orange	FMBA Loc 23	Employer, 3/31/2014	IA-2014-042	Withdrawn by petitioner
14	E Orange	E Orange Fire Officers Assn (Captains)	Employer, 3/31/2014	IA-2014-043	Parties negotiating on own
15	E Orange	FOP Lodge 111	Employer, 3/31/2014	IA-2014-062 **(SM-2014-024)**	Withdrawn by petitioner
16	Essex Cty Prosecutor	PBA Loc 325	Employer, 3/31/2014	IA-2014-076 **(SM-2014-025)**	Withdrawn by petitioner

	Employer	Union	Filed by/on	IA and SM Dkt. Nos.	Status as of March 31, 2015
17	Essex Cty Sheriff	FOP Lodge 138 (Superiors)	Employer, 3/31/2014	IA-2014-072 **(SM-2015-001)**	Withdrawn by petitioner
18	Essex Cty	PBA Loc 382	Employer, 3/31/2014	IA-2014-074	Withdrawn by petitioner
19	Essex Cty Prosecutor	FOP Lodge 205	Employer, 3/31/2014	IA-2014-070	Withdrawn by petitioner
20	Essex Cty	FOP Lodge 105	Employer, 3/31/2014	IA-2014-073	Withdrawn by petitioner
21	Essex Cty Sheriff	PBA Loc 183	Employer, 3/31/2014	IA-2014-075	Withdrawn by petitioner
22	Evesham Tp	FOP Lodge 143	Employer, 3/31/2014	IA-2014-034 **(SM-2014-002)**	Settled by mediator
23	Evesham Tp	FOP Lodge 143A	Employer, 3/31/2014	IA-2014-033 **(SM-2014-003)**	Settled by mediator
24	Gloucester Cty Sheriff	PBA Loc 122	Employer, 3/31/2014	IA-2014-056	Withdrawn by petitioner
25	Green Brook	PBA Loc 398	Employer, 3/31/2014	IA-2014-035 **(SM-2014-006)**	Withdrawn by petitioner
26	Harding Tp	PBA 340	Employer, 3/31/2014	IA-2014-050 **(SM-2014-001)**	Settled by mediator
27	Hudson Cty	FOP Lodge 196A	Employer, 3/31/2014	IA-2014-059	Withdrawn by petitioner
28	Hudson Cty	FOP Lodge 196	Employer, 3/31/2014	IA-2014-060	Withdrawn by petitioner
29	Hudson Cty	PBA Loc 232	Employer, 3/31/2014	IA-2014-038	Withdrawn by petitioner
30	Hunterdon Cty	FOP Lodge 94	Employer, 3/31/2014	IA-2014-049 **(SM-2015-002)**	Parties negotiating with the assistance of mediator
31	Irvington Tp	IAFF Loc 305	Employer, 3/31/2014	IA-2014-055	Withdrawn by petitioner
32	Irvington Tp	IAFF Loc 2004	Employer, 3/31/2014	IA-2014-054	Withdrawn by petitioner
33	Irvington Tp	PBA Loc 29	Employer, 3/31/2014	IA-2014-066	Interest arbitration award issued 6/17/2014
34	Irvington Tp	Irvington Police SOA	Employer, 3/31/2014	IA-2014-064	Settled with assistance of interest arbitrator
35	Lakehurst Boro	FOP Lodge 179	Employer, 3/31/2014	IA-2014-040	Withdrawn by petitioner
36	Madison Boro	PBA Loc 92	Employer, 3/31/2014	IA-2014-025	Withdrawn by petitioner

	Employer	Union	Filed by/on	IA and SM Dkt. Nos.	Status as of March 31, 2015
37	Madison Boro	PBA Loc 92 SOA	Employer, 3/31/2014	IA-2014-026	Withdrawn by petitioner
38	Mercer Cty	PBA Loc 187	Employer, 3/31/2014	IA-2014-077 **(SM-2014-016)**	Settled by mediator
39	Mercer Cty Prosecutor	Mer Cty Pros Sup Officers Unit	Employer, 3/31/2014	IA-2014-078	Interest arbitrator being assigned
40	Mercer Cty	PBA Loc 339	Employer, 3/31/2014	IA-2014-079 **(SM-2014-010)**	Parties negotiating with assistance of mediator
41	Monmouth Cty Sheriff	FOP Lodge 30 Investigators	Employer, 3/31/2014	IA-2014-081 **(SM-2015-009)**	Settled by mediator
42	Monmouth Cty	PBA Loc 240	Employer, 3/31/2014	IA-2014-083 **(SM-2014-014)**	Settled by mediator
43	Monmouth Cty Sheriff	FOP Lodge 121	Employer, 3/31/2014	IA-2014-086 **(SM-2015-008)**	Settled by mediator
44	Monmouth Cty Prosecutor	PBA Loc 256 SOA	Employer, 3/31/2014	IA-2014-084	Interest arbitration award issued 8/4/2014
45	Monmouth Cty	PBA Loc 314	Employer, 3/31/2014	IA-2014-087 **(SM-2014-018)**	Withdrawn by petitioner
46	Monmouth Cty Sheriff	FOP Lodge 30 SOA	Employer, 3/31/2014	IA-2014-082 **(SM-2015-009)**	Settled by mediator
47	Monmouth Cty Prosecutor	PBA Loc 256	Employer, 3/31/2014	IA-2014-085	Interest arbitration award issued 8/4/2014
48	NJ/State	NJ Div of Criminal Justice NCO	Union, 3/26/2014	IA-2014-016	Withdrawn by petitioner
49	NJ/State	NJ Div of Criminal Justice SOA	Union, 3/26/2014	IA-2014-017	Withdrawn by petitioner
50	NJ/State	FOP Lodge 91	Union, 3/26/2014	IA-2014-015	Withdrawn by petitioner
51	Oakland Boro	PBA Loc 164	Employer, 3/31/2014	IA-2014-044 **(SM-2014-022)**	Interest arbitration award due 5/4/2015
52	Ocean Cty	PBA Loc 258 SOA	Employer, 3/28/2014	IA-2014-021	Settled with assistance of interest arbitrator

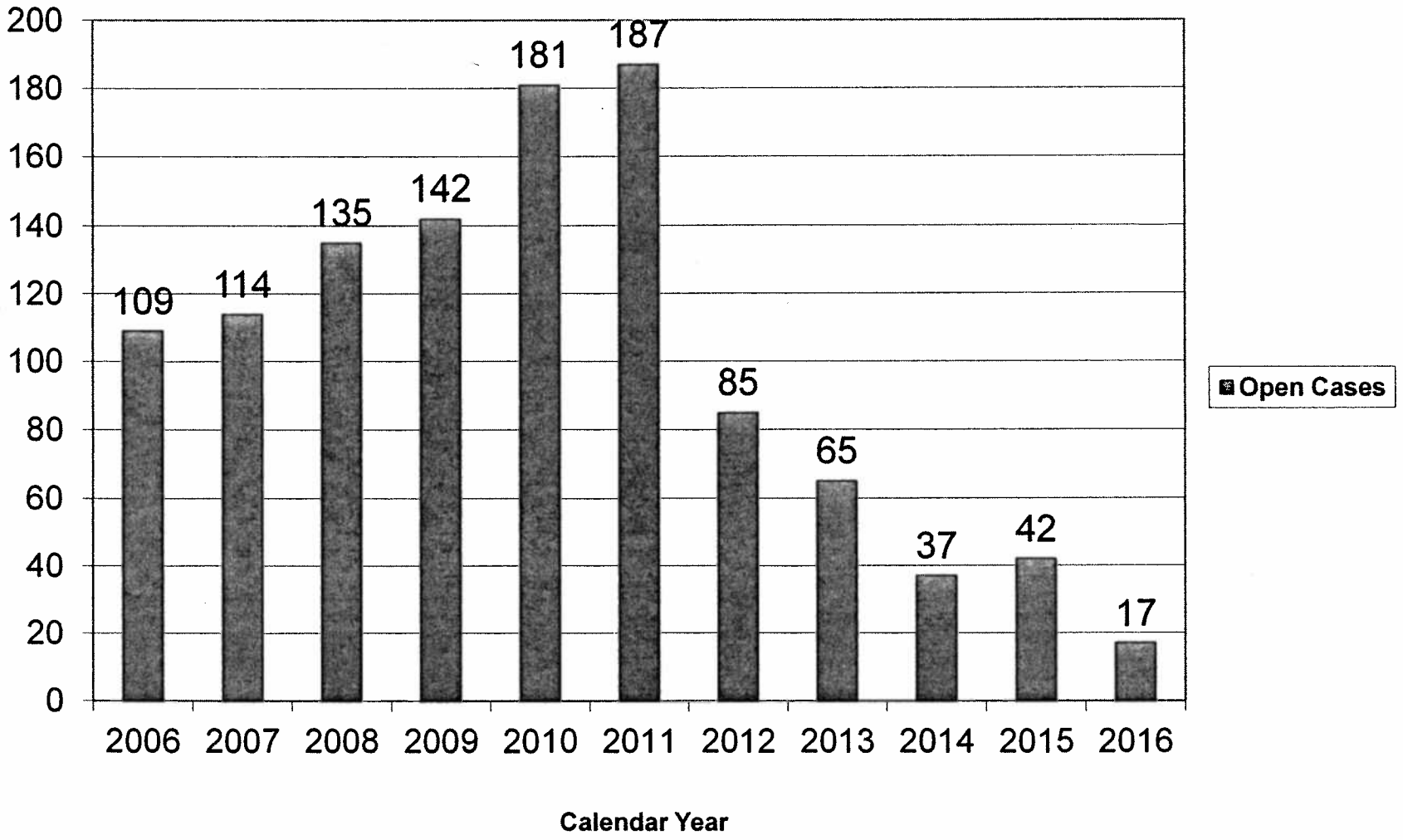
	Employer	Union	Filed by/on	IA and SM Dkt. Nos.	Status as of March 31, 2015
53	Ocean Cty	Ocean Cty Pros Sgts Assn	Employer, 3/28/2014	IA-2014-024	Withdrawn by petitioner
54	Ocean Cty	PBA Loc 258	Employer, 3/28/2014	IA-2014-020 **(SM-2014-015)**	Interest arbitration award issued 10/7/2014
55	Ocean Cty	PBA Loc 171	Employer, 3/28/2014	IA-2014-023 **(SM-2014-017)**	Settled by mediator
56	Ocean Cty	PBA Loc 379A	Employer, 3/28/2014	IA-2014-022	Parties negotiating on own
57	Old Bridge Tp	FOP Lodge 22 (Lts/Sgts)	Employer, 3/31/2014	IA-2014-047 **(SM-2014-020)**	Settled with assistance of interest arbitrator
58	Old Bridge Tp	FOP Lodge 22 (Captains)	Employer, 3/31/2014	IA-2014-046	Withdrawn by petitioner
59	Old Bridge Tp	PBA Loc 127	Employer, 3/31/2014	IA-2014-045	Withdrawn by petitioner
60	Paulsboro Boro	PBA Loc 122	Employer, 3/31/2014	IA-2014-048	Withdrawn by petitioner
61	Pennsauken Tp	FOP Lodge 3	Employer, 3/31/2014	IA-2014-071	Withdrawn by petitioner
62	Pennsauken Tp	FMBA Loc 64	Employer, 3/31/2014	IA-2014-061	Withdrawn by petitioner
63	Pennsauken Tp	FMBA Loc 264	Employer, 3/31/2014	IA-2014-065	Withdrawn by petitioner
64	Plainfield	Plainfield Fire Officers Assn	Employer, 3/31/2014	IA-2014-029	Withdrawn by petitioner
65	Plainfield	PBA Loc 19	Employer, 3/31/2014	IA-2014-037 **(SM-2014-011)**	Settled by mediator
66	Plainfield	FMBA Loc 7	Employer, 3/31/2014	IA-2014-028 **(SM-2014-021)**	Settled by mediator
67	Plainfield	PBA Loc 19 SOA	Employer, 3/31/2014	IA-2014-036	Settled by mediator
68	Plainsboro Tp	PBA Loc 319 SOA	Employer, 3/31/2014	IA-2014-031	Parties negotiating on own
69	Plainsboro Tp	PBA Loc 319	Employer, 3/31/2014	IA-2014-032 **(SM-2014-009)**	Withdrawn by petitioner
70	Plumsted Tp	PBA Loc 390	Employer, 3/31/2014	IA-2014-080	Settled with assistance of interest arbitrator

	Employer	Union	Filed by/on	IA and SM Dkt. Nos.	Status as of March 31, 2015
71	Sea Girt Boro	PBA Loc 50	Employer, 3/31/2014	IA-2014-027 **(SM-2015-004)**	Withdrawn by petitioner
72	Tinton Falls	PBA Loc 251	Employer, 3/31/2014	IA-2014-039 **(SM-2014-007)**	Settled by mediator
73	Union Cty	PBA Loc 199	Employer, 3/31/2014	IA-2014-069 **(SM-2014-019)**	Withdrawn by petitioner
74	Union Cty	PBA Loc 199A	Employer, 3/31/2014	IA-2014-067 **(SM-2015-003)**	Withdrawn by petitioner

Cases Open 8 **Cases Closed 66**

Tab

Interest Arbitration Cases Open at Start of Calendar Year



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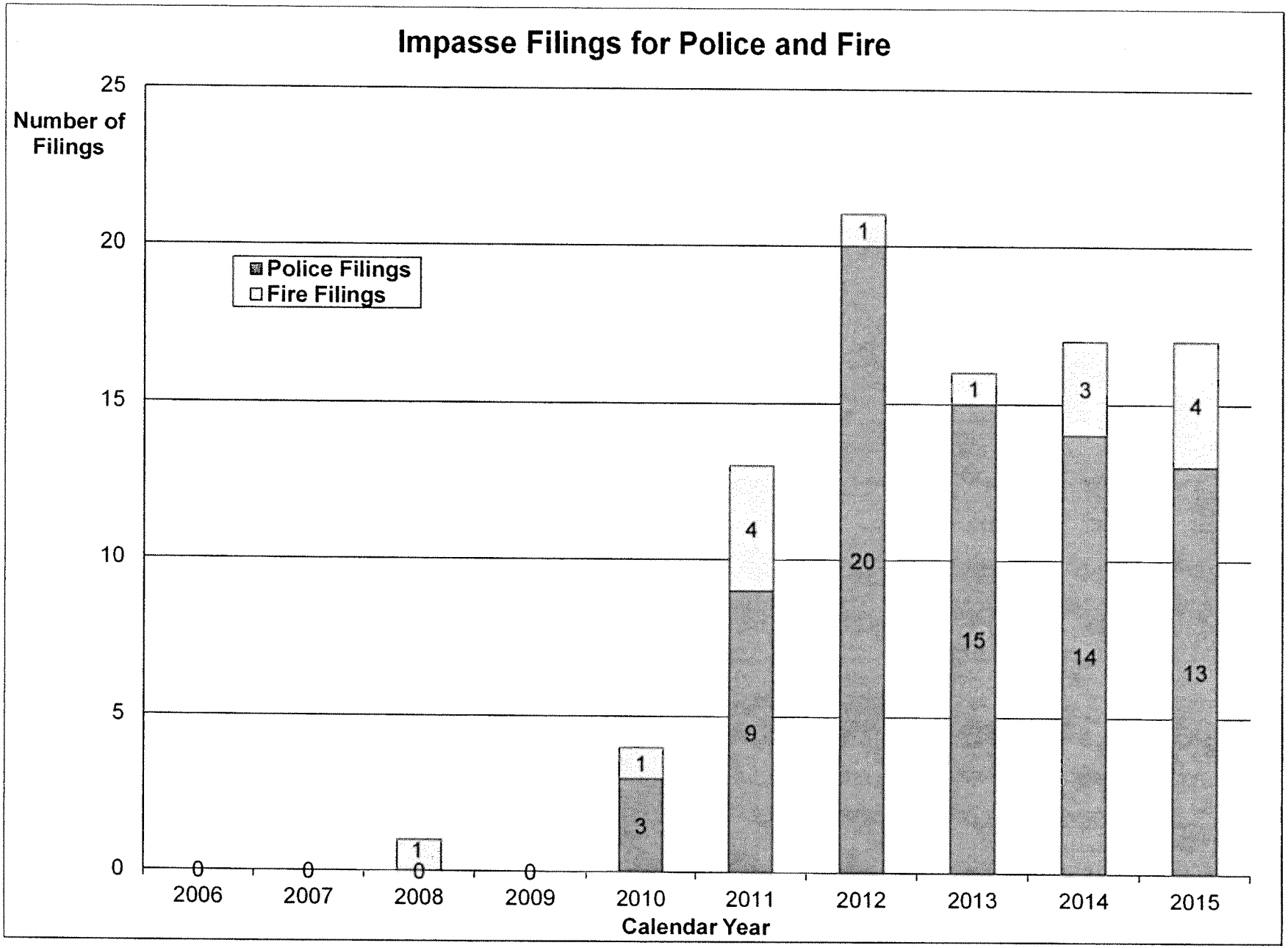
TASK FORCE
INTEREST ARBITRATION DATA

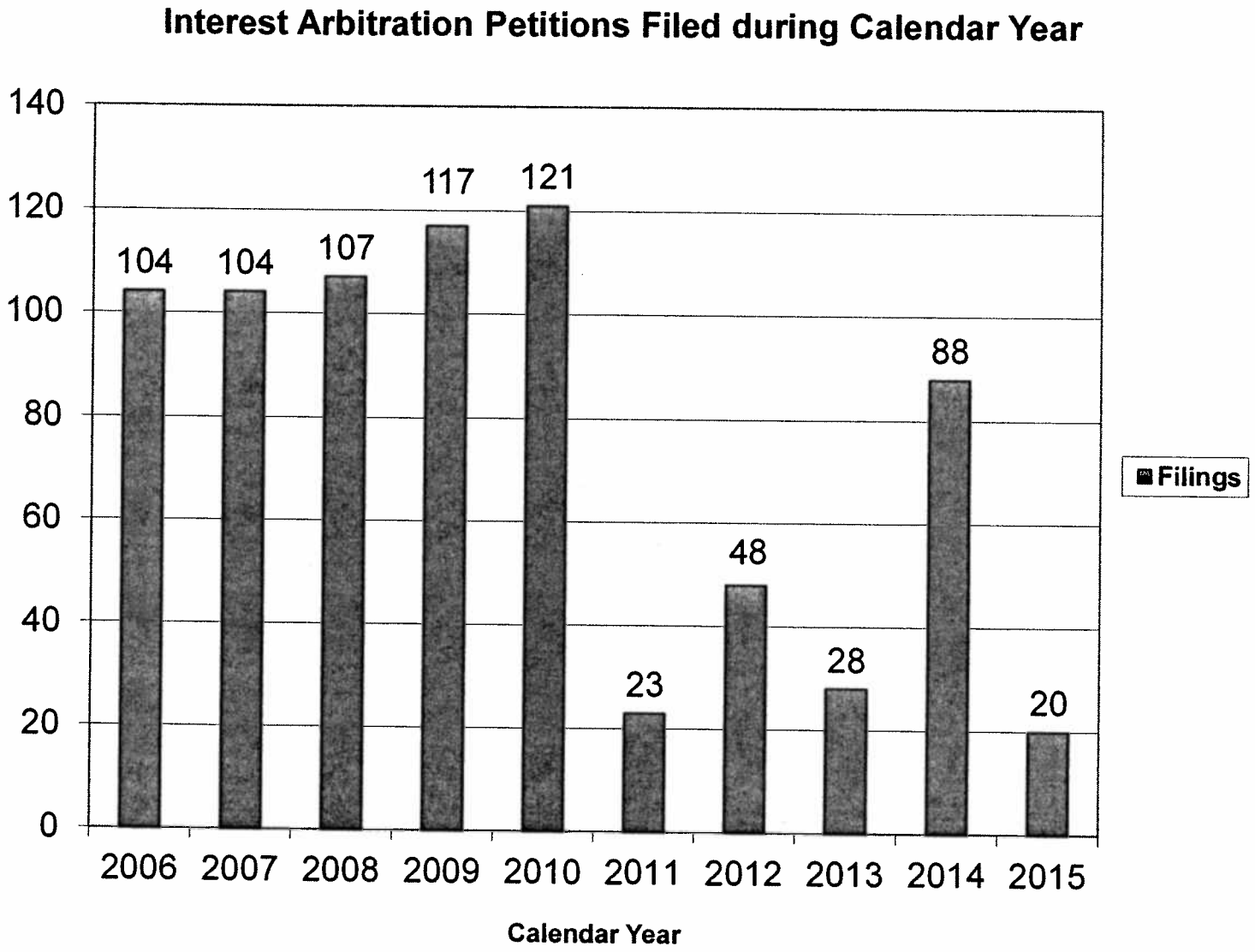
Data	CY 2006	CY 2007	CY 2008	CY 2009	CY 2010	CY 2011	CY 2012	CY 2013	CY 2014	CY 2015
IA PETITIONS FILED	104	104	107	117	121	23	48	28	88	20
OPEN CASES @ START OF CY	109	114	135	142	181	187	85	65	37	42
IA DISPOSALS (closed dockets)	98	80	100	89	115	124	74	57	80	40
IA AWARDS ISSUED	13	16	15	16	16	34	36	27	12	6
IA VOLUNTARY SETTLEMENTS*	51	44	58	43	45	38	29	8	16	9
IA APPEALS FILED	3	1	2	5	15	17	22	9	5	3
IMPASSE FILINGS (Police / Fire)	0P / 0F	0P / 0F	0P / 1F	0P / 0F	3P / 1F	9P / 4F	20P / 1F	15P / 1F	14P / 3F	13P / 4F
FACT-FINDING (Police / Fire)	0P / 0F	0P / 0F	0P / 0F	0P / 0F	0P / 0F	1P / 1F	0P / 1F	0P / 0F	0P / 0F	0P / 1F

* - Includes only settlements in impasses for which an arbitrator was assigned.

Tab

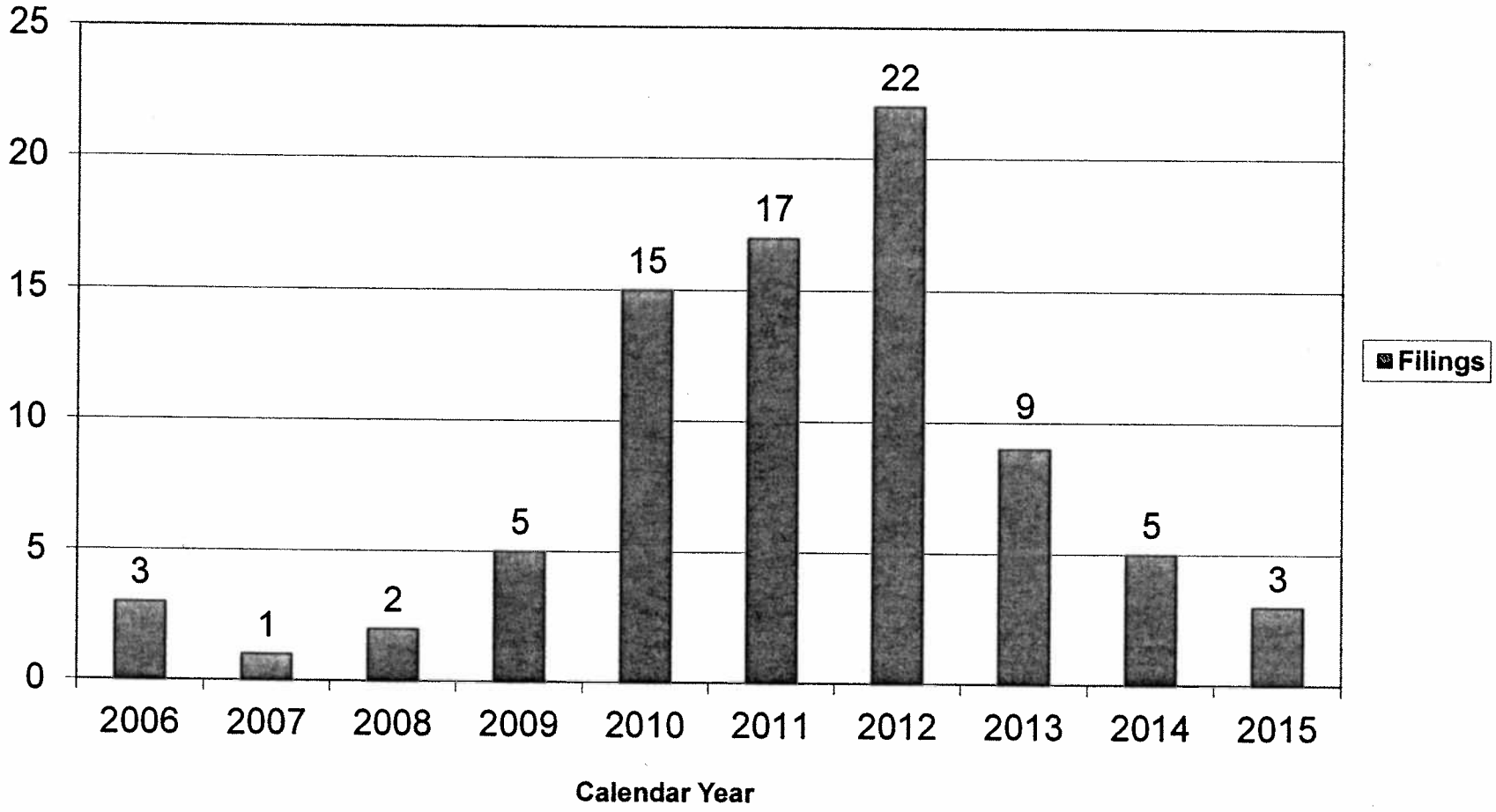

Impasse Filings for Police and Fire
Number of Filings
25
20
15
10
5
0
Police Filings
Fire Filings
0
0
1
0
0
3
1
9
4
20
1
15
1
14
3
13
4
2006
2007
2008
2009
2010
2011
2012
2013
2014
2015
Calendar Year

Tab


Interest Arbitration Petitions Filed during Calendar Year
140
120
100
80
60
40
20
0
104
104
107
117
121
23
48
28
88
20
2006
2007
2008
2009
2010
2011
2012
2013
2014
2015
Calendar Year
Filings

Tab

Interest Arbitration Appeals Filings during Calendar Year



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NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION
INTEREST ARBITRATION SALARY INCREASE ANALYSIS

TIME PERIOD	TOTAL NUMBER OF AWARDS & AVERAGE INCREASES								APPEALS OF IA AWARDS (TO NJ PERC)			NUMBER OF REPORTED VOLUNTARY SETTLEMENTS & REPORTED AVERAGE INCREASES					AVERAGE INCREASE VOLUNTARY SETTLEMENTS
	TOTAL	Total Pre-2011	Avg. % Awards Pre-2011	Total Post-2011	Total Post-2011 Non-2%	Avg. % Awards Post-2011 Non-2%	Total Post-2011 2%	Avg. % Awards Post-2011 2%	TOTAL	Total Pre-2011	Total Post-2011	TOTAL	Total Pre- & Post-2011 Non-2%	Avg. % Pre- & Post-2011 Non-2%	Total Post-2011 2%	Avg. % Post-2011 2%	TOTAL
1/1/2015 - 12/31/2015	6	0	N/A	6	0	N/A	6	1.71% [1]	3	0	3	9 [2]	0	N/A	9	1.73% [3]	1.73%
1/1/2014 - 12/31/2014	12	1	1.69%	11	5	1.74%	6	1.69% [1]	5	1	4	16 [2]	5	1.93%	11	1.47% [3]	1.61%
1/1/2013 - 12/31/2013	27	15	1.87%	12	1	1.16%	11	1.89% [1]	9	3	6	8 [2]	5	1.85%	3	2.13% [3]	1.96%
1/1/2012 - 12/31/2012	36	20	1.85%	16	9	1.59%	7	1.98% [1]	22	5	17	29 [2]	13	1.86%	16	1.78% [3]	1.82%
						All calculations are based on actual awards or settlements received.											
CHART KEY		**Pre 2011:** IA petitions filed prior to January 1, 2011 are not subject to statutory fast processing or 2% annual base salary increase cap. **Post 2011:** IA petitions filed after December 31, 2010 are subject to new fast processing statutory requirements. **Post 2011 2%:** IA petitions filed after December 31, 2010 for contracts expired after December 31, 2010 are subject to fast processing and the 2% salary increase cap.															
		1 - These Salary Increase Percentages include any increases due to increments/steps, longevity, and across-the-board raises.															
		2 - Includes only settlements in impasses for which an interest arbitrator was assigned.															
		3 - May or may not include increases due to increments/steps, or longevity.															

BIENNIAL REPORT

TAB 4

New Jersey Public Employment Relations Commission

Interest Arbitrator By-Lot Selection
Program:

Random Number Generation
Testing for Re-Certification

By

Francis A. Steffero, PhD, CISA

April 28, 2014

I. INTRODUCTION

In September, 1991, the New Jersey Public Employment Relations Commission (PERC) implemented a computer-assisted system to create interest arbitration panels. The system was designed to assign interest arbitrators to panels in a random manner. The system used a computer-based random number generator supplied by the equipment manufacturer, Wang Laboratories, Inc.

PERC commissioned a study to certify that the computer system performed in a random manner consistent with requirements set forth in N.J.S.A. 34:13A-16 and N.J.A.C. 19:16-5.6. The study (Steffero, 1991) used statistical techniques recommended by Knuth (1981) and confirmed the system performed as expected. The system was modified in 1996 to comply with a revision in N.J.S.A. 34:13A-16e(2) which changed the selection of interest arbitrators from a panel selection process to a direct by-lot appointment process. PERC commissioned a second study (Steffero, 1996) which certified that the system assigned interest arbitrators in an unbiased manner.

In 2005, the Wang Laboratories, Inc., hardware and software used to create and operate the computer-assisted system reached the end of its life cycle. PERC selected Specialty Systems, Inc. (SSI) to develop a new system based on the original requirements. SSI used Lotus Notes, an IBM product, and Microsoft's Windows 2003 Server running on a Hewlett-Packard ProLiant DL380 server as the hardware and software platform. Lotus Script is the programming language for Lotus Notes and was used to program the current system. SSI used the random number generator provided by IBM in the Lotus Script programming language as the source of random numbers used in the algorithm to select interest arbitrators.

The Lotus Notes system was tested in 2005, 2009 and 2011 (Steffero, 2005, 2009, 2011) to confirm that the computer assisted system assigned interest arbitrators in a random manner. The methodology of the study applied a statistical test described by Donald E. Knuth (1981, 1998), professor emeritus from Stanford University. The results of prior studies confirmed that the random number generator provided by IBM in Lotus Script generated random numbers. The results of prior studies also confirmed that the programming provided by SSI selected interest arbitrators in a random manner (Steffero, 2005, 2009, 2011).

In 2014 the IBM/Lotus Notes system was retested to confirm that the computer assisted system continues to comply with the interest arbitrator appointment procedures amended by L. 2010 c. 105 effective January 1, 2011 to assign interest arbitrators in a random manner. The present study followed the methodology from the past studies (Steffero, 2005, 2009, 2011). The PRNG (Pseudo Random Number Generator) test was not repeated because there had been no changes to the IBM random number generator between 2009 and 2014. The Completed Application Test was performed three times on April 17, April 21 and April 22, 2014, respectively. The results confirmed that the information selection process behaved in a random manner. The following sections present the background, methodology, results and conclusions of the study.

II. BACKGROUND INFORMATION

In this study, the term random is defined as "...a process of selection in which each item of a set has an equal probability of being chosen" (Flexner, 1987). Therefore, if each item of a set has an equal chance of being selected, then the selection process is free from bias. In this study, if every eligible interest arbitrator has an equal probability of being selected, then the selection process behaves in a random manner.

Donald Knuth (1981, 1998) devoted Volume II of the classic, seven volume series called The Art of Computer Programming, to semi-numerical algorithms, and Chapter 3 in Volume II thoroughly examined random numbers generated by digital computers. The 3rd edition of Volume II, published in 1998, brought the treatment of this topic up to date. Any thorough review of the literature on this topic by subsequent writers will reference the work of Professor Knuth at Stanford University.

Knuth (1998) explained that true randomness comes from natural phenomenon. He pointed out that digital computers are deterministic which means that they use algorithms, or formulae, to create random numbers. He used the term pseudo-random number to describe a random number generated by a digital computer and he called the computer programs that create them "pseudo-random number generators," or PRNGs. Knuth (1998) also described testing methods for PRNGs in detail. He called the Chi-square test "...perhaps the best known of all statistical tests, and it is a basic method that is used in connection with many other tests" (p. 42).

The Chi-square test compares the observed results of the PRNG with the expected results, and then determines the probability that the results are random or not random. For example, if one tosses an unbiased coin 100 times, one would expect the perfect result to be 'heads" 50 times, and tails "50" times. To determine if the method of tossing the coin is biased or unbiased, the coin must be tossed many times and the results examined. If the method of tossing the coin is unbiased, then the observed results will approach the expected results as the test is repeated over and over again. If the coin toss method is biased, then the observed results will not match the expected results.

The Chi-square test is also known as a "Goodness of Fit" test (Siegel, 1956) and means that the goal of the test is to measure how well the coin toss results will "fit" the expected distribution. Since the purpose of this study was to compare the observed results of the computer-assisted system with the expected results of a random selection process, the Chi-square goodness of fit test was selected.

The PRNG in Lotus Script is called the "Rnd" function. A critical component of a PRNG is the method it uses to obtain a "seed" value. The "seed" can directly determine the random value a PRNG will produce. If the same seed value is used each time a PRNG is executed, then the same pseudo-random value will be produced. In the present study, the computer-assisted system required that a unique pseudo-random value was generated each time the PRNG was executed.

The method in Lotus Script which ensures that a unique "seed" is provided to the "Rnd" function by the use of two subordinate functions, "Randomize" and "Timer." The "Randomize" function obtains the "seed" value from the "Timer" function. The "seed" value in the "Timer" function is the number of seconds elapsed since midnight expressed in hundredths of a second. Therefore, the combination of "Rnd," "Randomize," and "Timer" ensures that a unique "seed" value is obtained each time the PRNG function is executed.

Knuth (1998, p. 184) confirms that system clock functions are a common source for obtaining initial values to "seed" computer based random number generators. The method implemented by IBM in Lotus Script appears consistent with good practices. The study author conducted a computer "code" review with SSI and PERC staff and verified that the PRNG developed by SSI using Lotus Script is consistent with implementation guidelines recommended in the IBM Lotus Script documentation.

III. METHODOLOGY

The present study examined two possible sources for bias, or non-random behavior, in the PERC computer-assisted system arbitrator selection process. The first source of possible bias is performance of the IBM Lotus Script "Rnd" function supplied by the manufacturer, IBM and used by Specialty Systems, Inc., in a function called "getrandoms." The purpose of the PRNG test is to confirm that the basic function by itself is behaving in a random manner.

Even if the basic random function performs as designed, it is still possible that its use in the full information system could introduce bias. Therefore, the second test focuses on the selection process using the complete application. This was called the Completed Application Test.

Production Server Environment

All certification testing was performed on the production environment at PERC. The major components of the environment at PERC were the server hardware, operating system and Lotus Notes Server. The production server hardware was a Hewlett-Packard ProLiant, DL380 G4 server with dual 3.6 gigahertz processors, 4 gigabytes of random access memory (RAM) and a high performance, SCSI disk subsystem. The production server operating system was Windows 2003 Server, Standard Edition, Version 5.2, and Service Pack 2, by Microsoft Corporation. The Lotus software version was Lotus Domino Server, Release 7.0.1 for Windows, January 17, 2006. The server hardware, operating system, and Lotus Notes software used for the PERC system were consistent with generally accepted standards for high performance, production server environments at the time of this study.

The only change to the Production Server Environment between 2011 and 2014 was the upgrade of Windows 2003 Server from Service Pack 1 to Service Pack 2. This is a normal maintenance update and should have had no direct impact on the random selection process. The random selection functionality is provided by the IBM/Lotus software, and the IBM/Lotus software has not changed since the last report. Because there was no significant change between 2011 and 2014 to the production environment, there was no need to repeat the PRNG Test. If there was any impact on the Windows 2003 Service update on the random selection process, it would be detected in the Completed Application Test which was performed in the present study. A description of the PRNG test is included in the present report to keep all certification report descriptions of methodology consistent and repeatable for future certifications.

PRNG Test (Steffero, 2009)

To perform the PRNG test, the Lotus Script "Rnd" function was executed 1,000 times in the production environment using a script requested by the author and written by SSI for this study. The script used the "Rnd" function to generate 1,000 pseudo-random numbers

between 0 and 1, and then rounded each number to produce a test value between 1 and 10.

If one were to select the number 1 through 10 at random 1,000 times, one would expect to obtain the value "1" 100 times, the value "2" 100 times, and so on through the value "10." To test the randomness of the actual computed values, the study compared the actual outcome with the expected outcome. If the actual outcome matched the expected outcome, then the outcome is random. The Chi-square test was selected to measure the goodness of fit. The level of precision, or significance, was set at the .01 level. This means that if the test was repeated an infinite number of times, the probability that the results would be the same is 99%.

Completed Application Test

The Completed Application Test examined the actual arbitrator selection functionality of the system. To determine if the procedure of selecting one arbitrator from a pool of five arbitrators behaved in a random manner, the Interest Arbitrator selection procedure was performed manually 300 times in the production environment on each of three days, April 17, 21 and 22, 2014, respectively. On each of the three test days the results were recorded manually on a data collection form. When all data were collected, the findings were analyzed and the results presented in Table 2 below. Three separate tests were performed to comply with Knuth's (1998, p. 47) recommendation to perform the test 3 times.

If there was no bias in the selection of arbitrators reported in Table 2, then one would expect to select the first arbitrator 60 times (300/5 = 60), the second arbitrator 60 times, and so on until all arbitrators were selected. If the computer-generated results match the expected random results and pass the Chi-square test, then the outcome is random. The level of precision, or significance, was set at the .01 level. This means that if the tests were repeated an infinite number of times, the probability that the results would be the same is 99%.

Results appear in the next section.

IV. RESULTS

The results are divided into two sections: PRNG Test *(results from Steffero, 2009)* and Completed Application Test for Interest Arbitrator Selection from April, 2014.

PRNG Test (from Steffero, 2009)

The results of the PRNG Test are presented below in the Table 1 below. The Chi-square test accepted the null hypothesis that there was no significant difference between the observed and expected results at the .01 level of significance. Therefore, there is a 99% probability that the pseudo-random number generator is behaving in a random manner, as designed by the manufacturer.

Table 1. Results of the PRNG Test in 2009
(n = 1,000)

CHOICE	TEST
1	97
2	99
3	80
4	89
5	114
6	112
7	97
8	92
9	114
10	106
k=10	1,000
Chi-square	11.76

At the .01 Level of Significance with df = 9, Chi-square must be less than 21.67.
The test indicates that the results do not differ from a random distribution.

Completed Application Test for Interest Arbitrator By-Lot Selection (April 2014)

The results of the Completed Application Test for Interest Arbitrator By-Lot Selection are presented in Table 2 below. The Chi-square test accepted the null hypothesis that there was no significant difference between the observed and expected results at the .01 level of significance. Therefore, there is a 99% level of confidence that the selection of arbitrators from a pool of 5 interest arbitrators is behaving in a random manner.

Table 2. Results of Completed Application Test in 2014:
Interest Arbitrator Selection
(n=300)

Actual Arbitrator	Day 1	Day 2	Day 3
1	61	64	53
2	58	61	69
3	65	55	62
4	57	61	53
5	59	59	63
k=5	300	300	300
Chi-Square	0.67	0.73	3.20

At the .01 Level of Significance with df = 4, Chi-square must be less than 13.28.
The tests indicate that the results do not differ from a random distribution.

V. CONCLUSION

The study confirmed that the random behavior of the computer-assisted method is consistent with the requirements set forth in N.J.S.A. 34:13A-16e and N.J.A.C. 19:16-5.6. The test of the pseudo-random number generator provided by IBM/Lotus, which has not changed since 2009, behaved in a random manner based on prior testing (Steffero, 2009). The test of the computer-assisted system developed by Specialty Systems, Inc. for selecting interest arbitrators by-lot was re-tested in this study and also behaved in an random manner.

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Signature Page

I hereby certify to the authenticity of the report entitled:

New Jersey Public Employment Relations Commission

Interest Arbitrator By-Lot Selection
Program:

Random Number Generation
Testing for Re-Certification

Francis A. Steffero, PhD, CISA

4/25/14
Date

BIENNIAL REPORT

TAB 5

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

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September 21, 2014

Attached is a report of private sector wage changes compiled by the New Jersey Department of Labor and Workforce Development ("NJLWD"). The first table shows changes in average wages in employment for major industry groups in New Jersey between 2012 and 2013. The calculations were made by dividing total wages paid by covered private sector employers in particular industry groups by the number of jobs reported by those employers at their work sites. Table one also shows changes in the average wages of state and local government jobs covered under the state's unemployment insurance system, as well as changes in the average wages of federal government jobs in New Jersey covered by the federal unemployment insurance system.

The second table shows changes in the average wages of private sector jobs covered under the state's unemployment insurance system between 2012 and 2013. Statistics are broken down by county and include a statewide average. These calculations were made by dividing total wages paid by covered private sector employers by the number of jobs reported by those employers at their work sites.

As was the case last year, the first table in this report uses the North American Industry Classification System (NAICS) to assign and tabulate economic data by industry.

Further information compiled by NJLWD can be obtained at its website: www.state.nj.us/labor.

NEW JERSEY
AVERAGE ANNUAL WAGES
FOR JOBS COVERED BY UNEMPLOYMENT INSURANCE
BY NAICS INDUSTRY SECTOR
2012 and 2013

NAICS Industry Sector	2012	2013	Net Change	% Change
Total Private Sector *	$58,093	$59,026	$933	1.6%
Utilities	$108,596	$107,213	-$1,383	-1.3%
Construction	$62,396	$63,817	$1,421	2.3%
Manufacturing	$76,037	$77,340	$1,303	1.7%
Wholesale Trade	$81,160	$82,422	$1,262	1.6%
Retail Trade	$30,577	$30,940	$363	1.2%
Transportation/Warehousing	$49,657	$51,023	$1,366	2.8%
Information	$93,118	$96,489	$3,371	3.6%
Finance/Insurance	$108,802	$111,039	$2,237	2.1%
Real Estate/Rental/Leasing	$59,020	$58,688	-$332	-0.6%
Professional/Technical Services	$95,769	$97,793	$2,024	2.1%
Management of Companies/Enterprises	$146,508	$150,528	$4,020	2.7%
Administrative/Waste Services	$38,592	$39,141	$549	1.4%
Educational Services	$45,813	$47,288	$1,475	3.2%
Health Care/Social Assistance	$48,492	$48,792	$300	0.6%
Arts/Entertainment/Recreation	$34,000	$34,176	$176	0.5%
Accomodation/Food Service	$20,591	$21,038	$447	2.2%
Other Services **	$33,550	$32,415	-$1,135	-3.4%
Total Government	$61,752	$61,987	$235	0.4%
Federal Government	$74,271	$74,154	-$117	-0.2%
State Government	$66,232	$65,847	-$385	-0.6%
Local Government	$58,613	$59,168	$555	0.9%
TOTAL	$58,651	$59,474	$823	1.4%

* Also includes smaller categories not shown separately: agriculture, mining, forestry, fishing and those firms which have failed to provide sufficient information for industrial classification.

** Also includes repair, maintenance, personal and laundry services and membership associations/organizations and private households.

*** For additional historical employment and wage data for New Jersey, please go to the Labor Planning and Analysis - New Jersey Employment & Wage Data web site: http://www.wnjpin.state.nj.us/OneStopCareerCenter/LaborMarketInformation/lmi14/index.html

PRIVATE SECTOR
AVERAGE ANNUAL WAGES
FOR JOBS COVERED BY UNEMPLOYMENT INSURANCE
BY COUNTY
2012 and 2013

County	2012	2013	% Change
Atlantic	$ 37,143	$ 37,387	0.7%
Bergen	$ 61,119	$ 60,510	-1.0%
Burlington	$ 50,594	$ 50,801	0.4%
Camden	$ 46,621	$ 47,212	1.3%
Cape May	$ 30,231	$ 30,578	1.1%
Cumberland	$ 39,130	$ 38,270	-2.2%
Essex	$ 60,141	$ 61,726	2.6%
Gloucester	$ 40,560	$ 41,340	1.9%
Hudson	$ 69,608	$ 70,074	0.7%
Hunterdon	$ 55,687	$ 58,000	4.2%
Mercer	$ 66,135	$ 67,554	2.1%
Middlesex	$ 59,688	$ 59,762	0.1%
Monmouth	$ 47,826	$ 48,660	1.7%
Morris	$ 74,077	$ 76,391	3.1%
Ocean	$ 36,370	$ 37,124	2.1%
Passaic	$ 46,553	$ 46,622	0.1%
Salem	$ 53,679	$ 54,013	0.6%
Somerset	$ 79,563	$ 82,647	3.9%
Sussex	$ 37,396	$ 37,783	1.0%
Union	$ 61,796	$ 63,425	2.6%
Warren	$ 44,711	$ 44,822	0.2%
Total Private Sector*	$ 58,093	$ 59,026	1.6%

* Also includes firms which have failed to provide sufficient geographical information as to the location of the business.

** For additional historical employment and wage data for New Jersey, please go to the Labor Planning and Analysis - New Jersey Employment & Wage Data web site: http://www.wnjpin.state.nj.us/OneStopCareerCenter/LaborMarketInformation/lmi14/index.html

Source: QCEW (formerly ES-202) Report, New Jersey Department of Labor and Workforce Development

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June 6, 2016

Attached is a report of private sector wage changes compiled by the New Jersey Department of Labor and Workforce Development ("NJLWD"). Further information compiled by the NJLWD can be obtained at its website: www.state.nj.us/labor.

The first table shows changes in average wages in employment for major industry groups in New Jersey between 2013 and 2014. The calculations were made by dividing total wages paid by covered private sector employers in particular industry groups by the number of jobs reported by those employers at their work sites. The first table also shows changes in the average wages of state and local government jobs covered under the state's unemployment insurance system, as well as changes in the average wages of federal government jobs in New Jersey covered by the federal unemployment insurance system. The North American Industry Classification System ("NAICS") was used to assign and tabulate economic data by industry.

The second table shows changes in the average wages of private sector jobs covered under the state's unemployment insurance system between 2013 and 2014. Statistics are broken down by county and include a statewide average. These calculations were made by dividing total wages paid by covered private sector employers by the number of jobs reported by those employers at their work sites.

The chart depicts the average annual wage for private, federal, state and local employees in New Jersey from 2003-2014.

NEW JERSEY
AVERAGE ANNUAL WAGES
FOR JOBS COVERED BY UNEMPLOYMENT INSURANCE
BY NAICS INDUSTRY SECTOR
2013 and 2014

NAICS Industry Sector	2013	2014	Net Change	% Change
Total Private Sector *	$59,026	$60,146	$1,120	1.9%
Utilities	$107,213	$113,009	$5,796	5.4%
Construction	$63,817	$64,964	$1,147	1.8%
Manufacturing	$77,340	$80,034	$2,694	3.5%
Wholesale Trade	$82,422	$85,298	$2,876	3.5%
Retail Trade	$30,940	$31,713	$773	2.5%
Transportation/Warehousing	$51,023	$51,783	$760	1.5%
Information	$96,489	$99,134	$2,645	2.7%
Finance/Insurance	$111,039	$116,107	$5,068	4.6%
Real Estate/Rental/Leasing	$58,688	$60,414	$1,726	2.9%
Professional/Technical Services	$97,793	$100,249	$2,456	2.5%
Management of Companies/Enterprises	$150,528	$151,803	$1,275	0.8%
Administrative/Waste Services	$39,141	$39,635	$494	1.3%
Educational Services	$47,288	$48,425	$1,137	2.4%
Health Care/Social Assistance	$48,792	$49,736	$944	1.9%
Arts/Entertainment/Recreation	$34,176	$33,465	-$711	-2.1%
Accomodation/Food Service	$21,038	$21,639	$601	2.9%
Other Services **	$32,415	$32,811	$396	1.2%
Total Government	$61,987	$62,999	$1,012	1.6%
Federal Government	$74,154	$76,198	$2,044	2.8%
State Government	$65,847	$67,460	$1,613	2.4%
Local Government	$59,168	$59,916	$748	1.3%
TOTAL	$59,474	$60,576	$1,102	1.9%

* Includes smaller categories not shown separately: agriculture, mining, forestry, fishing and those firms which have failed to provide sufficient information for industrial classification.

** Includes repair, maintenance, personal and laundry services, membership associations/organizations and private households.

*** For additional historical employment and wage data for New Jersey, please go to the Office of Research and Information - Quarterly Census of Employment and Wages (QCEW) website:

http://lwd.dol.state.nj.us/labor/lpa/employ/qcew/qcew_index.html

PRIVATE SECTOR
AVERAGE ANNUAL WAGES
FOR JOBS COVERED BY UNEMPLOYMENT INSURANCE
BY COUNTY
2013 and 2014

County	2013	2014	% Change
Atlantic	$37,387	$ 38,568	3.2%
Bergen	$60,510	$ 62,191	2.8%
Burlington	$50,801	$ 51,597	1.6%
Camden	$47,212	$ 46,680	-1.1%
Cape May	$30,578	$ 31,183	2.0%
Cumberland	$38,270	$ 39,780	3.9%
Essex	$61,726	$ 61,680	-0.1%
Gloucester	$41,340	$ 41,862	1.3%
Hudson	$70,074	$ 72,183	3.0%
Hunterdon	$58,000	$ 61,714	6.4%
Mercer	$67,554	$ 67,971	0.6%
Middlesex	$59,762	$ 61,351	2.7%
Monmouth	$48,660	$ 49,576	1.9%
Morris	$76,391	$ 76,925	0.7%
Ocean	$37,124	$ 37,408	0.8%
Passaic	$46,622	$ 47,407	1.7%
Salem	$54,013	$ 56,952	5.4%
Somerset	$82,647	$ 84,480	2.2%
Sussex	$37,783	$ 39,282	4.0%
Union	$63,425	$ 64,589	1.8%
Warren	$44,822	$ 45,443	1.4%
Total Private Sector*	$59,026	$ 60,146	1.9%

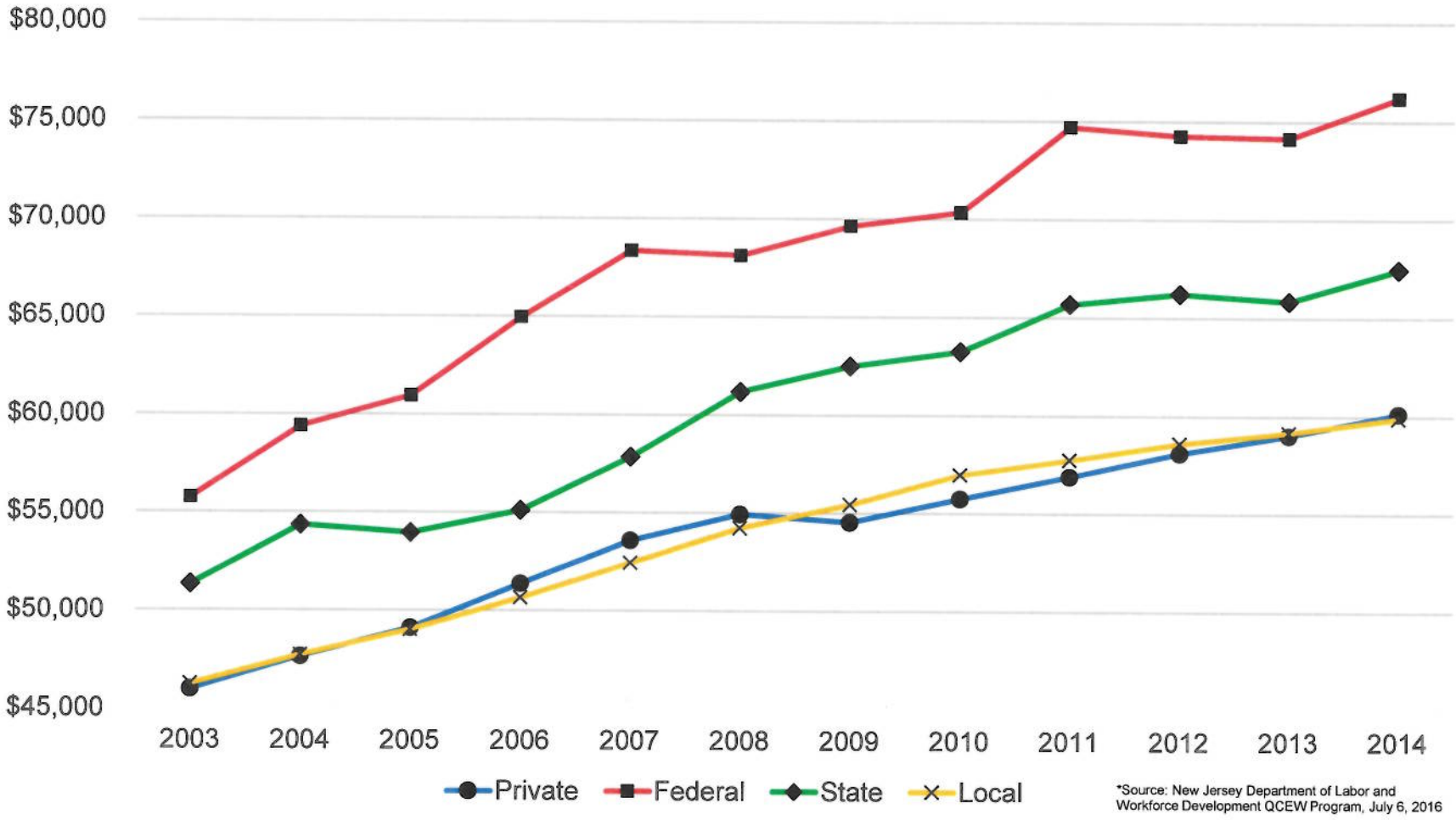
* Includes firms which have failed to provide sufficient geographical information as to the location of the business.

*** For additional historical employment and wage data for New Jersey, please go to the Office of Research and Information - Quarterly Census of Employment and Wages (QCEW) website:

http://lwd.dol.state.nj.us/labor/lpa/employ/qcew/qcew_index.html

Source: QCEW Report, New Jersey Department of Labor and Workforce Development

New Jersey Average Annual Wages 2003-2014*



*Source: New Jersey Department of Labor and Workforce Development QCEW Program, July 6, 2016

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July 12, 2016

Attached is a report of private sector wage changes compiled by the New Jersey Department of Labor and Workforce Development ("NJLWD"). Further information compiled by the NJLWD can be obtained at its website: www.state.nj.us/labor.

The first table shows changes in average wages in employment for major industry groups in New Jersey between 2014 and 2015. The calculations were made by dividing total wages paid by covered private sector employers in particular industry groups by the number of jobs reported by those employers at their work sites. The first table also shows changes in the average wages of state and local government jobs covered under the state's unemployment insurance system, as well as changes in the average wages of federal government jobs in New Jersey covered by the federal unemployment insurance system. The North American Industry Classification System ("NAICS") was used to assign and tabulate economic data by industry.

The second table shows changes in the average wages of private sector jobs covered under the state's unemployment insurance system between 2014 and 2015. Statistics are broken down by county and include a statewide average. These calculations were made by dividing total wages paid by covered private sector employers by the number of jobs reported by those employers at their work sites.

The chart depicts the average annual wage for private, federal, state and local employees in New Jersey from 2003-2015.

NEW JERSEY
AVERAGE ANNUAL WAGES
FOR JOBS COVERED BY UNEMPLOYMENT INSURANCE
BY NAICS INDUSTRY SECTOR
2014 and 2015

NAICS Industry Sector	2014	2015	Net Change	% Change
Total Private Sector *	$60,146	$61,981	$1,835	3.1%
Utilities	$113,009	$116,259	$3,250	2.9%
Construction	$64,964	$67,675	$2,711	4.2%
Manufacturing	$80,034	$77,137	-$2,897	-3.6%
Wholesale Trade	$85,298	$87,616	$2,318	2.7%
Retail Trade	$31,713	$32,927	$1,214	3.8%
Transportation/Warehousing	$51,783	$53,524	$1,741	3.4%
Information	$99,134	$103,255	$4,121	4.2%
Finance/Insurance	$116,107	$120,259	$4,152	3.6%
Real Estate/Rental/Leasing	$60,414	$63,735	$3,321	5.5%
Professional/Technical Services	$100,249	$106,752	$6,503	6.5%
Management of Companies/Enterprises	$151,803	$159,472	$7,669	5.1%
Administrative/Waste Services	$39,635	$40,805	$1,170	3.0%
Educational Services	$48,425	$49,665	$1,240	2.6%
Health Care/Social Assistance	$49,736	$51,106	$1,370	2.8%
Arts/Entertainment/Recreation	$33,465	$33,999	$534	1.6%
Accomodation/Food Service	$21,639	$21,903	$264	1.2%
Other Services **	$32,811	$33,840	$1,029	3.1%
Total Government	$62,999	$64,431	$1,432	2.3%
Federal Government	$76,198	$77,757	$1,559	2.0%
State Government	$67,460	$71,114	$3,654	5.4%
Local Government	$59,916	$60,537	$621	1.0%
TOTAL	$60,576	$62,341	$1,765	2.9%

* Includes smaller categories not shown separately: agriculture, mining, forestry, fishing and those firms which have failed to provide sufficient information for industrial classification.

** Includes repair, maintenance, personal and laundry services and membership associations/organizations and private households.

*** For additional historical employment and wage data for New Jersey, please go to the Office of Research and Information - Quarterly Census of Employment and Wages (QCEW) website:

http://lwd.dol.state.nj.us/labor/lpa/employ/qcew/qcew_index.html

Source: QCEW Report, New Jersey Department of Labor and Workforce Development

PRIVATE SECTOR
AVERAGE ANNUAL WAGES
FOR JOBS COVERED BY UNEMPLOYMENT INSURANCE
BY COUNTY
2014 and 2015

County	2014	2015	% Change
Atlantic	$38,568	$ 39,665	2.8%
Bergen	$62,191	$ 63,085	1.4%
Burlington	$51,597	$ 53,798	4.3%
Camden	$46,680	$ 49,078	5.1%
Cape May	$31,183	$ 32,361	3.8%
Cumberland	$39,780	$ 40,951	2.9%
Essex	$61,680	$ 63,197	2.5%
Gloucester	$41,862	$ 42,778	2.2%
Hudson	$72,183	$ 72,715	0.7%
Hunterdon	$61,714	$ 62,093	0.6%
Mercer	$67,971	$ 68,999	1.5%
Middlesex	$61,351	$ 62,978	2.7%
Monmouth	$49,576	$ 50,304	1.5%
Morris	$76,925	$ 81,101	5.4%
Ocean	$37,408	$ 38,898	4.0%
Passaic	$47,407	$ 49,691	4.8%
Salem	$56,952	$ 57,915	1.7%
Somerset	$84,480	$ 87,243	3.3%
Sussex	$39,282	$ 40,603	3.4%
Union	$64,589	$ 67,711	4.8%
Warren	$45,443	$ 46,982	3.4%
Total Private Sector*	$60,146	$ 61,981	3.1%

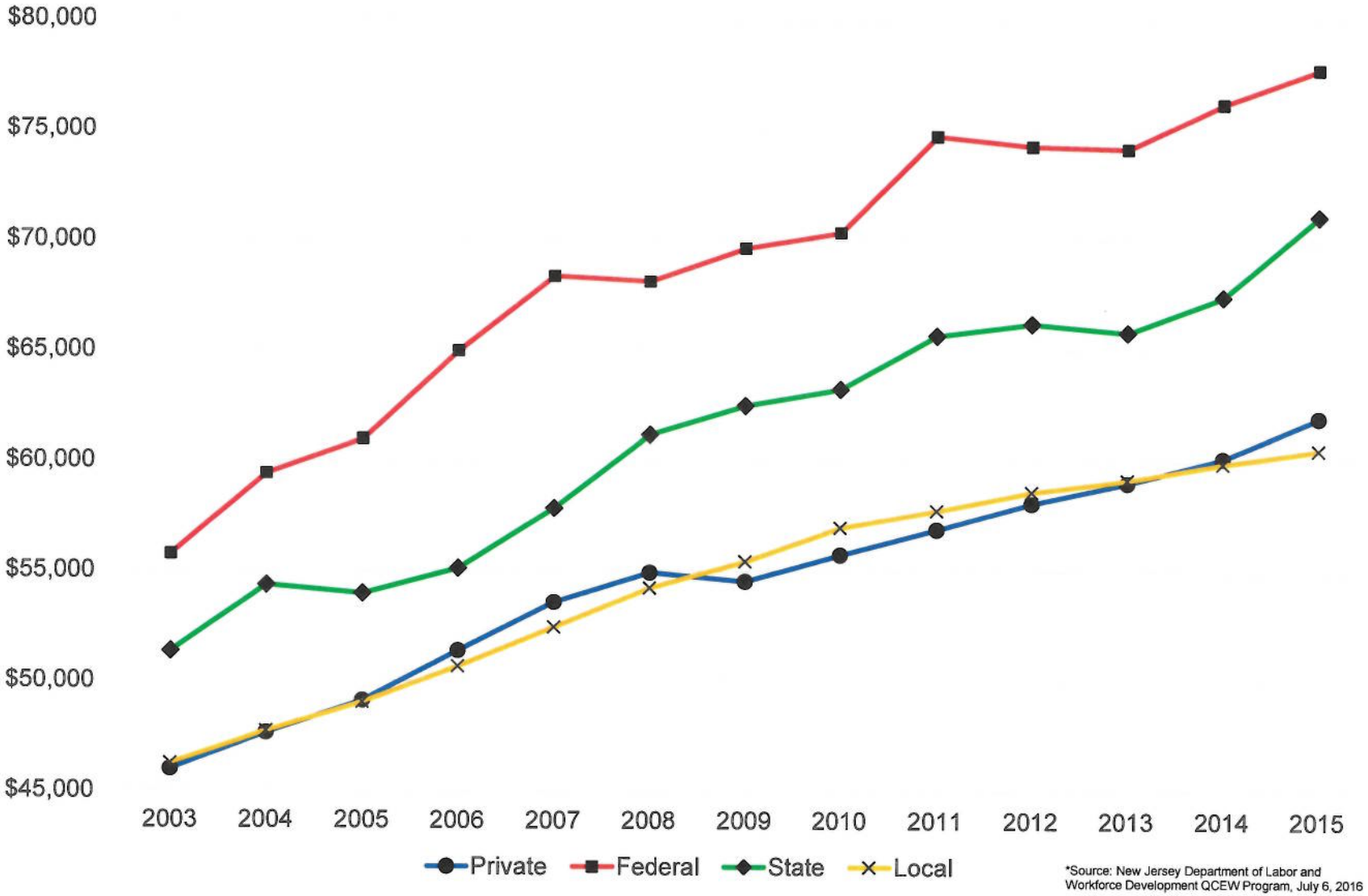
* Includes firms which have failed to provide sufficient geographical information as to the location of the business.

*** For additional historical employment and wage data for New Jersey, please go to the Office of Research and Information - Quarterly Census of Employment and Wages (QCEW) website:

http://lwd.dol.state.nj.us/labor/lpa/employ/qcew/qcew_index.html

Source: QCEW Report, New Jersey Department of Labor and Workforce Development

New Jersey Average Annual Wages
2003 - 2015*



*Source: New Jersey Department of Labor and Workforce Development QCEW Program, July 6, 2016

BIENNIAL REPORT

TAB 6

New Jersey Public Employment Relations Commission

POLICE AND FIRE

COLLECTIVE NEGOTIATIONS AGREEMENT SUMMARY FORM

Line #

SECTION I: Parties and Term of Contracts

1 Public Employer:_____ County: _____

2 Employee Organization: _____ Number of Employees in Unit: _____

3 Base Year Contract Term: _____

4 New Contract Term: _____

SECTION II: Type of Contract Settlement (please check only one)

5 ____ Contract settled without neutral assistance

6 ____ Contract settled with assistance of mediator

7 ____ Contract settled with assistance of fact-finder

8 ____ Contract settled in Interest Arbitration

9 If contract was settled in Interest Arbitration, did the Arbitrator issue an Award?
Yes____ No____

SECTION III: Base Salary Calculation

The "base year" refers to the final year of the expiring or expired agreement.

N.J.S.A. 34:13A-16.7(a) defines base salary as follows: Base salary is the salary provided pursuant to a salary guide or table and any amount provided pursuant to a salary increment, including any amount for longevity or length of service. It shall also include any other item agreed to by the parties, or any other item that was included in the base salary as understood by the parties in the prior contract. Base salary shall not include non-salary economic issues, pension, and health and medical insurance costs.

10 Salary Costs in base year * $_____

11 Longevity Costs in base year ** $_____

12 Other base year salary costs ***

$_____

$_____

$_____

$_____

Sum of "Other" Costs listed above $_____

13 **Total Base Salary Cost: (sum of lines 10, 11, 12):** $_____

* Any salary increments paid during the course of the base year should be included in base year salary cost.

** This is the total cost of longevity payments made during the base year.

*** Other base year salary cost items are those that are considered by the parties to be part of base pay.

SECTION IV: Increase in Base Salary Cost (for each year of New Agreement)

14 Total Base Salary Cost from Line 13 : $ _____

	Increases	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6
15	Effective Date (month/day/year)						
16	Cost of Salary Increments	$	$	$	$	$	$
17	Salary Increase Above Increments	$	$	$	$	$	$
18	Longevity Increase	$	$	$	$	$	$
19	Total Increased Cost for "Other" Items	$	$	$	$	$	$
20	Total Increase (sum of lines 16-19)	$	$	$	$	$	$

SECTION V: Average Increase Over Term of New Agreement

21 Dollar Increase Over Life of Contract $ _____ [Take sum of all amounts listed on Line 20 above]

22 Percentage Increase Over Life of Contract _____ % [Divide amount on Line 21 by amount on Line 14]

23 Average Percentage Increase Per Year _____ % [Divide percentage on Line 22 by number of years of the contract]

SECTION VI: Other Economic Items Outside Base Salary and Increases

		Base Year	Increases					
24	Item Description	Cost	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6
		$	$	$	$	$	$	$
		$	$	$	$	$	$	$
		$	$	$	$	$	$	$
		$	$	$	$	$	$	$
		$	$	$	$	$	$	$
		$	$	$	$	$	$	$
		$	$	$	$	$	$	$
		$	$	$	$	$	$	$
		$	$	$	$	$	$	$
25	Totals:	$	$	$	$	$	$	$

SECTION VII: Medical Costs

	Insurance Costs	Base Year	Year 1
26	Health Plan Cost	$	$
27	Prescription Plan Cost	$	$
28	Dental Plan Cost	$	$
29	Vision Plan Cost	$	$
30	Total Cost of Insurance	$	$
31	Employee Insurance Contributions	$	$
32	Contributions as % of Total Insurance Cost	%	%

33 Identify new insurance cost containment measures included in this agreement

SECTION VIII: Certification and Signature

34 The undersigned certifies that the foregoing figures are true:

Print Name: _____

Position/Title: _____

Signature: _____

Date: _____

Send this completed and signed form along with an electronic copy of the contract and the signed certification form to: contracts@perc.state.nj.us

NJ Public Employment Relations Commission
Conciliation and Arbitration
P.O. Box 429
Trenton, NJ 08625
Phone: 609-292-9898

Revised 8/2/16

New Jersey Public Employment Relations Commission

POLICE AND FIRE

COLLECTIVE NEGOTIATIONS AGREEMENT SUMMARY FORM

N.J.S.A. 34:13A-8.2 requires all public employers to "file with the commission a copy of any contracts it has negotiated with public employee representatives following consummation of negotiations." Further, public employers are also required to provide "a summary of all costs and the impact associated with the agreement." N.J.S.A. 34:13A-16.8(d)(2)

N.J.S.A. 34:13A-16.8(d)(2) requires "PERC to collect" and "post the collective negotiations agreement," including a summary of contract or arbitration award terms, in a standard format developed by the Public Employment Relations Commission." The attached form is in compliance with the aforementioned legislation. The sample form and instructions provide assistance in compiling the information for electronic submission. The directions are user-friendly and line specific.

Please fill in each line or section applicable to your agreement. Leave sections or lines blank if they do not apply to the terms of your agreement.

Send the attached form along with a copy of the contract and certification form electronically to: contracts@perc.state.nj.us.

Instructions for Completing the Summary Form

SECTION I: Parties and Term of Contracts

Line 1: Enter the name of the Public Employer as it appears in the collective negotiations agreement (e.g., "City of Newark" or "Trenton Board of Education"). Also indicate the County in which the locale is included, if applicable.

Line 2: Enter the name of the Employee Organization as it appears in the collective negotiations agreement. Also enter the number of employees covered by the negotiated agreement.

Line 3: The Base Year Contract Term is the term of the expiring or expired agreement (e.g., January 1, 2013 - December 31, 2015).

Line 4: The New Contract Term is the time period for the new agreement, which is the subject of this summary (e.g., January 1, 2016 - December 31, 2018).

SECTION II: Type of Contract Settlement
Place a check on Line 5, 6, 7, or 8 to indicate the forum used to reach a settlement.

Line 5: Parties reached contract settlement without assistance of a neutral (i.e., without mediation, fact-finding, or interest arbitration).

Line 6: Parties reached contract settlement with the assistance of a Mediator.

Line 7: Parties reached contract settlement during the Fact-finding process.

Line 8: Parties reached contract settlement through participation in Interest Arbitration.

Line 9: If your contract was settled through Interest Arbitration, indicate whether the arbitrator issued an Arbitration Award. (Check Yes or No.)

SECTION III: Base Salary Calculation
The "base year" is the final year of the expiring or expired agreement.

Line 10: Indicate the cost of salaries for the bargaining unit in the base year. If any salary increments were paid during the course of the base year, they should be included in this salary cost.

Line 11: Indicate the cost of longevity paid during the base year. Longevity refers to payments made in recognition of length or years of service.

Line 12: List any other items that are included in the base salary along with the cost of these items. These are items that the parties consider to be part of base salary in the expired contract. Base salary shall not include non-salary economic issues, pensions, or medical insurance costs. If there are not enough lines on the form for these additional base salary items, attach an additional page. [Please Note: There may be additional economic items in the contract that are not considered part of "base salary." Those economic items will be listed separately in Section VI.]

Line 13: Take the sum of all cost items listed on Lines 10, 11, and 12. This sum represents the "Total Base Salary Cost."

SECTION IV: Increase in Base Salary for Each Year of the New Agreement

Line 14: Re-enter the Total Base Salary Cost from Line 13.

Line 15 - Effective Date: Enter the effective date of the salary increase for each year of the agreement (e.g., 1/1/16 or 7/1/16). A separate column is provided for each year of the contract up to a maximum of six years. (If the contract is longer than six years, add an additional page.)

Line 16 – Cost of Salary Increments: For each year, enter the cost of salary increments applicable to that year (i.e. the cost of advancement on a salary guide, schedule or table). If there is no step advancement or salary increments in a given year, enter zero ($0) in the space provided.

Line 17 – Salary Increase Above Increments: For each year, enter the cost of the salary increase which is in addition to the salary increment cost identified on Line 16. If there is no salary increase, enter $0 in the space provided.

Line 18 – Longevity Increase: For each year, enter the *increased* cost of longevity payments. (Longevity costs may increase as a result of a negotiated or awarded increase in the contractual longevity amounts, and/or as a result of employees' additional years of service that qualify them for higher payments.) If there is no increase in longevity, enter $0 in the space provided.

Line 19 – Total Increased Cost for "Other" Items: For each year, enter the total increased cost for the "Other Items" that were delineated in Section III, Line 12.

Line 20 – Total Increase: For each year, calculate the total increase by taking the sum of Lines 16, 17, 18 and 19.

SECTION V: Average Increase Over Term of the New Agreement

Line 21 – Dollar Increase Over Life of Contract: Add up the amounts listed on Line 20.

Line 22 – Percentage Increase Over Life of Contract: Divide the dollar amount listed on Line 21 by the Total Salary Base listed on Line 14.

Line 23 – Average Percentage Increase Per Year: Divide the percentage increase listed on Line 22 by the number of years covered by the new contract.

SECTION VI: Other Economic Items Outside Base Salary

Line 24: List other economic items in the contract that were not included in the base salary calculation in Section III. List the cost of each item in the Base Year Column. In the appropriate column for each year of the contract, enter any *increased* cost. (Note: Medical insurance costs should not be included here. They will be addressed in Section VII, below.)

Line 25: Calculate the sum of the cost items listed in the Base Year column. Then calculate the sum of the increased costs for each year.

SECTION VII: Medical Costs
For the Base Year and for Year 1:

Line 26: Enter the total cost of health insurance for bargaining unit members.

Line 27: Enter the total cost of prescription insurance for bargaining unit members. (If prescription coverage is provided as part of the health plan, enter "N/A" on this line.)

Line 28: Enter the total cost of dental insurance for bargaining unit members.

Line 29: Enter the total cost of vision insurance for bargaining unit members.

Line 30: Take the sum of the costs listed on Lines 26 to 29 to obtain the total cost of insurance benefits.

Line 31: Enter the total contributions made by employees toward their insurance benefits. Contributions may be pursuant to law (e.g., P.L. 2011, C.78) or pursuant to the negotiated agreement.

Line 32: Enter the contributions made by employees as a Percent of Total Insurance Cost by dividing line 31 by line 30.

Line 33: In the box provided, identify any insurance cost containment measures that were negotiated or awarded: e.g., change in carrier, change in plans, change in benefits levels, co-pays, deductibles, etc. Identify the cost containment amount (or savings) associated with these plan/benefit changes.

SECTION VIII: Certification and Signature

Line 34: Print the name of the individual completing the form, along with the individual's title, signature and date.

Email the following documents to: contracts@perc.state.nj.us

- The completed, signed Summary Form
- An electronic copy of the contract and the signed certification form that must accompany the contract (see attached).

Certification

I declare to the best of my knowledge and belief that the attached document(s) are true electronic copies of the executed collective negotiations agreement(s) and the included summary is an accurate assessment of the collective negotiations agreement for the term beginning _____ through _____.

Employer: _____

County: _____

Date: _____

Name: _____
Print Name

Title: _____

Signature: _____

BIENNIAL REPORT

TAB 7

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

PO Box 429
TRENTON, NEW JERSEY 08625-0429

www.state.nj.us/perc

ADMINISTRATION/LEGAL
(609) 292-9830
CONCILIATION/ARBITRATION
(609 292-9898
UNFAIR PRACTICE/REPRESENTATION
(609) 292-6780

For Courier Delivery
495 WEST STATE STREET
TRENTON, NEW JERSEY 08618

FAX: (609) 777-0089
EMAIL: mail@perc.state.nj.us

December 3, 2012

TO: All Interested Parties

FROM: Lorraine H. Tesauro,
Director of Conciliation and Arbitration

RE: Pilot Program -
New Process for Expediting Scope of Negotiations Petitions
filed during Interest Arbitration Proceedings

The Public Employment Relations Commission is introducing a pilot program where, in limited cases, the Commission will issue expedited scope of negotiations determinations on issues that are actively in dispute in interest arbitration proceedings subject to the 45 day processing timeline pursuant to P.L. 2010 c. 2. The attached Pilot Program Notice explains eligibility and procedure requirements including the modified timelines. We hope this new program will accelerate the processing of petitions for the parties and the arbitrators.

Please visit our website www.state.nj.us/perc for further information.

Thank you for your cooperation.

EXPEDITED SCOPE RULINGS FOR INTEREST ARBITRATION

I. Purpose and Applicability of Procedure

In limited cases, the Commission will issue expedited scope of negotiations determinations on issues that are actively in dispute in current interest arbitration proceedings.

A. To be eligible for expedited processing of a petition for scope of negotiations determination emanating from a current interest arbitration proceeding, all of these conditions must be present:

1. The petition for scope of negotiations determination was filed:

   a. By the respondent no later than five days after receipt of the petition to initiate compulsory interest arbitration;

   b. By the party filing for interest arbitration, no later than five days after receipt of the response to the petition for compulsory interest arbitration.

2. The issues for which a negotiability determination is sought are:

   a. Listed, in writing, among the issues in dispute by the party submitting the petition for compulsory interest arbitration and/or by the party filing a written response to the petition for compulsory interest arbitration.

   b. All language alleged to be not mandatorily negotiable must be identified with specificity. A reference to a contract article in a prior agreement or to a paragraph or section number in a negotiations proposal, is insufficient to meet this requirement. Where only a portion of the pertinent contract language or negotiations proposal is alleged to be not mandatorily negotiable, the portion asserted to be not mandatorily negotiable must be identified.

B. The Commission will not determine the negotiability of any issues that are no longer in dispute during the pending interest arbitration. It shall be the obligation of all parties to immediately advise the Commission Chair and the assigned interest arbitrator that an issue that is the subject of a pending scope of negotiations petition is no longer actively in dispute during interest arbitration.

C. This procedure will be used only where the issue(s) arose during the course of interest arbitration. It is not applicable to scope of negotiations petitions relating to issues sought to be submitted to a contractual or statutory grievance procedure, nor is it applicable to units of public employees not eligible for compulsory interest arbitration.

II. Procedure for expedited scope of negotiations determinations:

A. The decision to issue an expedited scope of negotiations ruling during the pendency of a compulsory interest arbitration proceeding shall be within the sole, non-reviewable discretion of the Commission Chair.

B. If the Commission Chair determines not to issue an expedited scope of negotiations ruling, then any scope of negotiations issues pending in interest arbitration shall be within the jurisdiction of the interest arbitrator and either party may challenge a negotiability ruling as part of an appeal from an interest arbitration award. See N.J.A.C. 19:16-5.7(i) as amended effective October 1, 2012.

C. Briefs:

1. The party filing a scope of negotiations determination during interest arbitration must file its brief simultaneously with the petition;

2. The Respondent shall submit a brief to the Commission Chair within three business days of receipt of the petitioner's petition and brief;

3. All briefs shall conform to the requirements set forth in N.J.A.C. 19:13- 3.6(f)(2) and (3);

4. No additional briefs or submissions shall be filed.

D. Within five days after receipt of a scope of negotiations petition, the Commission Chair will advise the parties whether the petition will be resolved using the expedited procedure.

E. The failure of a party to submit a brief or other document shall not delay the issuance of the expedited scope of negotiations ruling.

F. The Commission or Commission Chair pursuant to the authority delegated to her by the full Commission shall issue a written decision within 14 days of receipt of the parties briefs. The decision shall be immediately served on all parties and signed interest arbitrator(s).

G. Any contract language or proposals that are determined to be not mandatorily negotiable shall not be considered by the interest arbitrator. If time permits, and in accordance with the rules governing interest arbitration proceedings, the interest arbitrator may allow the parties to amend their final offers to take into account the negotiability determination.

H. A decision issued by the Commission or Chair pursuant to this process shall be a final Agency decision. Any appeal must be made to the Superior Court Appellate Division.

BIENNIAL REPORT

TAB 8

TASK FORCE REPORT OF THE IA 74

(as of 3/31/2015)

	Employer	Union	Filed by/on	IA and SM Dkt. Nos.	Status as of March 31, 2015
1	Asbury Park	PBA Loc 6	Employer, 3/31/2014	IA-2014-030 **(SM-2014-008)**	Settled by mediator
2	Asbury Park	PBA Loc 6 (Superiors)	Employer, 3/31/2014	IA-2014-052 **(SM-2014-008)**	Settled by mediator
3	Atlantic Cty	FOP Lodge 34	Employer, 3/26/2014	IA-2014-014	Interest arbitration award issued 10/2/2014
4	Berkeley Tp	PBA Loc 237	Employer, 3/28/2014	IA-2014-019	Withdrawn by petitioner
5	Bernardsville	PBA Loc 365 (Lts/Sgts)	Employer, 3/31/2014	IA-2014-053 **(SM-2014-005)**	Settled by mediator
6	Bernardsville	PBA Loc 365	Employer, 3/31/2014	IA-2014-051 **(SM-2014-004)**	Settled by mediator
7	Camden Cty	FOP Lodge 218	Employer, 3/31/2014	IA-2014-057	Settled by mediator
8	Camden Cty	FOP Lodge 218A	Employer, 3/31/2014	IA-2014-058 **(SM-2014-023)**	Parties negotiating on own Reassess May 1, 2015
9	Camden City	IAFF Loc 2578	Employer, 3/31/2014	IA-2014-068	Settled with assistance of interest arbitrator
10	Camden City	IAFF Loc 788	Employer, 3/27/2014	IA-2014-018	Interest arbitration award issued 8/11/2014
11	E Orange	E Orange SOA, Loc 16	Employer, 3/31/2014	IA-2014-063	Withdrawn by petitioner
12	E Orange	E Orange Fire Officers Assn	Employer, 3/31/2014	IA-2014-041	Parties negotiating on own
13	E Orange	FMBA Loc 23	Employer, 3/31/2014	IA-2014-042	Withdrawn by petitioner
14	E Orange	E Orange Fire Officers Assn (Captains)	Employer, 3/31/2014	IA-2014-043	Parties negotiating on own
15	E Orange	FOP Lodge 111	Employer, 3/31/2014	IA-2014-062 **(SM-2014-024)**	Withdrawn by petitioner
16	Essex Cty Prosecutor	PBA Loc 325	Employer, 3/31/2014	IA-2014-076 **(SM-2014-025)**	Withdrawn by petitioner

	Employer	Union	Filed by/on	IA and SM Dkt. Nos.	Status as of March 31, 2015
17	Essex Cty Sheriff	FOP Lodge 138 (Superiors)	Employer, 3/31/2014	IA-2014-072 **(SM-2015-001)**	Withdrawn by petitioner
18	Essex Cty	PBA Loc 382	Employer, 3/31/2014	IA-2014-074	Withdrawn by petitioner
19	Essex Cty Prosecutor	FOP Lodge 205	Employer, 3/31/2014	IA-2014-070	Withdrawn by petitioner
20	Essex Cty	FOP Lodge 105	Employer, 3/31/2014	IA-2014-073	Withdrawn by petitioner
21	Essex Cty Sheriff	PBA Loc 183	Employer, 3/31/2014	IA-2014-075	Withdrawn by petitioner
22	Evesham Tp	FOP Lodge 143	Employer, 3/31/2014	IA-2014-034 **(SM-2014-002)**	Settled by mediator
23	Evesham Tp	FOP Lodge 143A	Employer, 3/31/2014	IA-2014-033 **(SM-2014-003)**	Settled by mediator
24	Gloucester Cty Sheriff	PBA Loc 122	Employer, 3/31/2014	IA-2014-056	Withdrawn by petitioner
25	Green Brook	PBA Loc 398	Employer, 3/31/2014	IA-2014-035 **(SM-2014-006)**	Withdrawn by petitioner
26	Harding Tp	PBA 340	Employer, 3/31/2014	IA-2014-050 **(SM-2014-001)**	Settled by mediator
27	Hudson Cty	FOP Lodge 196A	Employer, 3/31/2014	IA-2014-059	Withdrawn by petitioner
28	Hudson Cty	FOP Lodge 196	Employer, 3/31/2014	IA-2014-060	Withdrawn by petitioner
29	Hudson Cty	PBA Loc 232	Employer, 3/31/2014	IA-2014-038	Withdrawn by petitioner
30	Hunterdon Cty	FOP Lodge 94	Employer, 3/31/2014	IA-2014-049 **(SM-2015-002)**	Parties negotiating with the assistance of mediator
31	Irvington Tp	IAFF Loc 305	Employer, 3/31/2014	IA-2014-055	Withdrawn by petitioner
32	Irvington Tp	IAFF Loc 2004	Employer, 3/31/2014	IA-2014-054	Withdrawn by petitioner
33	Irvington Tp	PBA Loc 29	Employer, 3/31/2014	IA-2014-066	Interest arbitration award issued 6/17/2014
34	Irvington Tp	Irvington Police SOA	Employer, 3/31/2014	IA-2014-064	Settled with assistance of interest arbitrator
35	Lakehurst Boro	FOP Lodge 179	Employer, 3/31/2014	IA-2014-040	Withdrawn by petitioner
36	Madison Boro	PBA Loc 92	Employer, 3/31/2014	IA-2014-025	Withdrawn by petitioner

	Employer	Union	Filed by/on	IA and SM Dkt. Nos.	Status as of March 31, 2015
37	Madison Boro	PBA Loc 92 SOA	Employer, 3/31/2014	IA-2014-026	Withdrawn by petitioner
38	Mercer Cty	PBA Loc 187	Employer, 3/31/2014	IA-2014-077 **(SM-2014-016)**	Settled by mediator
39	Mercer Cty Prosecutor	Mer Cty Pros Sup Officers Unit	Employer, 3/31/2014	IA-2014-078	Interest arbitrator being assigned
40	Mercer Cty	PBA Loc 339	Employer, 3/31/2014	IA-2014-079 **(SM-2014-010)**	Parties negotiating with assistance of mediator
41	Monmouth Cty Sheriff	FOP Lodge 30 Investigators	Employer, 3/31/2014	IA-2014-081 **(SM-2015-009)**	Settled by mediator
42	Monmouth Cty	PBA Loc 240	Employer, 3/31/2014	IA-2014-083 **(SM-2014-014)**	Settled by mediator
43	Monmouth Cty Sheriff	FOP Lodge 121	Employer, 3/31/2014	IA-2014-086 **(SM-2015-008)**	Settled by mediator
44	Monmouth Cty Prosecutor	PBA Loc 256 SOA	Employer, 3/31/2014	IA-2014-084	Interest arbitration award issued 8/4/2014
45	Monmouth Cty	PBA Loc 314	Employer, 3/31/2014	IA-2014-087 **(SM-2014-018)**	Withdrawn by petitioner
46	Monmouth Cty Sheriff	FOP Lodge 30 SOA	Employer, 3/31/2014	IA-2014-082 **(SM-2015-009)**	Settled by mediator
47	Monmouth Cty Prosecutor	PBA Loc 256	Employer, 3/31/2014	IA-2014-085	Interest arbitration award issued 8/4/2014
48	NJ/State	NJ Div of Criminal Justice NCO	Union, 3/26/2014	IA-2014-016	Withdrawn by petitioner
49	NJ/State	NJ Div of Criminal Justice SOA	Union, 3/26/2014	IA-2014-017	Withdrawn by petitioner
50	NJ/State	FOP Lodge 91	Union, 3/26/2014	IA-2014-015	Withdrawn by petitioner
51	Oakland Boro	PBA Loc 164	Employer, 3/31/2014	IA-2014-044 **(SM-2014-022)**	Interest arbitration award due 5/4/2015
52	Ocean Cty	PBA Loc 258 SOA	Employer, 3/28/2014	IA-2014-021	Settled with assistance of interest arbitrator

	Employer	Union	Filed by/on	IA and SM Dkt. Nos.	Status as of March 31, 2015
53	Ocean Cty	Ocean Cty Pros Sgts Assn	Employer, 3/28/2014	IA-2014-024	Withdrawn by petitioner
54	Ocean Cty	PBA Loc 258	Employer, 3/28/2014	IA-2014-020 **(SM-2014-015)**	Interest arbitration award issued 10/7/2014
55	Ocean Cty	PBA Loc 171	Employer, 3/28/2014	IA-2014-023 **(SM-2014-017)**	Settled by mediator
56	Ocean Cty	PBA Loc 379A	Employer, 3/28/2014	IA-2014-022	Parties negotiating on own
57	Old Bridge Tp	FOP Lodge 22 (Lts/Sgts)	Employer, 3/31/2014	IA-2014-047 **(SM-2014-020)**	Settled with assistance of interest arbitrator
58	Old Bridge Tp	FOP Lodge 22 (Captains)	Employer, 3/31/2014	IA-2014-046	Withdrawn by petitioner
59	Old Bridge Tp	PBA Loc 127	Employer, 3/31/2014	IA-2014-045	Withdrawn by petitioner
60	Paulsboro Boro	PBA Loc 122	Employer, 3/31/2014	IA-2014-048	Withdrawn by petitioner
61	Pennsauken Tp	FOP Lodge 3	Employer, 3/31/2014	IA-2014-071	Withdrawn by petitioner
62	Pennsauken Tp	FMBA Loc 64	Employer, 3/31/2014	IA-2014-061	Withdrawn by petitioner
63	Pennsauken Tp	FMBA Loc 264	Employer, 3/31/2014	IA-2014-065	Withdrawn by petitioner
64	Plainfield	Plainfield Fire Officers Assn	Employer, 3/31/2014	IA-2014-029	Withdrawn by petitioner
65	Plainfield	PBA Loc 19	Employer, 3/31/2014	IA-2014-037 **(SM-2014-011)**	Settled by mediator
66	Plainfield	FMBA Loc 7	Employer, 3/31/2014	IA-2014-028 **(SM-2014-021)**	Settled by mediator
67	Plainfield	PBA Loc 19 SOA	Employer, 3/31/2014	IA-2014-036	Settled by mediator
68	Plainsboro Tp	PBA Loc 319 SOA	Employer, 3/31/2014	IA-2014-031	Parties negotiating on own
69	Plainsboro Tp	PBA Loc 319	Employer, 3/31/2014	IA-2014-032 **(SM-2014-009)**	Withdrawn by petitioner
70	Plumsted Tp	PBA Loc 390	Employer, 3/31/2014	IA-2014-080	Settled with assistance of interest arbitrator

	Employer	Union	Filed by/on	IA and SM Dkt. Nos.	Status as of March 31, 2015
71	Sea Girt Boro	PBA Loc 50	Employer, 3/31/2014	IA-2014-027 **(SM-2015-004)**	Withdrawn by petitioner
72	Tinton Falls	PBA Loc 251	Employer, 3/31/2014	IA-2014-039 **(SM-2014-007)**	Settled by mediator
73	Union Cty	PBA Loc 199	Employer, 3/31/2014	IA-2014-069 **(SM-2014-019)**	Withdrawn by petitioner
74	Union Cty	PBA Loc 199A	Employer, 3/31/2014	IA-2014-067 **(SM-2015-003)**	Withdrawn by petitioner

Cases Open 8 **Cases Closed 66**

BIENNIAL REPORT

TAB 9

NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION
INTEREST ARBITRATION SALARY INCREASE ANALYSIS

TIME PERIOD	TOTAL NUMBER OF AWARDS & AVERAGE INCREASES								APPEALS OF IA AWARDS (TO NJ PERC)			NUMBER OF REPORTED VOLUNTARY SETTLEMENTS & REPORTED AVERAGE INCREASES					AVERAGE INCREASE VOLUNTARY SETTLEMENTS
	TOTAL	Total Pre-2011	Avg. % Awards Pre-2011	Total Post-2011	Total Post-2011 Non-2%	Avg. % Awards Post-2011 Non-2%	Total Post-2011 2%	Avg. % Awards Post-2011 2%	TOTAL	Total Pre-2011	Total Post-2011	TOTAL	Total Pre- & Post-2011 Non-2%	Avg. % Pre- & Post-2011 Non-2%	Total Post-2011 2%	Avg. % Post-2011 2%	TOTAL
1/1/2015 - 12/31/2015	6	0	N/A	6	0	N/A	6	1.71% [1]	3	0	3	9 [2]	0	N/A	9	1.73% [3]	1.73%
1/1/2014 - 12/31/2014	12	1	1.69%	11	5	1.74%	6	1.69% [1]	5	1	4	16 [2]	5	1.93%	11	1.47% [3]	1.61%
1/1/2013 - 12/31/2013	27	15	1.87%	12	1	1.16%	11	1.89% [1]	9	3	6	8 [2]	5	1.85%	3	2.13% [3]	1.96%
1/1/2012 - 12/31/2012	36	20	1.85%	16	9	1.59%	7	1.98% [1]	22	5	17	29 [2]	13	1.86%	16	1.78% [3]	1.82%
						All calculations are based on actual awards or settlements received.											

CHART KEY	**Pre 2011:** IA petitions filed prior to January 1, 2011 are not subject to statutory fast processing or 2% annual base salary increase cap. **Post 2011:** IA petitions filed after December 31, 2010 are subject to new fast processing statutory requirements. **Post 2011 2%:** IA petitions filed after December 31, 2010 for contracts expired after December 31, 2010 are subject to fast processing and the 2% salary increase cap.
	1 - These Salary Increase Percentages include any increases due to increments/steps, longevity, and across-the-board raises.
	2 - Includes only settlements in impasses for which an interest arbitrator was assigned.
	3 - May or may not include increases due to increments/steps, or longevity.

BIENNIAL REPORT

TAB 10

PUBLIC EMPLOYMENT RELATIONS COMMISSION
SALARY INCREASE ANALYSIS
INTEREST ARBITRATION[1]

1/1/1993 -12/31/2011

Time Period	Total # of Awards Issued	Substantive Appeals Filed w/PERC	Average of Salary Increase All Awards	Number of Reported Voluntary Settlements	Average Salary Increase of Reported Vol. Settlements
1/1/11 - 12/31/11	34	13	2.05%	38	1.87%
1/1/10 - 12/31/10	16	9	2.88%	45	2.65%
1/1/09 - 12/31/09	16	5	3.75%	45	3.60%
1/1/08 - 12/31/08	15	2	3.73%	60	3.92%
1/1/07 - 12/31/07	16	1	3.77%	46	3.97%
1/1/06 - 12/31/06	13	3	3.95%	55	4.09%
1/1/05 - 12/31/05	11	0	3.96%	54	3.94%
1/1/04 - 12/31/04	27	2	4.05%	55	3.91%
1/1/03 - 12/31/03	23	2	3.82%	40	4.01%
1/1/02 - 12/31/02	16	0	3.83%	45	4.05%
1/1/01 - 12/31/01	17	0	3.75%	35	3.91%
1/1/00 - 12/31/00	24	0	3.64%	60	3.87%
1/1/99 - 12/31/99	25	0	3.69%	45	3.71%
1/1/98 - 12/31/98	41	2	3.87%	42	3.77%
1/1/97 - 12/31/97	37	4	3.63%	62	3.95%
1/1/96 - 12/31/96	21	2	4.24%	35	4.19%
1/1/95 - 11/31/95	37	0	4.52%	44	4.59%
1/1/94 - 12/31/94	35	0	5.01%	56	4.98%
1/1/93 - 12/31/93	46	0	5.65%	66	5.56%

[1] Salary Increase Percentages do not include increases due to increments/steps or longevity

BIENNIAL REPORT

TAB 11

P.E.R.C. NO. 2014-60

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY,

Respondent,

-and-

Docket No. IA-2014-003

NEW JERSEY LAW ENFORCEMENT
SUPERVISORS ASSOCIATION,

Appellant.

SYNOPSIS

The Public Employment Relations Commission affirms an interest arbitration award establishing the terms of a successor agreement between the State of New Jersey and the New Jersey Law Enforcement Supervisors Association (NJLESA). NJLESA appealed the award, asserting that the arbitrator erred in accepting the State's scattergram and methodology to calculate salary increases. NJLESA also challenged the arbitrator's award of the State's proposal to modify the disciplinary clause's 45-day rule. The Commission finds that the arbitrator's use of the State's scattergram and decision not to credit the unit with the State's actual savings in the first two fiscal years of award is consistent with N.J.S.A. 34:13A-16.7(b) and the Commission's New Milford, P.E.R.C. No. 2012-53, 38 NJPER 340 (¶116 2012) and Ramsey, P.E.R.C. No. 2013-6, 39 NJPER 96 (¶34 2012) decisions. The Commission holds that whether speculative or known, any changes in financial circumstances benefitting the employer or majority representative are not contemplated by the statute and should not be considered by the arbitrator. The Commission rejects the NJLESA's statutory preemption challenge to the arbitrator's 45-day rule modification because it was not filed according to the N.J.A.C. 19:16-5.5(c) time line for scope of negotiations challenges during the interest arbitration process.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

P.E.R.C. NO. 2014-60

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY,

Respondent,

-and-

Docket No. IA-2014-003

NEW JERSEY LAW ENFORCEMENT SUPERVISORS ASSOCIATION,

Appellant.

Appearances:

For the Respondent, Jackson Lewis, PC, attorneys (Jeffrey J. Corradino, of counsel and on the brief; James J. Gillespie, on the brief)

For the Appellant, Pellettieri, Rabstein & Altman (Frank M. Crivelli, of counsel and on the brief; Donald C. Barbati, on the brief)

DECISION

The New Jersey Law Enforcement Supervisors Association (NJLESA) appeals from an interest arbitration award involving a unit of approximately 665 primary level supervisory law enforcement officers.[1/] The majority of the unit members (541) are sergeants employed in the Department of Corrections (DOC); the Juvenile Justice Commission (JJC); and in the title Supervising Interstate Escort Officer.[2/] Thirty-nine (39) unit

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1/ We deny NJLESA's request for oral argument. The issues have been fully briefed.

2/ These titles are in State of New Jersey Employee Relations Group (ERG).

members are Sergeants, Campus Police and Police Sergeant, Palisades Interstate Parkway (PIP).[3/] The remainder of the unit (85) are Assistant District Parole Supervisor; Assistant District Parole Supervisor, JJC; State Park Police Sergeant; Police Sergeant, Human Services; Conservation Officer II; and Special Agent I.[4/]

The arbitrator issued a conventional award as he was required to do pursuant to P.L. 2010, c. 105 effective January 1, 2011. A conventional award is crafted by an arbitrator after considering the parties' final offers in light of statutory factors.

NJLESA primarily appeals the salary award asserting the arbitrator erred in accepting the scattergram and methodology offered by the State to calculate the salary increases. NJLESA also challenges the arbitrator's award of the State's proposal to modify Article XI, Section L(5) [Discipline-45 Day Rule] as it asserts it is preempted by statute.[5/] On February 7, 2014, NJLESA withdrew its request for clarification and/or modification of Article XI, Section L(6) of the award.

The State responds that the arbitrator properly relied upon its scattergram and NJLESA's failure to file a scope of

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3/ These titles are in ERG K (Colleges and PIP).

4/ These titles are in ERG K (Centralized Payroll).

5/ N.J.S.A. 30:4-3.11a.

negotiations petition is a waiver to its objection regarding the Discipline article award.

The parties' final offers, as pertinent to this appeal, are as follows:

NJSLESA

Article XIII: Salary Compensation Plan and Program:

The NJLESA seeks the maximum monetary amount available pursuant to N.J.S.A. 34:13A-16.7(b), and the restrictions contained therein, to increase the base salary items of its members. This monetary amount will be allocated between a lump sum payment to NJLESA members and an appropriate across-the-board increase applied to each negotiation unit employee's base salary effective the first full pay periods in July 2013 and July 2014.

State

Compensation Adjustment

1. Wage Increases: Subject to the State Legislature enacting appropriations of funds for these specific purposes, the State agrees to provide the following benefits effective at the time stated herein or, if later, within a reasonable time after the enactment of the appropriation.

A) Effective the first full pay period after July 1, 2014, there shall be a one percent (1%) across the board increase applied to each negotiation unit employee's base salary in effect on June 30, 2014. The State Compensation Plan salary schedule shall be adjusted in accordance with established procedures to incorporate the above increases for each step of each salary range. Each employee shall receive the increase by remaining at the step in the range occupied prior to the adjustments.

B) Payable in the first full pay period after July 1, 2014, each negotiation unit employee who is at Step 10 of his/her

appropriate salary range on or before the start of Pay Period 14 of 2014, and employed on the date of payment, shall receive a one-time lump sum cash bonus of four hundred and seventy-five dollars ($475), which shall not be included in the base salary.

2. Salary Increments: Normal increments shall be paid to all employees eligible for such increments within the policies of the State Compensation Plan during the term of this Agreement:

a. Where the normal increment has been denied due to an unsatisfactory performance rating, and if subsequent performance of th employee is determined by the supervisor to have improved to the point which then warrants granting a merit increment, such increment may be granted effective on any of the three (3) quarterly action dates which follow the anniversary date of the employee and subsequent to the improved performance and rating which justifies such action. The normal anniversary date of such employee shall not be affected by this action.

b. Employees who have been at the eighth step of the same range for 18 months or longer shall be eligible for movement to the ninth step providing their performance warrants the salary adjustment.

c. Employees who have been at the ninth step of the same range for 24 months or longer shall be eligible for movement to the tenth step providing their performance warrants the salary adjustment.

3. Salary Upon Promotion: Pursuant to the 2011 amendment to N.J.A.C. 4A:3-4.9 by the Civil Service Commission, which applies to every employee promoted in this unit, any employee who is promoted to any job title represented by NJLESA shall receive a salary increase by receiving the amount necessary to place then on the appropriate salary guide (Employee Relations Group "2" or "K") on the lowest Step that provides them with an increase in salary from the salary that they were receiving at the time of

promotion. No employee shall receive any salary increase greater than the increase provided for above, upon promotion to any job title represented by NJLESA. By way of illustration, a Senior Correction Officer ("SCO") is currently in Employee Relations Group "L" Range 18. If such SCO is at Step 9 as of the date of his/her promotion and therefore earning a salary of $77,667.00 as shown on the salary guide effective 7/13/13, such employee, upon promotion to Correction Sergeant (Employee Relations Group "2", range 21) would move to Step 6 at $80,254.10, as this is the lowest salary on the Group "2", Range 21 salary scale effective 1/01/11 that is above the promoted employee's salary as of the date of promotion. [It is understood that the foregoing example is for illustration purposes only and is based upon the salary guide effective as of 1/01/11 and that the salary at each step of the guide is subject to change as per the across the board salary increases that are awarded in the interest arbitration proceeding.

12. **Article XI, Section L(5) [Discipline - 45 Day Rule]**

Proposed Change: Modify as follows:

~~5. All disciplinary charges shall be brought within 45 days of the appointing authority reasonably becoming aware of the offense, except for EEO charges which must be brought within sixty (60) days of the appointing authority reasonably becoming aware of the offense, or in the absence of the institution of the charge within 45 day time period, the charge shall be considered dismissed. The employee's whole record of employment, however, may be considered with respect to the appropriateness of the penalty to be imposed.~~

5.a All disciplinary charges shall be brought within forty-five (45) days of the appointing authority reasonably becoming aware of the offense, except, effective after ratification of this agreement, where the employee is charged with conduct related to the following, in which case a 120 day rule will apply:

1) Removal charges related to any criminal matter of the third degree or higher, or any criminal matter of the fourth degree or higher where the matter touches upon or concerns the individual's employment, or where the facts underlying the proposed discipline could support a criminal charge.

2) Removal charges related to positive test result for Controlled Dangerous Substances.

3) Removal charges related to the introduction of contraband into a State Correctional Facility, or Juvenile Justice Commission-operated facility or program, which jeopardizes safety or security, including but not limited to cell phones and cell phone accessories.

4) Removal charges related to undue familiarity pursuant to the State's policy thereto.

5) Removal charges related to misconduct/inappropriate contact involving a student of a State College or University in which the employee is employed.

6) Removal charges related to uses of excessive force.

7) Removal charges related to incidents of workplace violence, violations of the New Jersey State Policy Prohibiting Discrimination in the Workplace ("State Policy"), or findings of violations of State or Agency Codes of Ethics by the State Ethics Commission.

8) Removal charges related to matter where the employee becomes unfit to perform the duties of their title, including but not limited to

physical unfitness, mental unfitness or being prohibited from carrying a firearm.

9) Removal charges related to matters where the employee is participating in a county, state or federal government investigation. The 120 day time limit in this instance shall not commence until the conclusion of the employee's participation in the investigation.

Charges related to the above conduct constitute cause for major discipline and only will be brought under N.J.S.A. 4A:2-2.3 or, if applicable, investigated as criminal matters.

All EEO charges not meeting the description above must be brought within sixty (60) days of the appointing authority reasonably becoming aware of the offense.

In the aforementioned cases, the forty-five (45) day rule shall not apply. Where the forty-five (45) day or sixty (60) day rule applies, any charges issued after the applicable time frame will be dismissed. The employee's whole record of employment, however, may be considered with respect to the appropriateness of the penalty imposed.

5.b. For the purpose of this sub-section, the following individuals, or their respective designees, shall be the appointing authority for their respective Department or Agency: Administrator (Corrections); Vice-Chairman (Parole); Superintendent (Juvenile Justice); Director of Administration (Treasury); Human Resources Director (Human Services); Superintendent (Palisades Interstate Park Commission); Director of Human Resources (Environmental Protection); Superintendent (Law and Public Safety); Assistant Vice President of Labor Relations (Rowan University); and Vice President or Director of Human Resources (all other State Colleges).

5.c. The exceptions to the 45 day rule (Paragraph 4(A)), set forth in Paragraphs 4(A)(1)-(9)),

> will not be available to an appointing authority (as defined in Paragraph (4)(B)), for a period of one year, if that appointing authority issues removal charges under Paragraphs 4(A)(1) - (9) arising out of two (2) disciplinary events within a one year period (measured backwards from the date of issuance of discipline in the second event) and the removal charges are subsequently reduced by a final agency determination. The dismissal of charges is not considered "reduced" charges for purposes of the section.

The arbitrator issued an 165-page Opinion and Award. After summarizing the parties' arguments on their respective proposals, the arbitrator awarded, in material regard to this appeal, a four year agreement from July 1, 2011 through June 30, 2015. The salary award is as follows:

> Compensation Adjustment
>
> It is agreed that during the term of this agreement for the period July 1, 2011-June 30, 2015, the following salary and fringe benefit improvements shall be provided to eligible employees in the unit within the applicable policies and practices of the State and in keeping with the conditions set forth herein.
>
> 1. Wage Increases: Subject to the State Legislature enacting appropriations of funds for these specific purposes, the State agrees to provide the following benefits effective at the time stated herein or, if later, within a reasonable time after the enactment of the appropriation.
>
> > a. Effective the first full pay period after July 1, 2013, there shall be a one and one quarter percent (1.25%) increase applied to each negotiation unit employee who is at Step 10 of his/her appropriate salary range on or before the start of Pay Period 14 of 2013, and employed on the date of payment.

> b. Effective the first full pay period after July 1, 2014, there shall be a one and one quarter percent (1.25%) increase applied to each negotiation unit employee who is at Step 10 of his/her appropriate salary range on or before the start of Pay Period 14 of 2014, and employed on the date of payment.

2. Salary Increments: Normal increments shall be paid to all employees eligible for such increments within the policies of the State Compensation Plan during the term of this Agreement:

> a. Where the normal increment has been denied due to an unsatisfactory performance rating, and if subsequent performance of the employee is determined by the supervisor to have improved to the point which then warrants granting merit increments, such increment may be granted effective on any of the three (3) quarterly action dates which follow the anniversary date of the employee, and subsequent to the improved performance and rating which justifies such action. The normal anniversary date of such employee shall not be affected by this action.
>
> b. Employees who have been at the eighth step of the same range for 18 months or longer shall be eligible for movement to the ninth step providing their performance warrants the salary adjustment.
>
> c. Employees who have been at the ninth step of the same range for 24 months or longer shall be eligible for movement to the tenth step providing their performance warrants the salary adjustment.

The Arbitrator also awarded the State's proposal to delete Article XI, Section L(5) Discipline - and replace it with the 45-Day Rule and modify Section L(6).

N.J.S.A. 34:13A-16g requires that an arbitrator shall state in the award 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. The statutory factors are as follows:

> (1) The interests and welfare of the public . . .;
>
> (2) Comparison of the wages, salaries, hours, and conditions of employment of the employees 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 . . .;
>
> (b) in public employment in general . . .;
>
> (c) in public employment in the same or comparable jurisdictions;
>
> (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 . . .;
>
> (6) The financial impact on the governing unit, its residents and taxpayers . . .;
>
> (7) The cost of living;
>
> (8) The continuity and stability of employment including seniority rights . . .; and

> (9) Statutory restrictions imposed on the employer. . . .
>
> [N.J.S.A. 34:13A-16g]

The standard for reviewing interest arbitration awards is well established. We will not vacate an award unless the appellant demonstrates that: (1) the arbitrator failed to give "due weight" to the subsection 16g factors judged relevant to the resolution of the specific dispute; (2) the arbitrator violated the standards in N.J.S.A. 2A:24-8 and -9; or (3) the award is not supported by substantial credible evidence in the record as a whole. Teaneck Tp. v. Teaneck FMBA, Local No. 42, 353 N.J. Super. 298, 299 (App. Div. 2002), aff'd o.b. 177 N.J. 560 (2003), citing Cherry Hill Tp., P.E.R.C. No. 97-119, 23 NJPER 287 (¶28131 1997). An arbitrator must provide a reasoned explanation for an award and state what statutory factors he or she considered most important, explain why they were given significant weight, and explain how other evidence or factors were weighed and considered in arriving at the final award. N.J.S.A. 34:13A-16g; N.J.A.C. 19:16-5.9; Lodi. Within the parameters of our review standard, we will defer to the arbitrator's judgment, discretion and labor relations expertise. City of Newark, P.E.R.C. No. 99-97, 26 NJPER 242 (¶30103 1999).

In cases where the 2% salary cap imposed by P.L. 2010, c. 105 applies, we must also determine whether the arbitrator established that the award will not increase base salary by more

than 2% per contract year or 6% in the aggregate for a three year contract award.

P.L. 2010, c. 105 amended the interest arbitration law. N.J.S.A. 34:13a-16.7 provides:

> a. As used in this section:
>
> "Base salary" means the salary provided pursuant to a salary guide or table and any amount provided pursuant to a salary increment, including any amount provided for longevity or length of service. It also shall include any other item agreed to by the parties, or any other item that was included in the base salary as understood by the parties in the prior contract. Base salary shall not include non-salary economic issues, pension and health and medical insurance costs.
>
> "Non-salary economic issues" means any economic issue that is not included in the definition of base salary.
>
> b. An arbitrator shall not render any award pursuant to section 3 of P.L. 1977, c. 85 (*C.34:13A-16*) which, on an annual basis, increases base salary items by more than 2.0 percent of the aggregate amount expended by the public employer on base salary items for the members of the affected employee organization in the twelve months immediately preceding the expiration of the collective negotiation agreement subject to arbitration; provided, however, the parties may agree, or the arbitrator may decide, to distribute the aggregate monetary value of the award over the term of the collective negotiation agreement in unequal annual percentages. An award of an arbitrator shall not include base salary items and non-salary economic issues which were not included in the prior collective negotiations agreement.

Borough of New Milford P.E.R.C. No. 2012-53, 38 NJPER 340 (¶116 2012) was the first interest arbitration award that we reviewed under the new 2% limitation on adjustments to base salary. We held:

> Accordingly, we modify our review standard to include that we must determine whether the arbitrator established that the award will not increase base salary by more than 2% per contract year or 6% in the aggregate for a three-year contract award. In order for us to make that determination, the arbitrator must state what the total base salary was for the last year of the expired contract and show the methodology as to how base salary was calculated. We understand that the parties may dispute the actual base salary amount and the arbitrator must make the determination and explain what was included based on the evidence submitted by the parties. Next, the arbitrator must calculate the costs of the award to establish that the award will not increase the employer's base salary costs in excess of 6% in the aggregate. The statutory definition of base salary includes the costs of the salary increments of unit members as they move through the steps of the salary guide. Accordingly, the arbitrator must review the scattergram of the employees' placement on the guide to determine the incremental costs in addition to the across-the-board raises awarded. The arbitrator must then determine the costs of any other economic benefit to the employees that was included in base salary, but at a minimum this calculation must include a determination of the employer's cost of longevity. Once these calculations are made, the arbitrator must make a final calculation that the total economic award does not increase the employer's costs for base salary by more than 2% per contract year or 6% in the aggregate.

The crux of NJLESA's argument is that the arbitrator erred in utilizing the scattergram and methodology provided by the State to calculate the salary award. It asserts that NJLESA's scattergram and methodology provides a more accurate cost out of the award. The parties stipulated the baseline salary amount expended by the State in Fiscal Year 2011 ("FY 11" - the last year of the parties' prior agreement) is $56,945,856.70. The State's scattergram moves all unit members through the salary guide irrespective as to whether officers retired after FY 11 or new officers joined the unit. Accordingly, based on the prior guide, the State argued the NJLESA members would receive 6.56% base salary increases through step movement and increments.

According to NJLESA, its scattergram differs in that it reflects the actual salaries and/or monies paid to unit members for FY 12 and FY 13 reflecting actual expenditures of $55,807,399.79 for FY 12 and $56,208,517.37 for FY 13. For FY 14, NJLESA moves its members through the guide establishing that members would realize a 5.07% base salary increase throughout the contract. NJLESA relies on our decision in Atlantic City, P.E.R.C. No. 2013-82, 39 NJPER 505 (¶161 2013), where we stated:

> We further clarify that the above information[6/] must be included for officers

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6/ 1) A list of all unit members, their base salary step in the last year of the expired agreement and their anniversary date of hire; 2) costs of increments and specific date on which they are paid; 3)costs of any other base salary items

(continued...)

> who retire in the last year of the expired agreement. For such officers, the information should be prorated for what was actually paid for base salary items. Our guidance in New Milford for avoiding speculation for retirements was applicable to future retirements only.

To support its position that since FY 12 and FY 13 have passed, its scattergram should have been used because it provides actual dollars verses speculation.

To illustrate its point, NJLESA refers to Borough of Tenafly, P.E.R.C. No. 2013-87, 40 NJPER 90 (¶34 2013), app. pending. In that case, we affirmed an interest arbitration award that rejected the PBA's proposal of 2% across-the-board increases for five years and the Borough's proposal of 0% increases. Finding that the PBA's offer would increase base salary by 17.35% and the Borough's offer by 15.59% based on step movement alone, the arbitrator restructured the guides and instituted longevity and salary freezes to comply with the 2% cap. If the Tenafly compensation scheme can be eviscerated by the 2% cap, NJLESA argues that it should be able to benefit from the reduction in the base salary expenditures the State realized in FY12 and FY13.

NJLESA seeks a modification of the salary award to its proposal of a lump sum payment of $5,315,327 or $5,292,548 payable proportionally and evenly to its members based on the

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6/ (...continued)
and the specific date on which they are paid; and 4) the total cost of all base salary items for the last year of the expired agreement.

time they were in the unit for FY 12 and 13 as well as 4.77% and 4.65% across-the-board increases in FY 14 and 15. This proposal, according to NJLESA's expert economist, will provide a full 2% salary increase.

If the Commission does not modify the award, NJLESA seeks a vacation and a remand for re-calculation of the award asserting the arbitrator did not provide an adequate analysis to support his determination to utilize the State's numbers since the State did not introduce expert testimony to support its proposal.

The State responds that the arbitrator fully complied with his obligation under N.J.S.A. 34:13A-16g; N.J.A.C. 19:16-5.9(b); and correctly determined that the award will not exceed the 2% salary cap imposed by P.L. 2010, c. 105. The State cites Borough of Ramsey, P.E.R.C. No. 2012-60, 39 NJPER 17 (¶3 2012), where we stated:

> The statute does not provide for a majority representative to be credited with savings that a public employer receives from any reduction in costs, not does it provide for the majority representative to be debited for any increased costs the public employer assumes for promotions or other costs associated with maintaining the workforce.

The State requests we affirm the salary award as NJLESA's approach would result in 24.67% salary increases over a four-year period. The State asserts that its scattergram and salary analysis complies with the interest arbitration statute and Commission case law as it is calculated based on the unit

composition at the end of the expired agreement; provides for step movement of the members as they progress through the guide in FY 11 and FY 12; and then provides for salary increases within the cap for FY 13 and 14.

The State asserts the arbitrator properly rejected NJLESA's scattergram because it incorporates post base year savings. In response to NJLESA's argument that its economic expert's testimony should have been accepted, the State argues the expert's reasoning was based on a flawed interpretation of the 2% cap law. The State points to testimony in the record wherein the expert testified the statute requires that unit employees receive 2% salary raises; took account of savings realized by the employer in FY 12 and FY 13 as "back salary not paid"; and concluded that to achieve a full 2% increase for each year of the award, NJLESA must be awarded $5,315,327 to account for the short fall in the unit's base salary in FY 12 and 13 plus 4.77% across-the-board increases on June 30 of 2014 and 2015. The State asserts that the expert's reasoning assumes the reduction in salary realized in FY 12 and FY 13 will continue and did not account for increment payments in FY 14 and 15.

As to the arbitrator's rejection of NJLESA's proposal, the State argues it was the correct decision under the interest and welfare of the public and the lawful authority of the employer criteria. The State asserts the intent of the 2% salary cap would be frustrated if unions or employers were able to engage in

gamesmanship with the timing of interest arbitration filings. If NJLESA's method is accepted, unions could time their filings based on unit member decreases thereby deflating actual salary expenditures or employers could time a filing at a point where a group of new hires, promoted employees or cadets were added to the unit.

This case is unique because it requires us to examine our guidance in New Milford as it relates to an interest arbitration hearing proceeding two fiscal years after the expiration of the prior agreement. As the arbitrator indicated in his analysis, the State followed the dynamic status quo doctrine and paid salary increments to the unit members for Fiscal Years 12 and 13. Thus, the actual dollar amounts expended by the State were available to the parties and the evidence establishes that the State paid less monies in FY 12 and 13 then it did in the base salary year of the prior agreement being FY 11. The arbitrator complied with his calculation requirements and determined the monies available within the cap. [Award at 133-142] In determining which approach to use, and justifying his salary award, the arbitrator reasoned:

> After thorough review and consideration of the parties' vigorous arguments as to how to apply the cap and base salary amounts that can be awarded, I am persuaded that the State's methodology must be selected as the one that is consistent with the PERC case law. Notwithstanding NJLESA's disagreement with that case law as applied herein by the State, I am bound by that methodology and

will apply it to the salary award. While doing so, neither the statute nor the case law requires that the apportionment of the maximum aggregate amount of funds that can be awarded be identical to the specific terms that the State has proposed. As previously indicated, the statute states that "the arbitrator may decide to distribute the aggregate monetary value of the award over the term of the collective negotiations agreement in unequal annual percentages."

Based upon the above analysis of the amount of funds available to be awarded beyond the step movements costs that the State projected would occur over the four year period, that sum is $821,373. That amount, in addition to the $3,734,295 projected expenditures for the cost step movements over the four year period equals the cap amount of $4,555,668. Given the conventional arbitration authority granted to me under law, and the latitude to distribute the funds consistent with the cap amount over the four year period, I have decided not to award the 1% across the board amount in FY 2015 for all unit employees nor the $475 one-time non-base payment during the 14th pay period of FY 2014 for those employees at the maximum step of the salary schedule. This 1.44% is calculated at $821,373. Instead, and for the purpose of achieving reasonable consistency with collective negotiations agreements reached between the State and its other law enforcement and civilian bargaining units over the 2011-2015 contract years, I have awarded a 1.25% increase in FY 2015 (contract year #4) only for those employees who were projected to be placed at the top step of the salary schedules for unit employees during these years based upon A. Ex. #6.

The calculations of cost for this portion of the award is $334,125 for FY 2014 as a result of a 1.25% increase only for employees at the top step and an additional

> $423,708 for FY 2015 as a result of a 1,25% increase only for employees at top step. These increases would be effective the first pay period after each July 1 effective date. The distribution for both of the two years total $757,833 ($334,125 in FY 2014 and $423,408 in FY 2015) and is based off of an approximate top step salary average of $90,000 for all of the salary guides as of the base salary year that ended on June 30, 2011 and the State's projections of the number of employees in all ERGs at Step 10 of 297 in FY 2014 and 372 in FY 2015. The amounts awarded are somewhat less than the $821,373 that would equal the maximum allowable but there is no basis for the expenditure of that requires any additional amounts.
>
> The terms of the award are within the costs of the cap on base salary that are lawfully allowable and are reasonably consistent with the across the board wage increases that the State achieved with PBA Local 105, NJSOLEA and FOP Local 174.
>
> [Award at 143-145]

We affirm the arbitrator's salary award and find that his selection of the State's scattergram is consistent with our direction in New Milford. We reject NJLESA's argument that the savings realized by the State in FY 12 and 13 are to be credited to the unit. As we indicated in New Milford, the base salary calculation may not increase by more than 2% per year, or 6% in the aggregate for a three year contract award, the amount expended by the employer in the last year of the prior agreement. N.J.S.A. 34:13A-16.7(b). Whether speculative or known, we again hold that any changes in financial circumstances benefitting the employer or majority representative are not contemplated by the

statute or to be considered by the arbitrator. See Borough of Ramsey (Holding that the interest arbitration statute does not provide for a majority representative to be credited with savings that a public employer receives from any reduction in costs in the new contract years). We also note that we have recently reversed the dynamic status quo doctrine as a matter of Commission policy and no longer require employer's to pay salary increments upon contract expiration. See Atlantic County, P.E.R.C. No. 2014-40, __ NJPER __ (¶__ 2013), app. pending; and State-Operated School Dist. of the City of Paterson, P.E.R.C. No. 2014-46, __ NJPER __ (¶__ 2014).

The second basis for NJLESA'a appeal is its opposition to the awarding of the State's proposal to modify Article XI, Section L(5), commonly referred to as the 45-Day Rule. NJLESA asserts this Article is preempted by N.J.S.A. 30:4-3.11a that provides:

> A person shall not be removed from employment or a position as a State corrections officer, or suspended, fined or reduced in rank for a violation of the internal rules and regulations established for the conduct of employees of the Department of Corrections, unless a complaint charging a violation of those rules and regulations is filed no later than the 45th day after the date on which the person filing the complaint obtained sufficient information to file the matter upon which the complaint is based. A failure to comply with this section shall require a dismissal of the complaint. The 45-day time limit shall not apply if an investigation of a State corrections officer for a violation

> of the internal rules and regulations of the Department of Corrections is included directly or indirectly within a concurrent investigation of that officer for a violation of the criminal laws of this State; the 45-day limit shall begin on the day after the disposition of the criminal investigation. The 45-day requirement in this section for the filing of a complaint against a State corrections officer shall not apply to a filing of a complaint by a private individual.

The State responds that by failing to file a petition for a scope of negotiations determination or raise its objection earlier, NJLESA has waived its objection to the awarding of the 45-day Rule modification under N.J.A.C. 19:15-5.5. This regulation requires scope petitions be filed within 5 days of the filing of an interest arbitration petition or a response to the petition. The regulation further specifies that the failure to do so will constitute an agreement to arbitrate all unresolved issues.

In the alternative, the State asserts the language is not preempted as N.J.S.A. 30:4-3.11a addresses a 45-day time limit on the issuance of major discipline issued "for a violation of the internal rules and regulations established for the conduct of employees of the Department of Corrections." The State cites McElwee v. Borough of Fieldsboro, 400 N.J. Super. 388 (App. Div. 2008), a case applying a similarly worded statute to municipal police officers, where the Court held that the statutory 45-day

time limit imposed by N.J.S.A. 40A:14-147[2/] did not apply to

7/ N.J.S.A. 40A:14-147 provides:

> Except as otherwise provided by law, no permanent member or officer of the police department or force shall be removed from his office, employment or position for political reasons or for any cause other than incapacity, misconduct, or disobedience of rules and regulations established for the government of the police department and force, nor shall such member or officer be suspended, removed, fined or reduced in rank from or in office, employment, or position therein, except for just cause as hereinbefore provided and then only upon a written complaint setting forth the charge or charges against such member or officer. The complaint shall be filed in the office of the body, officer or officers having charge of the department or force wherein the complaint is made and a copy shall be served upon the member or officer so charged, with notice of a designated hearing thereon by the proper authorities, which shall be not less than 10 nor more than 30 days from date of service of the complaint.
>
> A complaint charging a violation of the internal rules and regulations established for the conduct of a law enforcement unit shall be filed no later than the 45th day after the date on which the person filing the complaint obtained sufficient information to file the matter upon which the complaint is based. The 45-day time limit shall not apply if an investigation of a law enforcement officer for a violation of the internal rules or regulations of the law enforcement unit is included directly or indirectly within a concurrent investigation of that officer for a violation of the criminal laws of this State. The 45-day limit shall begin on the day after the disposition of the criminal investigation. The 45-day requirement of this paragraph for the filing of a complaint against an officer shall not apply to a filing of a complaint by a private individual.
>
> A failure to comply with said provisions as to the service of the complaint and the time within which a complaint is to be filed shall require a dismissal of the complaint.

(continued...)

discipline grounded in violations of Title 4A of the New Jersey Administrative Code or to violations that are criminal in nature. The State asserts the award complies with the statute because the modification that extends to 120 days the period for filing removal charges "brought under N.J.A.C. 4A:2-2.3 or, if applicable investigated as criminal matters does not apply to disciplinary charges brought for violations of the internal rules and regulations established for the conduct of employees of the Department of Corrections."

In awarding the change to the 45-day Rule, the Arbitrator relied on comparability:

> The record does reflect that the 45 day rule has been the subject of interpretation and dispute. The fact that PBA Local 105 and NJSOLEA have agreed to some modification of the 45 day rule tends to support the State's argument that the rule is in need of some clarification and modification in order to minimize disputes over its application. NJLSEA shares a greater community of interest with NJSOLEA than with PBA Local 105 based upon the fact that the two units represent superior officers. Moreover, the PBA 105 agreement provides the State with the Broad authority to extend the 45 day period for an undetermined period of time by changing the trigger date from "45 days of the appointing authority reasonably becoming aware of the offense" to when "the

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7/ (...continued)

> The law enforcement officer may waive the right to a hearing and may appeal the charges directly to any available authority specified by law or regulation, or follow any other procedure recognized by a contract, as permitted by law.

> appointing authority reasonably becomes aware of the offense" without reference to days. The NJSOLEA agreement provides for dates of certainty by maintaining the 45 day rule except for when the 120 day rule would apply to nine specific types of removal charges that are contained in the State's proposal to NJLESA. It is reasonable for Sergeants and Lieutenants operating in the same departments and agencies to have similar investigatory procedures that provide due process for unit members. An award of the State's proposal accomplishes that goal and it is awarded. I also award the State's proposal for specific individuals to serve as the appointing authority for their respective departments or agencies consistent with the terms agreed to by the other law enforcement units. Such designation will avoid any ambiguity as to who may bring disciplinary charges against a unit member. NJLESA contends that case law supercedes the State's proposal. This cannot be determined on this record but this award is intended to be consistent with case law.

We affirm the arbitrator's award of the 45-day rule modification and reject NJLESA's appeal of same. A review of the record indicates that NJLESA is raising its negotiability argument for the first time in this appeal. The time line set forth in N.J.A.C. 19:16-5.5(c) structures the interest arbitration process; ensures that the parties and the arbitrator know the nature and extent of the controversy at the outset; and fosters the statutory goal of providing for an expeditious, effective and binding procedure for resolution of disputes between employers and police and fire employees. See Borough of Ft. Lee, P.E.R.C. No. 2008-70, 34 NJPER 261 (¶92 2008) and the

cases cited therein. This rule has become more important since the passing of P.L. 2010, c. 105 and the quick time frames set forth therein.

We find no extraordinary circumstances to relax this rule. The parties engaged in extended mediation sessions and NJLESA has not offered any evidence that it was unaware of the State's proposal or otherwise prevented from filing a scope of negotiations petition. Indeed, the State filed a scope of negotiations petition in this case that was decided on an expedited basis prior to the arbitration proceedings pursuant to a pilot program of the Commission. See State of New Jersey and NJLESA, P.E.R.C. No. 2014-21, __ NJPER __ (¶__ 2014). Thus, we affirm the award. NJLESA is not precluded from seeking relief in Superior Court if a particularized circumstance arises that it deems violates N.J.S.A. 30:4-3.11a.

ORDER

The interest arbitration award is affirmed.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau and Eskilson voted in favor of this decision. Commissioners Voos and Wall voted against this decision. Commissioner Jones was not present.

ISSUED: March 10, 2014

Trenton, New Jersey

P.E.R.C. NO. 2014-69

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF MORRIS,
MORRIS COUNTY SHERIFF'S OFFICE,

Appellant,

-and-

Docket No. IA-2012-035

PBA LOCAL NO. 298,

Respondent.

PBA LOCAL NO. 298,

Appellant,

-and-

COUNTY OF MORRIS,
MORRIS COUNTY SHERIFF'S OFFICE,

Respondent.

SYNOPSIS

The Public Employment Relations Commission affirms an interest arbitration award establishing the terms of a successor agreement between the County of Morris and the Morris County Sheriff's Office (County) and the PBA Local 298. The County appealed an interest arbitration award that had been previously remanded to the Commission by the Appellate Division and assigned to a new arbitrator. The Commission rejects the County's arguments on appeal finding that the arbitrator complied with our directive on remand and was correct in considering the entire award and all aspects of the interest arbitration statute when formulating her award. The Commission found that the arbitrator issued a well reasoned opinion and award that complied with the relevant statutes and is supported by substantial credible evidence in the record as a whole.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

P.E.R.C. NO. 2014-69

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-and-

COUNTY OF MORRIS,
MORRIS COUNTY SHERIFF'S OFFICE,

Respondent.

Appearances:

For the County of Morris, Morris County Sheriff's Office, Knapp, Trimboli & Prusinowski (Stephen Trimboli, of counsel and on the brief)

For the PBA Local No. 298, Lindabury, McCormick, Estabrook & Cooper, P.C. (Donald B. Ross, Jr., of counsel and on the brief)

DECISION

This is an appeal by the County of Morris, Morris County Sheriff's office from an interest arbitration award that was remanded to a new arbitrator after an appeal to the New Jersey Superior Court, Appellate Division. This matter has a long

history. The first award in this matter was issued on June 25, 2012. Both parties appealed that award to the Commission. On July 19, 2012, we remanded the award back to the arbitrator for a supplemental award in accordance with our decision. Morris Cty., P.E.R.C. No. 2013-3, 39 NJPER 81 (¶31 2012). The arbitrator issued his supplemental award on August 28, 2012, and the County appealed that award. We affirmed the award. Morris Cty., P.E.R.C. No. 2013-27, 39 NJPER 200 (¶64 2012). The County then appealed to the Superior Court, Appellate Division. On November 15, 2013, the Appellate Division remanded the matter back to the Commission to develop the record regarding the arbitrator's analysis of the factors established in N.J.S.A. 34:13A-16(g) consistent with its opinion. The court left the task to the discretion of the Commission and did not retain jurisdiction. County of Morris, Morris County Sheriff's Office and PBA Local 298, P.E.R.C. No. 2013-27, 39 NJPER 200 (¶64 2012), rem'd 40 NJPER 241 (¶92 2013). We remanded the matter to a new arbitrator[1/] who filed her opinion and award with the Commission on March 5, 2014. The County then filed this appeal.

The original collective negotiations agreement expired on December 31, 2010.

1/ The initial arbitrator retired from the interest arbitration panel.

The PBA is the majority representative of all Correction Officers employed at the Morris County jail and has filed a brief[2/] but has not filed a cross-appeal in this matter.

The County argues that the last arbitrator only had the authority to determine the issue of step increments for 2011 as that was the only issue that was appealed to the Appellate Division. The points asserted by the County are as follows:

POINT I

> THE SCOPE OF THIS REMAND HEARING SHOULD BE LIMITED TO THE ISSUE OF 2011 STEP INCREMENTS, THE ONLY ISSUE ON WHICH APPEAL WAS TAKEN FROM THE SUPPLEMENTAL AWARD, AND THE ONLY ISSUE ADDRESSED BY THE APPELLATE DIVISION.

POINT II

> THE ARBITRATOR ACTED CONTRARY TO LAW BY AWARDING A CONTRACT OF FOUR YEARS' DURATION THAT DID NOT LIMIT ANNUAL INCREASES IN BASE SALARY ITEMS TO 2.0% PER YEAR ON AVERAGE.

POINT III

> FOUR CRITICAL FINDINGS IN THE ARBITRATOR'S REMAND AWARD ARE NOT SUPPORTED BY SUBSTANTIAL CREDIBLE EVIDENCE ON THE RECORD BELOW, AND BECAUSE THESE ERRONEOUS DETERMINATIONS HAD A SIGNIFICANT IMPACT ON THE ARBITRATOR'S CONCLUSIONS, IT IS NECESSARY TO REMAND THE MATTER TO THE

2/ The brief filed by the PBA contained a newspaper article as an exhibit that was not part of the record below. The County objected to the article as a violation of N.J.A.C. 19:16-8.19(c), "Where no cross-appeal is being filed, . . . the respondent shall file . . . an answering brief limited to the issues raised in the appeal and the brief in support of the appeal." We have not considered the article.

ARBITRATOR SO THAT HER CONCLUSIONS MAY BE RECONSIDERED IN LIGHT OF THE ACTUAL RECORD.

A. The Arbitrator Failed to Attain her Stated Goal of Following the Pattern Set by the Sheriffs Officers, Sheriff's Superiors, and Correction Superiors Contract By Misstating the Increases Under Those Contracts

B. The Arbitrator Further Misconstrued the Pattern She Purported to Rely Upon by Not Accounting for the Surrendering of Retiree Coverage for New Hires.

C. The Arbitrator Placed Excessive Weight on Comparison to Local Morris County Police Departments, and Insufficient Weight on Comparisons to Other Correctional Departments.

D. In addressing the Financial Impact Criterion, the Arbitrator Failed to Consider the Cost to the Appellant of Employees who Received 2011 Step Increments Under the Mason Award that the County Will be Unable to Recoup.

The PBA responds that the Commission should uphold the arbitration award; that the scope of the remand hearing was appropriate based on the language from the Court's decision which remanded the case to the Commission to develop the record regarding the arbitrator's analysis of the statutory factors; that had the arbitrator been limited to the issue of the 2011 step increments, the award would have issued a CNA that was already expired at the time of the award[3/]; it was not a

3/ The award from the first arbitrator was for a three year (continued...)

violation for the arbitrator to award a four-year CNA that did not limit the annual increases to 2% per year since the statue did not apply to this interest arbitration; and that the arbitrator did not make erroneous determinations in her 93-page award and "gave proper, careful and comprehensive consideration of the statutory criteria."

The arbitrator in the instant matter issued a conventional award as she was required to do pursuant to P.L. 2010, c. 105, effective January 1, 2011. A conventional award is crafted by an arbitrator after considering the parties' final offers in light of statutory factors.

The parties proposals were as follows:[4/]

COUNTY FINAL OFFER

Duration: January 1, 2012 through December 31, 2013.

Medical Plan:

> All employees currently enrolled in the Medallion Plan shall have the option to transfer to the PPO Plan.

3/ (...continued)
period and ended on December 31, 2013...the CNA awarded by the instant arbitrator was for a four year period that ends on December 31, 2014.

4/ The arbitrator informed the parties of the following:

"I advised the parties that the remand for a new hearing would not be an opportunity for the parties to amend their respective final offers filed in 2012 to include additional items in dispute, but that the parties would be permitted to agree upon disputed issues and/or withdraw any issue from consideration."

All employees enrolled in the Wraparound Plan shall transfer to the PPO Plan. The Wraparound Plan will no longer be available for enrollment.

Payroll Contributions - Current Employees

Employees enrolled in the HMO Option plan shall contribute in accordance with Chapter 78.

Employees enrolled in the Medallion Plan shall contribute the greater of 30% of the difference between the cost of the Medallion Plan and the PPO Plan, plus 1.5% of base salary, plus 3% of the premium or in accordance with Chapter 78.

Employees enrolled in the PPO Plan shall contribute the greater of 1.5% of base salary or in accordance with Chapter 78.

Prescription Co-Pays - Applicable to All Active Employees and Employees Who Retire After the Date the Award is Issued.

Generic	$1.00
Brand Name	$20.00
Non Preferred	$35.00

Retiree Health Insurance:

Employees hired after the date the Award is issued, who retire and meet the criteria for County-paid health insurance, will receive a plan for the employee only. Employees hired after the date the Award is issued and meet the requirements for County-paid health insurance will have the option to add their eligible dependents to the plan at the expense of the retiree.

Wage Proposal:

No step movement for the term of the Agreement.

0% increase effective January 1, 2011, with no step movement.

2% increase effective January 1, 2012, with no step movement.

2% increase effective January 1, 2013, with no step movement.

Resumption of step movement after expiration of Agreement shall be subject to negotiation.

PBA FINAL OFFER

Duration: The PBA proposes a contract term of January 1, 2011 through December 31, 2014.

Wage Proposal:

2011: 2.5% across the board increase effective January 1, 2011 plus full step movement as per prior contract.

2012: 2.5% across the board increase effective January 1, 2012 plus full step movement as per prior contract.

2013: 2.5% across the board increase effective January 1, 2013 plus full step movement as per prior contract.

2014: 2.5% across the board increase effective January 1, 2014 plus full step movement as per prior contract.

Health Insurance:

Effective as soon as practicable after execution of the new agreement, all officers who are currently enrolled in

> either the so-called Medallion Plan or the so-called Wrap-Around Plan shall be required to enroll in the County's "PPO" plan currently provided to certain other County employees. Other officers who are currently enrolled in the "HMO" plan shall be permitted to change to the PPO plan, provided that these officers shall pay 30 percent of the difference between the HMO plan premium and the PPO premium.

Overtime on Holidays:

> If an officer is working on a holiday and required to work mandatory overtime on that day, the officer shall be paid double time and one half for working the extra shift or portion thereof.

AWARD SUMMARY

Contract Duration: January 1, 2011 through December 31, 2014

Salary Increases and Increments:

> 2011 - Wage freeze and guide freeze
>
> 2012 - Effective January 1, 2012 all employees at top pay shall receive a 2.5% salary increase. All employees eligible for step guide increases shall move one step on the guide on their anniversary in 2012.
>
> 2013 - Effective January 1, 2013 all employees at top pay shall receive a 1.632% salary increase. All employees eligible for step guide increases shall move one step on the guide on their anniversary in 2013.
>
> 2014 - Effective January 1, 2014 the salary guide is revised as follows:

2011 - 2014 SALARY GUIDE

Old Step	New Step	2010 Salary Guide	01/01/11 Salary Guide	01/01/12 Salary Guide	01/01/13 Salary Guide	01/01/14 Salary Guide	Increment
Entry	Entry	$44,162	$44,162	$44,162	$44,162	$44,162	$1,813
1	1	45,975	45,975	45,975	45,975	45,975	3,276
2	2	49,251	49,251	49,251	49,251	49,251	3,627
3	3	52,878	52,878	52,878	52,878	52,878	3,626
4	4	56,504	56,504	56,504	56,504	56,504	3,640
	5					60,144	3,640
5	6	60,500	60,500	60,500	60,500	63,784	3,640
6	7	65,733	65,733	65,733	65,733	67,424	3,640
	8					71,064	3,640
7	9	72,273	72,273	72,273	72,273	74,704	3,640
	10					78,344	3,640
8	11	78,824	78,824	78,824	78,824	81,984	3,640
	12					85,624	3,679
9	13	85,726	85,726	87,869	89,303	89,303	

Effective January 1, 2014, employees will move horizontally across the guide from their current step to their new step and their salaries shall be adjusted, as required, to the amount in the column headed "1/1/14". For example, employees currently on step 6 of the old salary guide ($65,733) will move to the new step 7 on the salary guide ($67,424). Employees in old steps "entry step" through "step 4", as well as employees on old step 9, will not receive an adjustment.

Employees shall not receive regular increment payments or across-the-board increases in 2014.

Future Increments:

Add the following language to the Salary Article:

> The salary schedule shall, unless agreed to otherwise, remain without change upon the expiration of this agreement. However, salary step movement shall not occur beyond the contract expiration date in the absence of a new collective negotiations agreement.

Health Benefit Changes:

> Discontinue the Wrap-Around plan effective July 1, 2012. Employees currently in this plan will be permitted to enroll in either the PPO plan or the HMO plan.

Offer PPO plan to all unit employees.

> Effective July 1, 2014, employees who wish to enroll in the Medallion Plan will contribute 1.5% of salary plus 30% of the difference between the Medallion plan premium and the PPO plan premium, OR the Chapter 78 contribution, whichever is higher.
>
> All employees will contribute to the cost of health care premiums pursuant to Chapter 78.

Prescription Copayments:

> Applicable to all active employees and employees who retire after the date the Award is issued:
>
> | | |
> |---|---|
> | Generic | $1.00 |
> | Brand Name | $20.00 |
> | Non Preferred | $35.00 |

Retirement Health Care for Future Employees:

> Employees hired after the date the Award is issued, who retire and meet the criteria for County-paid health insurance, will receive a plan for the employee only. Employees hired after the date the Award is issued and meet the requirements for County-paid health insurance will have the option to add their eligible dependents to the plan at the expense of the retiree.

Stipulations:

> All previously agreed upon changes to the contract shall be incorporated in the new agreement.

N.J.S.A. 34:13A-16g requires that an arbitrator shall state in the award 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. The statutory factors are as follows:

> (1) The interests and welfare of the public . . .;
>
> (2) Comparison of the wages, salaries, hours, and conditions of employment of the employees 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 . . . ;
>
> (b) in public employment in general . . . ;

> (c) in public employment in the same or comparable jurisdictions;
>
> (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 . . .;
>
> (6) The financial impact on the governing unit, its residents and taxpayers . . .;
>
> (7) The cost of living;
>
> (8) The continuity and stability of employment including seniority rights . . .; and
>
> (9) Statutory restrictions imposed on the employer. . . .
>
> [N.J.S.A. 34:13A-16g]

The standard for reviewing interest arbitration awards is well established. We will not vacate an award unless the appellant demonstrates that: (1) the arbitrator failed to give "due weight" to the subsection 16g factors judged relevant to the resolution of the specific dispute; (2) the arbitrator violated the standards in N.J.S.A. 2A:24-8 and -9; or (3) the award is not supported by substantial credible evidence in the record as a whole. Teaneck Tp. v. Teaneck FMBA, Local No. 42, 353 N.J. Super.

298, 299 (App. Div. 2002), aff'd o.b. 177 N.J. 560 (2003), citing Cherry Hill Tp., P.E.R.C. No. 97-119, 23 NJPER 287 (¶28131 1997). An arbitrator must provide a reasoned explanation for an award and state what statutory factors he or she considered most important, explain why they were given significant weight, and explain how other evidence or factors were weighed and considered in arriving at the final award. N.J.S.A. 34:13A-16g; N.J.A.C. 19:16-5.9; Lodi. Within the parameters of our review standard, we will defer to the arbitrator's judgment, discretion and labor relations expertise. City of Newark, P.E.R.C. No. 99-97, 26 NJPER 242 (¶30103 1999). Because the Legislature entrusted arbitrators with weighing the evidence, we will not disturb an arbitrator's exercise of discretion unless an appellant demonstrates that the arbitrator did not adhere to these standards. Teaneck, 353 N.J. Super. at 308-309; Cherry Hill. Arriving at an economic award is not a precise mathematical process. Given that the statute sets forth general criteria rather than a formula, the treatment of the parties' proposals involves judgment and discretion and an arbitrator will rarely be able to demonstrate that an award is the only "correct" one. See Borough of Lodi, P.E.R.C. No. 99-28, 24 NJPER 466 (¶29214 1998). Some of the evidence may be conflicting and an arbitrator's award is not necessarily flawed because some pieces of evidence, standing alone, might point to a different result. Lodi. Therefore, within the parameters of our review

standard, we will defer to the arbitrator's judgment, discretion and labor relations expertise. City of Newark, P.E.R.C. No. 99-97, 26 NJPER 242 (¶30103 1999). However, an arbitrator must provide a reasoned explanation for an award and state what statutory factors he or she considered most important, explain why they were given significant weight, and explain how other evidence or factors were weighed and considered in arriving at the final award. N.J.S.A. 34:13A-16g; N.J.A.C. 19:16-5.9; Lodi.

The County's objection in its first point is that the scope of the remand hearing should have been limited to the only issue that was appealed, the 2011 step increments issued by the previous arbitrator. The Appellate Division stated in its opinion, "We therefore remand to develop the record regarding the arbitrator's analysis of the factors established in N.J.S.A. 34:13A-16g consistent with this opinion. We leave this task to the discretion of PERC. We do not retain jurisdiction." County of Morris, Morris County Sheriff's Office and PBA Local 298, supra. We determined that the arbitrator could not solely consider the 2011 step increments without looking at the entire award as a change to the step increments would have an impact on the rest of the award that was appealed. As a result, we instructed the arbitrator that "all aspects of the interest arbitration statute apply in this case." See Bogota Bor. P.E.R.C. No. 99-20, 24 NJPER 453 (¶29210 1998) ("[E]vidence could not be considered in a

vacuum: in formulating a new award, the arbitrator would have to evaluate it together with the evidence on the other statutory criteria."; Allendale Bor. P.E.R.C. No. 98-123, 24 NJPER 216 (¶29103 1998) ("An arbitrator must assess the evidence on individual statutory factors and then weigh and balance the relevant, sometimes competing, factors."). Thus, we find that the arbitrator was correct in considering the entire award and all aspects of the interest arbitration statute when formulating her award.

The County's next argument is that the arbitrator acted contrary to law by awarding a four-year CNA that ended on December 31, 2014 and, as a result, was not subject to the 2% cap per year on average imposed by P.L. 2010, c. 105, codified in relevant part as N.J.S.A. 34:13A-16.7(b):

> An arbitrator shall not render any award pursuant to section 3 of P.L. 1977, c.85 (C.34:13A-16) which, on an annual basis, increases base salary items by more than 2.0 percent of the aggregate amount expended by the public employer on base salary items for the members of the affected employee organization in the twelve months immediately preceding the expiration of the collective negotiation agreement subject to arbitration; provided, however, the parties may agree, or the arbitrator may decide, to distribute the aggregate monetary value of the award over the term of the collective negotiation agreement in unequal annual percentages. An award of an arbitrator shall not include base salary items and non-salary economic issues which were not

> included in the prior collective negotiations agreement.

The effective date of the statue is codified in N.J.S.A. 34:13A-16.9:

> This act shall take effect January 1, 2011; provided however, section 2 [C.34:13A-16.7] shall apply only to collective negotiations between a public employer and the exclusive representative of a public police department or public fire department that relate to a negotiated agreement expiring on that effective date or any date thereafter until April 1, 2014, whereupon the provisions of section 2 shall become inoperative for all parties except those whose collective negotiations agreements expired prior to April 1, 2014 but for whom a final settlement has not been reached. When final settlement between the parties in all such negotiations is reached, the provisions of section 2 of this act shall expire. In the case of a party that entered into a contract that expires on the effective date of this act or any date thereafter until April 1, 2014, and where the terms of that contract otherwise meet the criteria set forth in section 2 of this act, that party shall not be subject to the provisions of section 2 when negotiating a future contract.

As set forth above, the CNA awarded by the arbitrator was for a four-year period from January 1, 2011 to December 31, 2014. Since the original CNA expired on December 31, 2010, the CNA awarded by the arbitrator was not subject to the 2% cap as set forth in P.L. 2010, c. 105. If the arbitrator had awarded a CNA that ended on December 31, 2013, as requested by the County, then the subsequent CNA would have been subject to the 2% cap. The

County argues, however, that since the CNA awarded by the arbitrator ends on December 31, 2014, it effectively allows the PBA members to "escape" the 2% cap. The County further argues in its brief that this result is counter to the Legislative intent of the statue:

> The clear intention in this Legislative scheme is that every public safety employee union be party to at least one contract negotiations that is subject to the mandatory "hard" 2.0% base salary cap. The obvious purpose of the scheme is to provide cost relief to local government by limiting the cost of public safety base salary increases to an aggregate total of 2.0% per year for a specified period of time. This purpose is not served if a bargaining unit is permitted to escape the 2.0% cap by virtue of a contract that commenced negotiation before the cap's effective date, but has a duration that extends well after the cap's expiration. (Emphasis in original).

We have reviewed the Statements from both the New Jersey Senate and the Assembly, dated December 9, 2010 (both are identical in relevant part) regarding the statute which states in pertinent part:

> Finally, the provisions of the bill are to sunset in 39 months. All police and fire collective negotiation agreements that expire during that period are subject to the bills provisions. The provisions of the bill continue to apply in arbitration cases that began during the three year period, but where the arbitrator's award is not rendered until after the sunset date. Parties that enter into contracts that expire during the sunset

> period, but otherwise meet the criteria enumerated in the bill, are not subject to the provision of the bill when negotiating future contracts.

As an administrative agency, we are empowered to enforce P.L. 2010, c. 105, "[I]nterpretations of the statute and cognate enactments by agencies empowered to enforce them are given substantial deference in the context of statutory interpretation. Matturri v. Bd. of Trs., Judicial Ret. Sys., 173 N.J. 368, 381, 802 A.2d 496 (2002) (citing R & R Mktg., LLC v. Brown-Forman Corp., 158 N.J. 170, 175, 729 A.2d 1 (1999))." TAC Associates v. New Jersey Dept. of Environmental Protection, 202 N.J. 533, 541 (2010).

We find nothing in the plain meaning of the statute, or the Legislature's statements, that indicates that the arbitrator's award was contrary to law since the CNA "escaped" the 2% cap. It should be noted that the Legislature may elect to extend the 2% cap, and if so, the subsequent CNA between the parties will be subject to the 2% cap. Additionally, with respect to the length of the awarded CNA, the arbitrator took into account that seven of the nine completed law enforcement officer CNAs with the County all expired on December 31, 2014. The arbitrator stated:

> Noteworthy is the fact that all of these contracts but two (Park Police and Park Superiors) extend through the end of 2014. It is in the public interest for parties to have

> contracts expiring contemporaneously so that many bargaining units competing for scarce dollars are doing so during the same round of negotiations. This is particularly true here, where both of the sheriff's officers bargaining units and the corrections superiors unit, extend through 2014. Therefore, I intend to extend the awarded contract for the corrections officers through 2014 as well.

We find that, under the facts of the instant matter, it was appropriate for the arbitrator to award a four year contract.[5/]

The third and final objection point from the County is that the arbitrator erred in four critical findings in her award. As set forth above, the County asserts that the arbitrator erred when she "Failed to Attain her Stated Goal of Following the Pattern Set by the Sheriffs Officers, Sheriff's Superiors, and Correction Superiors Contract By Misstating the Increases Under Those Contracts." The County primarily relies on the testimony of its Manager of Labor Relations, who testified at the arbitration hearing, for its argument. We find that the arbitrator's award with respect to this issue is supported by substantial credible evidence in the record. The arbitrator stated, "Since there is no broad universal pattern of settlement increases among the other law enforcement County groups, I intend to give the greatest weight to the settlements achieved by the Corrections SOA and the

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5/ It is not clear from the record why the County proposed a two year CNA, as set forth above, from January 1, 2012 to December 31, 2013, leaving out the 2011 calendar year.

two sheriff's officers groups." Specifically, the arbitrator did not state that she would mirror the other CNAs. With respect to the County's Manager of Labor Relations, the arbitrator credited specific provisions in the sheriff's officers' CNA over her testimony:

> Notwithstanding [the Manager of Labor Relations'] testimony that the third settlement pattern of 2.16% was inclusive of increment payments, the sheriff's officers' contract contradicts this assertion. Increment payments for that group ranged from $1,813 to $6,902, which equates to 4.1% to 8.7%. Therefore, it would not be possible to pay employees step movement and also provide for a 2.5% increase to the top step and still be within a cap of 2.16%. I credit the specific provisions in the contract over [the Manager of Labor Relations'] testimony.

The County attributes this discrepancy to a different method of calculating step increases. The County has not provided specific calculations establishing a mistake or pointed to evidence in the record for the Commission to observe an error. Broad assertions of calculation errors, without mathematical explanation or specific evidentiary support, are not persuasive.

Second, under this point, the County argues that the arbitrator erred by "[N]ot accounting for the surrendering of retiree coverage for new hires." However, as set forth above, and

as argued by the PBA, the arbitrator awarded the County's exact proposal concerning retiree health benefits for future employees.[6/]

Third, under this point, the County argues that the arbitrator "[P]laced excessive weight on comparison to local Morris County Police Departments, and insufficient weight on comparisons to other correctional departments." The County essentially argues that corrections officers and police officers perform "vastly different functions." However, comparison with the conditions of employment of other public employees is one of

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6/ The arbitrator stated the following with respect to this issue in her award:

> "I note that each contract the County has negotiated with its bargaining unit since 2011 has included at least this provision [the elimination of retirement heath care benefits for dependents of employees hired after the date of the award] and some have also included the elimination of retiree health benefits for future hires entirely. In the absence of compelling reasons to abandon the established Employer-wide pattern, the pattern must be followed. Applying the statutory criteria of the interest of the public and relying on the pattern of settlement, I award this proposal [the County's proposal]."

the factors that an interest arbitrator is required to consider.[7/]

The arbitrator also noted in her award that:

> The County acknowledged that there are a disproportionate number of officers who resign within their first two years of service, (4 of 5 in 2010 and 2011, 6 of 9 in 2012, and 4 of 9 in 2013). The assertion that the resigning employees resigned to receive higher pay or step increments in other departments is therefore nothing more than unsupported speculation. However, the County asserts that one might infer that the recruits were more interested in becoming police officers, and accepted corrections work merely until police positions became available. Significantly, there is no sign of excessive resignations among more senior employees.

7/ N.J.S.A. 34:13A-16g provides the following with respect to comparisons with other private and public employment:

(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."

Under the facts of this case, we find that the arbitrator properly considered the comparison to local Morris County police departments under N.J.S.A. 34:13A-16g(b).

Finally, the County argues that the arbitrator failed to consider, under the financial impact criterion,[8/] the cost to the County of employees who received 2011 step increments, who have since left the employ of the County, under the previous award "that the County will be unable to recoup."[9/] The PBA argues that

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8/ N.J.S.A. 34:13A-16g(6) provides:

> "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."

9/ The parties stipulated to the following in the instant arbitration proceeding regarding the 2011 step payments:

(continued...)

the County has "[T]he means to recoup compensation paid under the overturned Award . . . " We find that the County has the ability, at a minimum, to request reimbursement from the those affected previous employees and/or to make a judicial application through the New Jersey Superior Court of necessary to receive reimbursement. As a result, this argument was not a factor that the arbitrator was required to consider.

The arbitrator complied with our directive on remand and was correct in considering the entire award and all aspects of the interest arbitration statute when formulating her award. We find that the arbitrator issued a well reasoned opinion and award that complied with the relevant statutes and is supported by substantial credible evidence in the record as a whole. Having not met our review standard, we dismiss the County's appeal and affirm the award.

9/ (...continued)
"Retroactive payments made pursuant to the [arbitrator's] award were paid on a prorated basis to employees who were promoted out of the bargaining unit between January 1, 2011 and the implementation date of [arbitrator's] award. In addition, employees who retired during this period were also given a prorated increase pursuant to the [arbitrator's] award. No retroactive payments were made to employees who resigned or were discharged from the County's employ prior to the implementation of the [arbitrator's] award."

ORDER

The interest arbitration award is affirmed.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Boudreau, Voos and Wall voted in favor of this decision. Commissioners Bonanni and Eskilson voted against this decision. Commissioner Jones was not present.

ISSUED: April 10, 2014

Trenton, New Jersey

P.E.R.C. NO. 2014-95

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF CAMDEN,

Respondent,

-and- Docket No. IA-2014-018

IAFF LOCAL 788,

Appellant.

SYNOPSIS

The Public Employment Relations Commission remands, on a limited basis, an interest arbitration award between the City of Camden and IAFF Local 788. The IAFF appealed the award, asserting miscalculations regarding the costing out of longevity and salary increment increases. The Commission finds that the arbitrator's longevity calculations and rationale for 2013 and 2014 are based on substantial credible evidence in the record, and that the arbitrator properly did not offset savings from retirements. As for the IAFF's assertion regarding the calculation of the senior step increment in 2016, the Commission remands the award on the limited basis to explain how she calculated 2016 longevity and to make the projection based on the employees' anniversary dates if she had not done so already, and to comment on whether any miscalculation would cause her to reconsider the economic aspects of the award.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

P.E.R.C. NO. 2014-95

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF CAMDEN,

Respondent,

-and- Docket No. IA-2014-018

IAFF LOCAL 788,

Appellant.

Appearances:

For the Respondent, Brown & Connery, LLP (Michael J. Dipiero and Michael J. Watson, of counsel)

For the Appellant, Kroll Heineman Carton (Raymond G. Heineman, of counsel)

DECISION

On May 28, 2014, IAFF Local 788 appealed from an interest arbitration award involving a unit of 141 firefighters and fire prevention specialists employed by the City of Camden. The arbitrator issued a conventional award as she was required to do pursuant to P.L. 2010, c. 105, effective January 1, 2011. A conventional award is crafted by an arbitrator after considering the parties' final offers in light of statutory factors.

The arbitrator issued a 104-page opinion and award. While the Award addresses both economic and non-economic issues, the IAFF's appeal centers around the economic aspects of the Award. The economic proposals offered by the parties were as follows- - the City proposed 1% salary increases for each year of the

Agreement, to eliminate senior steps from the salary guides and to freeze longevity at 2013 rates for all employees currently receiving payments, and to eliminate longevity for employees not receiving it as of December 31, 2013. The IAFF proposed 2% salary increases for each year of the Agreement.

Both parties proposed a three-year term from January 1, 2014 through December 31, 2016, which the arbitrator awarded. For 2014, the arbitrator awarded a 1% increase, retroactive to January 1, 2014, and for all employees eligible for step movement and longevity on the salary guide to receive their increases effective on the date of their anniversary. She also converted longevity from a percentage to a flat dollar amount, based upon the dollar value of the employee's longevity percentages times their 2013 salary rates. For 2015, the arbitrator awarded a 1.5% increase, and effective January 1, employees at step 5 of the firefighters guide and step 4 of the fire prevention specialists guide will be frozen at their current step on the guide and will not advance to the next step when they reach 18 years of service. Effective 2015, the arbitrator also ordered longevity payments to be made in a separate, lump sum, annual payment to be distributed to employees by December 1, and it will no longer be considered part of base pay. For 2016, the arbitrator awarded a 1.5% increase in salary, effective January 1, and employees at step 5 of the firefighters guide and step 4 of the fire prevention

specialists guide will continue to be frozen at their current step on the guide and will not advance to the next step when they reach 18 years of service. She declined to eliminate the senior step on the salary guide.

The IAFF appeals, asserting that the arbitrator made miscalculations with regard to the costing of longevity and salary increment increases, and that based on these miscalculations, the award is not based on substantial credible evidence in the record. The City refutes that any miscalculations were made, and also asserts that any asserted miscalculation did not have a material impact on the award.

N.J.S.A. 34:13A-16g requires that an arbitrator shall state in the award 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. The statutory factors are as follows:

> (1) The interests and welfare of the public. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by P.L. 1976, c. 68 (C.40A:4-45.1 et seq.).
>
> (2) Comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally:

(a) In private employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.

(b) In public employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.

© 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.

(3) The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received.

(4) Stipulations of the parties.

(5) The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by 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 © 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).
>
> [N.J.S.A. 34:13A-16g]

The standard for reviewing interest arbitration awards

is well established. We will not vacate an award unless the appellant demonstrates that: (1) the arbitrator failed to give "due weight" to the subsection 16g factors judged relevant to the resolution of the specific dispute; (2) the arbitrator violated the standards in N.J.S.A. 2A:24-8 and -9; or (3) the award is not supported by substantial credible evidence in the record as a whole. Teaneck Tp. v. Teaneck FMBA, Local No. 42, 353 N.J. Super. 298, 299 (App. Div. 2002), aff'd o.b. 177 N.J. 560 (2003), citing Cherry Hill Tp., P.E.R.C. No. 97-119, 23 NJPER 287 (¶28131 1997). An arbitrator must provide a reasoned explanation for an award and state what statutory factors he or she considered most important, explain why they were given significant weight, and explain how other evidence or factors were weighed and considered in arriving at the final award. N.J.S.A. 34:13A-16g; N.J.A.C. 19:16-5.9; Lodi. Within the parameters of our review standard, we will defer to the arbitrator's judgment, discretion and labor relations expertise. City of Newark, P.E.R.C. No. 99-97, 26 NJPER 242 (¶30103 1999).

P.L. 2010, c. 105 amended the interest arbitration law, and N.J.S.A. 34:13a-16.7 now provides:

> a. As used in this section:
>
> "Base salary" means the salary provided pursuant to a salary guide or table and any amount provided pursuant to a salary increment, including any amount provided for longevity or length of service. It also shall include any other item agreed to by the

> parties, or any other item that was included in the base salary as understood by the parties in the prior contract. Base salary shall not include non-salary economic issues, pension and health and medical insurance costs.
>
> "Non-salary economic issues" means any economic issue that is not included in the definition of base salary.
>
> b. An arbitrator shall not render any award pursuant to section 3 of P.L. 1977, c. 85 (*C.34:13A-16*) which, on an annual basis, increases base salary items by more than 2.0 percent of the aggregate amount expended by the public employer on base salary items for the members of the affected employee organization in the twelve months immediately preceding the expiration of the collective negotiation agreement subject to arbitration; provided, however, the parties may agree, or the arbitrator may decide, to distribute the aggregate monetary value of the award over the term of the collective negotiation agreement in unequal annual percentages. An award of an arbitrator shall not include base salary items and non-salary economic issues which were not included in the prior collective negotiations agreement.

In New Milford, P.E.R.C. No. 2012-53, 38 NJPER 340 (¶116 2012), we amended our review standard to include that we must determine whether the arbitrator established that the award will not exceed the statutorily mandated base salary cap of 2% per year or 6% in the aggregate for a three-year award.

Many of the IAFF's arguments in the appeal are inconsistent and convoluted. Nonetheless, we have attempted to identify the specific miscalculations asserted by the IAFF. At the outset, we

note that the parties agreed that the total contractual base salary paid in 2013 was $11, 201.197. The first issue raised by the IAFF concerns how the arbitrator calculated longevity for 2013. The arbitrator noted that the parties disagreed on the amount of longevity paid in 2013 and whether the longevity was paid on January 1 or on the employee's anniversary date. The arbitrator found that the City offered no evidence to support its position that longevity was paid on January 1. She noted that the expired contract language explicitly states that longevity is paid on the anniversary date and credited the union president's testimony and evidence that he produced in the form of pay stubs to support that longevity was paid on his anniversary date. Therefore, the arbitrator determined that longevity was paid on an employee's anniversary date and made the appropriate pro-rated calculations for 2013 in arriving at a figure for total base pay (total base salary plus total longevity) paid. Award at 62 - 63. The arbitrator's calculations and rationale are precisely laid out in the award and based on substantial credible evidence in the record. We therefore reject IAFF's argument.

Additionally, the IAFF asserts that the arbitrator miscalculated longevity in 2014 because she failed to deduct the "offsetting decreased cost in longevity from employees who left the bargaining unit due to retirements, promotions and

terminations from the base year 2013." We squarely addressed this issue in New Milford wherein we stated as follows:

> The Commission believes that the better model to achieve compliance with P.L. 2010 c. 105 is to utilize the scattergram demonstrating the placement on the guide of all of the employees in the bargaining unit as of the end of the year preceding the initiation of the new contract, and to simply move those employees forward through the newly awarded salary scales and longevity entitlements. Thus, both reductions in costs resulting from retirements or otherwise, as well as any increases in costs stemming from promotions or additional new hires would not effect the costing out of the award required by the new amendments to the Interest Arbitration Reform Act.

[Id. At 15, emphasis added]

Based on the clear guidance we provided in New Milford, we reject the union's argument that the arbitrator miscalculated longevity for 2014 because she did not offset costs resulting from retirements.

Finally, the IAFF asserts that the arbitrator erroneously calculated the cost of the senior step increment in 2016 and that absent this miscalculation, the economic aspects of the Award would be more favorable to its members. The arbitrator found that the increment cost in 2016 would be $146,565.15 based on the current salary guide. However, the union argues that in 2016, 26 of the firefighters would advance to the senior step of the

salary guide on December 19, and therefore they would only receive the Senior step salary increment for half of the month of December 2016. The Award is replete with support for the increases awarded by the arbitrator as well as the measures she used to control costs. The arbitrator comprehensively discussed each statutory factor and arrived at an award which struck a balance between providing the firefighters with a fair and reasonable salary increase, while also employing methods to mitigate escalating costs. While we find the asserted miscalculation to likely be inconsequential, we will remand the Award on the limited basis for the arbitrator to explain how she calculated longevity for 2016, to pro-rate the longevity projection for 2016 based on the employees' anniversary date if she has not already done so, and to comment on whether any miscalculation would cause her to reconsider the economic aspects of her award, either in the increases she awarded or the methods she implemented to curb costs.

ORDER

The award is remanded on the limited basis for the arbitrator to explain how she calculated longevity for 2016, to pro-rate the longevity projection for 2016 based on the employees' anniversary date if she has not already done so, and to comment on whether any miscalculation would cause her to reconsider the economic aspects of her award, either in the

increases she awarded or the methods she implemented to curb costs. The arbitrator shall issue a supplemental award within 45 days of this decision.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau and Voos voted in favor of this decision. Commissioners Jones and Wall voted against this decision. Commissioner Eskilson recused himself.

ISSUED: June 26, 2014

Trenton, New Jersey

P.E.R.C. NO. 2015-21

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF CAMDEN,

Appellant,

-and-

Docket No. IA-2014-018

IAFF LOCAL 788,

Respondent.

SYNOPSIS

The Public Employment Relations Commission affirms in part and vacates in part an interest arbitration award establishing the terms of a successor agreement between the City of Camden and IAFF Local 788. The City appealed the remand award, objecting to the arbitrator's reinstatement of senior step movement for 2016, conversion of longevity into base pay, and instruction that longevity should not be considered part of base pay for overtime calculation purposes. The Commission affirms the arbitrator's economic adjustments in the remand award, finding that they were supported by substantial credible evidence in the record and were within her authority and the scope of the remand instructions. The Commission vacates the portion of the award directing that longevity not be included in base pay for overtime purposes, finding that the arbitrator did not provide a reasoned explanation for the change.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

P.E.R.C. NO. 2015-21

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF CAMDEN,

Appellant,

-and-

Docket No. IA-2014-018

IAFF LOCAL 788,

Respondent.

Appearances:

For the Appellant, Brown & Connery, LLP (Michael J. Dipiero and Michael J. Watson, of counsel)

For the Respondent, Kroll Heineman Carton (Raymond G. Heineman, of counsel)

DECISION

On June 26, 2014 we remanded an interest arbitration award between the City of Camden and IAFF Local 788, P.E.R.C. No. 2014-95, 41 NJPER 69 (¶22 2014). On remand, we asked the arbitrator to explain how she calculated longevity for 2016, to pro-rate longevity for 2016 based on the employees' anniversary date if she had not already done so, and to comment on whether any miscalculation would cause her to reconsider the economic aspects of her award. On August 9, 2014, the arbitrator issued a remand award. On August 26, the City filed an appeal of the remand award, IAFF filed a responsive brief on September 2, the City filed a reply on September 11, and IAFF filed a sur-reply on September 22.

The arbitrator issued a 17-page opinion and remand award. The significant findings and/or changes she made to the original award on remand are as follows:

- She found that 2016 longevity was actually $369.08 higher than in the original award;
- Longevity costs were included inside the 2% cap;
- Longevity amounts were frozen in 2016;
- She found that advancement to the senior step in 2016 was overstated by $138,622 in the original award;
- The freeze on advancement to the senior step for 2016 was lifted;
- Awarded increases in 2015 and 2016 were reduced from 1.5% to 1.25%;
- Effective January 1, 2015, for employees hired before the date of the award, longevity was placed back into base salary, but it shall not be considered part of base pay for overtime calculation purposes. Longevity was kept as a lump sum payment for employees hired after the date of the award.

The City's appeal asserts that the remand award should be vacated and the original award reinstated because the reinstatement of senior step movement in 2016 and the conversion of longevity back into base pay were not based on substantial, credible evidence in the record; the conversion of longevity back

into base salary for current employees exceeded the limited scope of the remand award; and the arbitrator's instruction that overtime shall not be considered part of base pay for overtime calculation purposes violates the Fair Labor Standard Act and the New Jersey Wage and Hour Law.

At the outset, we note that the maximum amount that could be awarded under the 2% hard cap is $688,111.31. The remand award total is below the 2% cap at $616,102.00, which is $28,909.00 more than the original award's total of $587,193.00. It should also be noted that the cost calculation of $587,193.00 for the original award was inaccurate since, as acknowledged by the arbitrator, it did not include the longevity cost increases in 2015 and 2016. Remand Award at 12, fn 7.[1/]

The arbitrator analyzed the senior pay movement as a form of longevity for length of service. In the remand award, she explicitly laid out the cost of advancing a firefighter to the senior step in 2016 after the across-the-board increases from the original award were applied, and acknowledged that the cost of increments was over-calculated by $138,622. After considering that the actual cost of increments for all years would exceed the hard cap maximum of $688,111.31 by $54,972.55, she determined that adjustments in the economic package would be required.

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[1] "Award" refers to the original award issued on June 26, 2014 and "Remand Award" refers to the remand award issued on August 9, 2014.

Remand Award at 11 - 12. Since the actual costs of the increments was much smaller than she previously found, she lifted the freeze on movement to the senior step in 2015 and 2016, but found that adjustments in the across-the-board increases would be necessary, and found cost savings for the City by reducing the increases for 2015 and 2016 from 1.5% to 1.25%.

The arbitrator also considered two additional exhibits submitted by the IAFF on remand - - UX95 and UX96. UX95 is an excerpt from New Jersey Pensions and Benefits Manual showing employer contribution rates to the Police and Firemen's Retirement System and UX96 is an excerpt from the PFRS Employee Benefit Manual summarizing pension benefits. UX96 showed that for PFRS members who were enrolled before May 21, 2010, a pension is based upon the final 12 months of pension credits. The arbitrator found as a fact that all IAFF members started with the fire department before May 21, 2010. The arbitrator considered that a firefighter with 24 years of service would have his base pay in his final year of service reduced by the longevity amount of $8,949. After considering the "dramatic" effect the removal of longevity from base pay would have on a firefighter's pension, she found that in rebalancing the award, it was appropriate to convert longevity back into base pay. Remand Award at 13 - 14.

We disagree with the City's argument that the unfreezing of the senior step movement and the conversion of longevity back

into base pay was not supported by substantial credible evidence in the record. There is not one correct way to fashion the economic aspects of an award. Provided an award is based on substantial, credible evidence in the record and does not violate the 2% cap limitation, we will generally defer to the discretion and judgment of the arbitrator who has presided over the proceedings and weighed the record evidence. City of Newark, P.E.R.C. No. 99-97, 26 NJPER 242 (30103 1999); New Milford, P.E.R.C. No. 2012-53, 38 NJPER 340 (¶116 2012). In our original decision, we found that the arbitrator comprehensively summarized her application of the statutory factors she found most significant in arriving at the economic aspects of her award. The original award contains background about existing working conditions including detailed information about the existing salary guide, longevity plan and shift complements. Award at 19 - 25. The arbitrator set out comprehensive information about comparables internally, externally and in the private sector. She placed greater weight on those fire departments located in Southern New Jersey and gave no weight to private sector comparisons. Award at 25 - 29. She noted PERC settlement rates for the average 2012 award for post-2011 with a 2% cap was 1.98%, and settlement rates for the same time period averaged 1.82%. Award at 29. She considered the Consumer Price Index for all Urban Consumers (CPI-U) and noted that cumulative wage growth of

23.0% over the nine-year period from January 2005 through December 31, 2013 outpaced increased of 16.7%. Award at 29 - 30. With regard to the City's ability to pay, she acknowledged that given the extraordinary weakness of the County's local economic base, the City is highly dependent on State aid and Transitional aid to fund the majority of its core municipal operations, and both are trending downward. The original award also outlines various other forms of aid and grants that the City receives, most of which are projected and varying forms of income and cannot be relied on as exact revenue streams. Award at 30 - 39. She also discussed the appropriation cap and the tax levy cap. Award at 40 - 41. In her analysis of the statutory factors, the arbitrator commented as follows:

> In applying the statutory criteria to the record in this matter, it is necessary to balance these factors against each other to come up with a fair and reasonable result. The factor that requires the greatest consideration is the public interest, which also encompasses the Employer's ability to pay, the levy cap, and the impact of the new contract on the taxpayers. Also worthy of considerable weight and viewed to be a component of the public interest is consideration of the morale of the employees and the continuity of the bargaining unit, which in turn necessitates consideration of comparability with other employees and the cost of living.
>
> An additional factor that is considered part of the public interest is the City's ability to attract and retain highly qualified employees to the Fire Department. This is essential to providing the public with firefighting services to protect life and property. But just as important is the City's ability to maintain a sufficient

> staffing level to protect the city. Therefore, the public interest demands a compensation plan that attracts and retains highly qualified employees but not one that prevents the City from sufficiently staffing its force.
>
> I have balanced these factors against each other to reach the resulting award herein. The resulting award seeks to maintain the integrity and comparability of the firefighters' compensation and benefit plan, while at the same time it moderates the financial impact to the extent that I believe it is within the City's ability to pay and still maintain current staffing levels in the Fire Department.
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> Award at 59 - 60.

We find that the same analysis that was applied in the original award continues to support the remand award. None of the economic adjustments in the remand award negates the fiscal balance that the arbitrator was seeking. The arbitrator's remand award acknowledged a significant miscalculation in the 2016 cost of senior step movement in the original award, which caused her to reevaluate other economic aspects of the award. The economic adjustments she made in the remand award did not significantly alter the balance she tried to achieve in providing the firefighters with a fair and reasonable salary increase while also employing methods to mitigate escalating costs. The economic adjustments still allowed the award to come in well

below the maximum allowed under the 2% cap. Indeed, in the remand award the arbitrator commented as follows:

> This revised award will allow the City to reduce some of its long-term labor costs associated with the Fire Department while at the same time, preserve some of the firefighters existing benefits. I believe it strikes an equitable balance between the needs of the City to prudently manage its budget and the needs of the employees to be fairly compensated. The revised award will continue to fit within the Fire Department budget and will not violate the cap restrictions [for] 2014. Moreover, it will permit the City to maintain unit continuity as there will be no special incentives for employees to seek early retirement.
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> Remand Award at 16.

The City further asserts that the arbitrator's decision to convert longevity back into base salary exceeded the "limited scope" of the remand, and that the arbitrator improperly considered UX-95 and UX-96 on remand, citing to N.J.S.A. 34:13A-16g. We disagree. In our instructions for the remand we advised the arbitrator to comment on whether any miscalculation would cause her to reconsider the economic aspects of her award. Given the significant miscalculations in the cost of the 2016 senior step movement, she rebalanced other economic aspects of the award, and it was well within her authority and our remand instructions to do so. Neither N.J.S.A. 34:13A-16g or any other relevant statute or rule prevents her from considering additional information on remand that she deemed necessary to comply with

the remand instructions. Indeed, "the conduct of the arbitration proceeding shall be under the exclusive jurisdiction and control of the arbitrator." N.J.A.C. 19:16-5.7(a). We do not consider the City's arguments regarding the payment liability it will incur in 2017 as a result of the unfreezing of the senior step movement as that issue does not effect the term of this agreement and can be considered when the parties negotiate the terms of the next agreement.

Finally, the City contests the arbitrator's directive that longevity not be included in base salary for overtime purposes. Other than citing to the City's estimated proffer on what it spent in overtime in 2013, there is no significant discussion in the original award or the remand award with regard to overtime costs. Given that the arbitrator did not provide a reasoned explanation for excluding longevity from base salary for overtime purposes, we vacate this portion of the award. Based on the scant evidence and discussion in the record with regard to overtime, the payment of overtime was not a significant issue or focus of either party during the arbitration proceedings. Indeed, the arbitrator noted that the City had determined that it would no longer adhere to minimum staffing standards that were previously in effect and set forth in the contract and was not using overtime as a method for achieving minimum staffing. Award at 20. Our vacating of this portion of the remand award will

restore the parties to the same position they were in prior to the arbitration proceedings with regard to the treatment of overtime. Since we have vacated this portion of the remand award, the City's arguments that this portion of the remand award violated the Fair Labor Standards Act and the New Jersey Wage and Hour Law are rendered moot.

ORDER

The remand award is affirmed except that we vacate the part of the award that directed that longevity not be included in base salary for overtime purposes.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau, Voos and Wall voted in favor of this decision. None opposed. Commissioner Eskilson recused himself. Commissioner Jones was not present.

ISSUED: October 23, 2014

Trenton, New Jersey

P.E.R.C. NO. 2015-050

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY,

Appellant,

-and-

Docket No. IA-2015-003

FOP LODGE 91,

Respondent.

SYNOPSIS

The Public Employment Relations Commission vacates and remands an interest arbitration award between the State of New Jersey and Fraternal Order of Police, Lodge 91. The State appealed the award on numerous grounds requesting that the award be vacated or modified. However, the main point raised by the State is that the arbitrator should have found that the 2% cap, under N.J.S.A. 34:13A-16.7, applied even though this was the initial CNA between the parties. The FOP asserted that the 2% cap should not apply to this matter and requested that the award be affirmed. The Commission finds that increases in compensation should have been subject to the 2% cap, and vacates the award and remands it to the arbitrator for reconsideration and issuance of a new award that complies with the 2% cap.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

P.E.R.C. NO. 2015-050

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY,

Appellant,

-and-

Docket No. IA-2015-003

FOP LODGE 91,

Respondent.

Appearances:

For the Appellant, Jackson Lewis, attorneys (Jeffrey J. Corradino, of counsel)

For the Respondent, Pellettieri Rabstein & Altman, attorneys (Frank M. Crivelli, of counsel)

DECISION

The State of New Jersey ("State") appeals from an interest arbitration award involving a unit of approximately 135 Detective Trainees, State Investigators; Detective II, State Investigators; and Detective I, State Investigators ("State Investigators") who are represented by Fraternal Order of Police, Lodge 91 ("FOP").[1/]

The arbitrator issued a conventional award as she was required to do pursuant to P.L. 2014, c. 11. A conventional award is crafted by an arbitrator after considering the parties' final offers in light of statutory factors.

1/ We deny the FOP's request for oral argument. The issues have been fully briefed.

This matter arises in unusual and rare circumstances because the parties did not have any prior CNA.

The State Investigators were originally classified as confidential employees but that status was removed by N.J.S.A. 52:17B-100, effective January 18, 2010. On or about December 8, 2010, the FOP was certified by the Commission as the majority representative for the State Investigators. The FOP and the State engaged in negotiations for a collective negotiations agreement ("CNA") which were unsuccessful. The FOP ultimately filed for interest arbitration and the arbitrator was appointed on September 4, 2014. The arbitrator issued a 314 page opinion and award ("award") with an initial CNA commencing on July 1, 2014 and terminating on June 30, 2019.[2/]

The State appeals on numerous grounds requesting that the award be vacated or modified. However, the main point raised by the State is that the arbitrator should have found that the 2% cap, under N.J.S.A. 34:13A-16.7[3/], applied in this case even

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2/ The award is set forth on pages 288 - 314 of the Opinion.

3/ N.J.S.A. 34:13A-16.7(b) provides in pertinent part:

> An arbitrator shall not render any award pursuant to . . . which, in the first year of the collective negotiation agreement awarded by the arbitrator, increases base salary items by more than 2.0 percent of the aggregate amount expended by the public employer on base salary items for the members of the affected employee organization in the twelve months immediately preceding the expiration of the collective negotiation

(continued...)

though this was the initial CNA between the parties. The FOP asserts that the 2% cap should not apply to this matter and requests that the award be affirmed. Because we find that increases in compensation should have been subject to the 2% cap, we vacate the award and remand to the arbitrator for reconsideration and issuance of a new award that complies with the 2% cap.[4/]

Before the arbitrator, the parties raised these contentions regarding the 2% cap. The State asserted:

- Not applying the cap to this proceeding because there has been no prior contract

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

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

4/ Vacating the entire award is necessary as the 2% cap may impact on other aspects of the award subject to the arbitrator's judgment, discretion and expertise. She has the authority to modify other aspects of her initial award.

between the parties would be illogical and contrary to legislative intent;

- Recognizing a cap exemption for first contracts, carried to its logical end, would make interest arbitration unavailable in such cases;

- Neither the letter, the purpose, nor the spirit of the interest arbitration law establishes that its provisions do not apply to first contracts;

- The recent amendments to the interest arbitration law only delays the application of the 2% cap until CNAs in force on the effective date expire;

- Having availed itself of the interest arbitration procedure, the FOP must accept all of the statutory limits, including the 2% cap;

- As the contract awarded starts after the effective date of the amendments, it must be subject to the terms of the law.

The FOP makes these points:

- The specific terms of N.J.S.A. 34:13A-16.9[5/] applies the 2% cap only where the parties to the interest arbitration

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5/ This act shall take effect January 1, 2011; provided however, section 2 of P.L.2010, c.105 (C.34:13A-16.7) shall apply only to collective negotiations between a public employer and the exclusive representative of a public police department or public fire department that relate to negotiated agreements expiring on that effective date or any date thereafter until or on December 31, 2017, whereupon, after December 31, 2017, the provisions of section 2 of P.L. 2010, c.105 (C.34:13A-16.7) shall become inoperative for all parties except those whose collective negotiations agreements expired prior to or on December 31, 2017 but for whom a final settlement has not been reached.

[emphasis by the FOP]

proceeding were also parties to an expired CNA;

- As there is no expired agreement within the meaning of N.J.S.A. 34:13A-16.9, the 2% cap does not apply;

- Legislative history and the report of the Police and Fire Public Interest Arbitration Task Force support its position as the amendments to the Act incorporated several recommendations of the Task Force and that administration members of the Task Force recommended that the law be altered to include language specifically stating that the cap apply to newly formed units who have not had a prior CNA;

- The fact that the most recent amendments incorporated many of the task force's recommendations but not the language regarding first contracts, demonstrates that the Legislature did not intend the 2% cap to apply to this case.

After considering these arguments, the arbitrator concluded the 2% cap did not apply. She gave a literal reading to the statute's references to expired CNAs (award at 30-31). She also found it significant that the Legislature adopted many of the Task Force's recommendations, but not the suggestion of some members to include language pertaining to first contracts. Id. at 31. Finally she noted that because the FOP was certified as the majority representative in December 2010, before the cap law took effect, and could have sought an agreement that began January 1, 2011, "they are in a parallel position to those bargaining units

whose contracts expired December 31, 2010," who were exempt from the cap.

We disagree with the arbitrator's reasoning on the applicability of the 2% cap. As her conclusion is one of law and legislative interpretation, it is entitled to no special deference.[6/]

P.L. 2010, c. 105 initially amended the interest arbitration law in 2010 and imposed the 2% salary cap for CNAs that expired after December 31, 2010 through April 1, 2014. On June 24, 2014, the Legislature in P.L. 2014, c. 11 extended the 2% salary cap, along with other changes, to December 31, 2017.

As set forth in In re Hunterdon County Bd. of Chosen Freeholders, 116 N.J. 322 (1989), we are charged with interpreting the New Jersey Employer-Employee Relations Act ("Act"), N.J.S.A. 34:13A-1 et seq:

> It must also be emphasized that the judicial role in this kind of case must be both sensitive and circumspect. We deal here with the regulatory determination of an administrative agency that is invested by the Legislature with broad authority and wide discretion in a highly specialized area of public life. PERC is empowered to "make policy and establish rules and regulations concerning employer-employee relations in

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6/ Accordingly, we do not recite or apply the normal guidelines used to review the various aspects of an interest arbitration award. See Cherry Hill Tp., P.E.R.C. No. 97-119, 23 NJPER 287 (¶28131 1997); N.J.S.A. 34:13A-16g. Should there be an appeal after the arbitrator issues a new award, those standards will be relevant.

> public employment relating to dispute settlement, grievance procedures and administration including . . . to implement fully all the provisions of [the] act." N.J.S.A. 34:13A-5.2. These manifestations of legislative intent indicate not only the responsibility and trust accorded to PERC, but also a high degree of confidence in the ability of PERC to use expertise and knowledge of circumstances and dynamics that are typical or unique to the realm of employer-employee relations in the public sector.
>
> [Id. at 328]

And, the Commission's interpretation of the statute it is charged with administering is entitled to deference. In re Bridgewater Tp., 95 N.J. 235, 244 (1984).

As part of our analysis, we need to "discern and effectuate the intent of the Legislature" with respect to P.L. 2014, c. 11. See Shelton v. Restaurant.com, Inc., 214 N.J. 419, 428 (2013). The Legislature issued the following statement when the statute was revised in June 2014:

> This bill makes several changes to the current law governing arbitration awards in disputes between public employers and their police and fire departments. Under current law, any time after a collective negotiation agreement between a public employer and a public police or fire department expires, either party may petition the New Jersey Public Employment Relations Commission (PERC) for arbitration. Arbitrators in these cases are required to render their decision within 45 days of the case being assigned to them. This bill extends the time to render the decision to 90 days and requires the arbitrator to conduct an initial meeting as a mediation session to effect a voluntary

> resolution of the impasse. Current law allows an aggrieved party seven days to file a notice of appeal of the arbitrator's decision. This bill extends the time to appeal to 14 days. The bill also increases the time frame allotted PERC to render its decision in an appeal of an arbitration award from 30 to 60 days. The bill further increases the maximum amount arbitrators can be compensated for their services from $7,500 to $10,000. Between January 1, 2011 and April 1, 2014, there was a two percent cap on base salary increases in arbitration awards. This two-percent cap expired on April 1, 2014. The bill extends the two percent cap until December 31, 2017 and makes the cap retroactive to April 2, 2014. The bill also makes changes to the calculation of the two-percent cap. Under current law, an arbitrator may not render an award which, on an annual basis, increases the base salary items by more than two-percent of the aggregate amount expended by the public employer on base salary items for the members of the affected employee organization in the year immediately preceding the expiration of the agreement. Under the bill, after the first year of the agreement, the award could not exceed two-percent of the base salary items as annually compounded at the end of each agreement year. Finally, the bill extends the reporting requirements applicable to the Police and Fire Public Interest Arbitration Impact Task Force from April 1, 2014 to December 31, 2017 to comport with the extension of the two-percent cap.[7/]

7/ We note, in revising the statute, that the Legislature adopted the Police and Fire Public Interest Arbitration Impact Task Force recommendations from its March 19, 2014 Final Report. The four appointees of the Governor specifically recommended that the statute be amended to include newly certified units without a prior CNA. No legislative history shows that the Legislature considered this recommendation or that it believed that the statute did not apply to newly certified units without a previous CNA.

When the Legislature revised the statute, it excised language from P.L. 2010, c. 105 that stated that once parties that entered into a contract subject to the 2% cap, that ceiling would not have to apply to their next agreement. As a result of that change, the law now continues the 2% cap for all subsequent CNAs that expire on or before December 31, 2017.

Regarding the intent of the Legislature, the New Jersey Supreme Court has stated: "The true meaning of an enactment and the intention of the Legislature in enacting it must be gained, not alone from the words used within the confines of the particular section involved, but from those words when read in connection with the entire enactment of which it is an integral part, Palkoski v. Garcia, 19 N.J. 175, 181 (1955)." Petition of Sheffield Farms Co., 22 N.J. 548, 554 (1956).

Our guidance from the Legislature in the Declaration of Policy for the Act is as follows:

> It is hereby declared as the public policy of this State that the best interests of the people of the State are served by the prevention or prompt settlement of labor disputes, both in the private and public sectors; that strikes, lockouts, work stoppages and other forms of employer and employee strife, regardless where the merits of the controversy lie, are forces productive ultimately of economic and public waste; that the interests and rights of the consumers and the people of the State, while not direct parties thereto, should always be considered, respected and protected; and that the voluntary mediation of such public and private employer-employee disputes under the

> guidance and supervision of a governmental agency will tend to promote permanent, public and private employer-employee peace and the health, welfare, comfort and safety of the people of the State. To carry out such policy, the necessity for the enactment of the provisions of this act is hereby declared as a matter of legislative determination.
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> [N.J.S.A. 34:13A-2]

As set forth above, the Legislature extended the 2% cap from April 1, 2014 to December 31, 2017. Although N.J.S.A. 34:13A-16.9 specifically refers to CNAs that have expired on or after January 1, 2011, the Legislature was silent on the issue of newly certified units that did not have a previous CNA. The statute does not contain a legislative declaration that newly certified units are excluded from the requirements of the 2% cap. See N.J. Democratic Party, Inc. v. Samson, 175 N.J. 178, 193-194 (2002). Additionally, under a strict reading of the Act, in order to be eligible for interest arbitration, parties are required to have a CNA that has expired. N.J.S.A. 34:13A-16 b(2). However, the Commission in this matter authorized the parties to proceed to interest arbitration notwithstanding the specific language in the statute since the FOP was a newly certified unit and negotiations were not successful. Allowing the parties to proceed to interest arbitration was consistent with the legislative intent of the Act that the "best interests of the people of the State are served by the prevention or prompt settlement of labor disputes." Similarly, we find that the

intent of the Legislature was to have collective negotiations between a public employer and the exclusive representative of a public police department or public fire department in interest arbitration to be subject to the 2% cap despite not having an expired CNA. Interpreting the act in pari materia, we find that newly certified units are eligible for interest arbitration and that those units are subject to the 2% cap if an application for interest arbitration is filed between January 1, 2011 and December 31, 2017.

ORDER

The award is vacated and remanded to the arbitrator for reconsideration and issuance of a new award that complies with the 2% cap.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau and Eskilson voted in favor of this decision. Commissioners Jones, Voos and Wall voted against this decision.

ISSUED: February 13, 2015

Trenton, New Jersey

P.E.R.C. NO. 2015-75

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF OAKLAND,

Respondent,

-and-

Docket No. IA-2014-044

PBA LOCAL 164,

Appellant.

SYNOPSIS

The Public Employment Relations Commission affirms an interest arbitration award establishing the terms of a successor agreement between the Borough of Oakland and PBA Local 164. The PBA appealed the award, asserting that the arbitrator modified contract provisions, mostly related to new hires, without making any cost analysis for each year of the contract. The PBA also argued that the arbitrator failed to sufficiently explain which statutory factors were deemed relevant or not relevant, and why. The Commission finds that the arbitrator properly did not factor projected retirements or new hires into his calculations under the 2% salary cap, and was not required to provide a cost analysis for modifications of economic terms for new hires. The Commission also finds that the arbitrator addressed all of the N.J.S.A. 34:13A-16g statutory factors, adequately explained the relative weight given, and analyzed the evidence on each relevant factor.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

P.E.R.C. NO. 2015-75

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF OAKLAND,

Respondent,

-and-

Docket No. IA-2014-044

PBA LOCAL 164,

Appellant.

Appearances:

For the Appellant, Loccke, Correia & Bukosky, attorneys (Richard D. Loccke, of counsel and on the brief)

For the Respondent, Cleary Giacobbe Alfieri Jacobs, LLC, attorneys (Matthew J. Giacobbe, of counsel; Adam S. Abramson-Schneider, on the brief)

DECISION

PBA Local 164 (PBA) appeals from an interest arbitration award involving a unit of approximately 24 police officers in the ranks of patrol officer, sergeant, lieutenant, and captain.[1/]

The Borough filed a Petition to Initiate Compulsory Interest Arbitration on March 31, 2014. On May 4, 2015, the arbitrator issued a conventional award as he was required to do pursuant to P.L. 2010, c. 105 effective January 1, 2011. A conventional award is crafted by an arbitrator after considering the parties' final offers in light of statutory factors.

1/ We deny the PBA's request for oral argument. The issues have been fully briefed.

The PBA appeals the award asserting that the arbitrator erred in modifying contract provisions with respect to salary guides for new hires, elimination of longevity for new hires, and caps on terminal leave payments without explaining the impact or making a cost analysis for each year of the three year contract. The PBA further asserts that the arbitrator violated N.J.S.A. 2A:24-8 by not sufficiently indicating which N.J.S.A. 34:13A-16g statutory factors were or were not relevant, and not providing an evidentiary basis or cost out of the 16g factors deemed relevant. The PBA requests that the award be reversed and remanded to a different arbitrator.

The Borough responds that the Commission should affirm the award because the arbitrator properly applied the subsection 16g statutory criteria; the arbitrator correctly determined that the award will not exceed the statutory 2% salary cap; the arbitrator was not required to cost-out modifications to benefits for new hires; and the arbitrator did not violate N.J.S.A. 2A:24-8(d) because he provided sufficient analysis of the evidence related to the relevant statutory factors and gave due weight to the final offers presented by both the Borough and PBA.

The parties' final offers can be summarized as follows. The PBA's final offer would have continued regular step payments in 2014, and delayed step payments six months while providing 2% raises to top-step and supervisory officers in 2015, 2016, and

2017. The Borough's final offer included proration of sick leave, vacation leave, and holiday pay during an officer's last year of employment, a cap of $15,000 on terminal leave payments, raises for current officers compliant with the 2% cap, a new salary guide with 15 equalized steps for new officers, and elimination of longevity for new officers.

The arbitrator issued an 89-page Decision and Award. After summarizing the proceedings, quoting from the parties' arguments and proposals from their post-hearing briefs, and addressing the required statutory factors, the arbitrator awarded a three year contract effective January 1, 2014 through December 31, 2016. He froze salary guides for current employees at 2013 levels for 2014 and 2015, maintained step and longevity increases based on the 2011-2013 contract, and provided an across-the-board salary increase of 0.81% in 2016. He awarded a new hire salary guide with 15 equalized steps and an increase of 0.81% to all steps in 2016, eliminated longevity for new hires, and capped terminal leave payments at $15,000 for employees hired on or after May 22, 2010.

N.J.S.A. 34:13A-16g requires that an arbitrator state in the award which of the following factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor:

(1) The interests and welfare of the public . . .;

(2) Comparison of the wages, salaries, hours, and conditions of employment of the employees 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 . . .;

(b) in public employment in general . . .;

(c) in public employment in the same or comparable jurisdictions;

(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 . . .;

(6) The financial impact on the governing unit, its residents and taxpayers . . .;

(7) The cost of living;

(8) The continuity and stability of employment including seniority rights . . .; and

(9) Statutory restrictions imposed on the employer. . . .

[N.J.S.A. 34:13A-16g]

The standard for reviewing interest arbitration awards is well established. We will not vacate an award unless the appellant demonstrates that: (1) the arbitrator failed to give "due weight" to the subsection 16g factors judged relevant to the resolution of the specific dispute; (2) the arbitrator violated the standards in N.J.S.A. 2A:24-8 and -9; or (3) the award is not supported by substantial credible evidence in the record as a whole. Teaneck Tp. v. Teaneck FMBA, Local No. 42, 353 N.J. Super. 298, 299 (App. Div. 2002), aff'd o.b. 177 N.J. 560 (2003), citing Cherry Hill Tp., P.E.R.C. No. 97-119, 23 NJPER 287 (¶28131 1997). Within the parameters of our review standard, we will defer to the arbitrator's judgment, discretion and labor relations expertise. City of Newark, P.E.R.C. No. 99-97, 26 NJPER 242 (¶30103 1999). However, an arbitrator must provide a reasoned explanation for an award and state what statutory factors he or she considered most important, explain why they were given significant weight, and explain how other evidence or factors were weighed and considered in arriving at the final award. N.J.S.A. 34:13A-16g; N.J.A.C. 19:16-5.9; Borough of Lodi, P.E.R.C. No. 99-28, 24 NJPER 466 (¶29214 1998).

In cases where the 2% salary cap imposed by P.L. 2010, c. 105 applies, we must also determine whether the arbitrator established that the award will not increase base salary by more

than 2% per contract year or 6% in the aggregate for a three year contract award.

P.L. 2010, c. 105 amended the interest arbitration law, imposing a 2% "Hard Cap" on annual base salary increases for arbitration awards where the preceding CNA or award expired after December 31, 2010 through April 1, 2014.[2/] The version of N.J.S.A. 34:13a-16.7 incorporating the changes from P.L. 2010, c. 105 and in effect at the time of this petition provides:

> a. As used in this section:
>
> "Base salary" means the salary provided pursuant to a salary guide or table and any amount provided pursuant to a salary increment, including any amount provided for longevity or length of service. It also shall include any other item agreed to by the parties, or any other item that was included in the base salary as understood by the parties in the prior contract. Base salary shall not include non-salary economic issues, pension and health and medical insurance costs.
>
> "Non-salary economic issues" means any economic issue that is not included in the definition of base salary.
>
> b. An arbitrator shall not render any award pursuant to section 3 of P.L. 1977, c. 85 (*C.34:13A-16*) which, on an annual basis, increases base salary items by more than 2.0 percent of the aggregate amount expended by

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2/ P.L. 2014, c. 11, signed June 24, 2014 and retroactive to April 2, 2014, amended the interest arbitration law and extended the 2% salary cap, along with other changes, to December 31, 2017. However, the petition herein was filed on March 31, 2014, prior to the new law's effective date, so P.L. 2010, c. 105 is applicable.

> the public employer on base salary items for the members of the affected employee organization in the twelve months immediately preceding the expiration of the collective negotiation agreement subject to arbitration; provided, however, the parties may agree, or the arbitrator may decide, to distribute the aggregate monetary value of the award over the term of the collective negotiation agreement in unequal annual percentages. An award of an arbitrator shall not include base salary items and non-salary economic issues which were not included in the prior collective negotiations agreement.

Borough of New Milford P.E.R.C. No. 2012-53, 38 NJPER 340 (¶116 2012) was the first interest arbitration award that we reviewed under the new 2% limitation on adjustments to base salary. We modified our review standard to include a determination of whether the arbitrator established that the award would not exceed the Hard Cap, holding that such determination depends on the arbitrator stating the total base salary for the last year of the expired contract, and calculating the costs of the award for unit members as they proceed through each year of the award. Id. at 344.

The PBA's chief argument is that the arbitrator erred by not providing a cost analysis for benefits modifications, and that he was unable to provide such an analysis without knowing who would be hired or who would retire or otherwise leave the unit during the term of the award. For the foregoing reasons, we reject the PBA's argument that the arbitrator erred by failing to cost out the effects of the award for new hires, or that the

arbitrator erred by awarding speculative modifications such as elimination of longevity and terminal leave benefits for new hires which are not capable of being costed out.

The Cost Out of the Award

In New Milford, the Commission endorsed the following method for "costing out" an interest arbitration award within the parameters of the 2% Hard Cap:

> Since an arbitrator, under the new law, is required to project costs for the entirety of the duration of the award, calculation of purported savings resulting from anticipated retirements, and for that matter added costs due to replacement by hiring new staff or promoting existing staff are all too speculative to be calculated at the time of the award. The Commission believes that the better model to achieve compliance with P.L. 2010 c. 105 is to utilize the scattergram demonstrating the placement on the guide of all of the employees in the bargaining unit as of the end of the year preceding the initiation of the new contract, and to simply move those employees forward through the newly awarded salary scales and longevity entitlements. Thus, both reductions in costs resulting from retirements or otherwise, as well as any increases in costs stemming from promotions or additional new hires would not effect the costing out of the award required by the new amendments to the Interest Arbitration Reform Act.
>
> [38 NJPER at 344, emphasis added]

In Borough of Ramsey P.E.R.C. No. 2012-60, 39 NJPER 17 (¶3 2012), we rejected the union's assertion that the arbitrator should have taken into account a recent retirement and recent promotions when projecting salary costs in the award. We

reaffirmed our position in New Milford regarding the speculative nature of unknown future employment actions by the employer and employees:

> In New Milford, we determined that reductions in costs resulting from retirements or otherwise, or increases in costs stemming from promotions or additional new hires, should not affect the costing out of the award. N.J.S.A. 34:13a-16.7(b) speaks only to establishing a baseline for the aggregate amount expended by the public employer on base salary items for the twelve months immediately preceding the expiration of the collective negotiation agreement subject to arbitration. The statute does not provide for a majority representative to be credited with savings that a public employer receives from any reduction in costs, nor does it provide for the majority representative to be debited for any increased costs the public employer assumes for promotions or other costs associated with maintaining its workforce.
>
> [Ramsey, 39 NJPER at 20, emphasis added]

Subsequent Commission decisions have similarly found that the interest arbitrator should not factor in projected retirements or hiring during the term of the new contract as such projections are not consistent with the precise mathematical calculations necessary to determine compliance with the 2% annual base salary cap. See, e.g., City of Camden, P.E.R.C. No. 2014-95, 41 NJPER 69 (¶22 2014)(arbitrator did not err by failing to deduct decreased longevity costs from first year of award for employees who left the unit in the base year); Township of Byram, P.E.R.C. No. 2013-72, 39 NJPER 477 (¶151 2013)(longevity savings

from officers who retired during the base year should not have been included as savings credited to the PBA for the first year of the award).

In a case very similar to the present case, and recently affirmed by the Appellate Division, the Commission found that the arbitrator properly followed the guidance of New Milford and Ramsey and was not required to provide a cost analysis for modifications affecting longevity, terminal leave, and other benefits for new or recent hires. Borough of Tenafly and PBA Local 376, P.E.R.C. No. 2013-87, 40 NJPER 90 (¶34 2013), aff'd 41 NJPER 257 (¶84 App. Div. 2015), pet. for certif. pending. Furthermore, even when the arbitrator has had actual total base salary expenditure data for several years of the award, we have found that the actual savings realized by the employer should not be credited to the unit because N.J.S.A. 34:13A-16.7(b) requires that the 2% Hard Cap analysis be based on the last year of the prior agreement. See State of NJ and New Jersey Law Enforcement Supervisors Association, P.E.R.C. No. 2014-60, 40 NJPER 495 (¶160 2014), app. pending. Citing New Milford and Ramsey, we stated:

> Whether speculative or known, we again hold that any changes in financial circumstances benefitting the employer or majority representative are not contemplated by the statute or to be considered by the arbitrator.
>
> [State of NJ, 40 NJPER at 500-501]

In the present case, the arbitrator cited New Milford and his overall salary award was consistent with our guidance in that decision and the interest arbitration law. Using the total base year salary of 2013 of $2,740,442.90 that the parties agreed upon, he determined that the annual 2% Hard Cap was $54,809. Using the twenty-one police officers in the unit as of December 31, 2013, he costed out his award for the years 2014-2016, showing how the projected salary increases for those officers would total $164,418 over three years [Award at 70-74, 80-85]. This results in an average annual base salary increase of $54,806, which is just under 2.00% per year and therefore compliant with the 2% Hard Cap imposed by P.L. 2010, c. 105. The arbitrator correctly assumed "for the purposes of comparison there are no resignations, retirements, promotions or additional hires," and specifically excluded information about two new 2014 hires from his analysis [Award at 82-83].

Consideration of the Statutory Criteria

The next basis for the PBA's appeal is that the arbitrator failed to properly apply, sufficiently explain, or provide an evidentiary basis in his analysis of the 16g statutory factors. The PBA's brief makes no specific assertions with regard to this argument and does not point to any evidence in the record which the arbitrator failed to consider. We find that the arbitrator complied with N.J.S.A. 34:13A-16g and sufficiently explained his

basis for finding some statutory factors more relevant than others, gave due weight to the factors deemed relevant, and analyzed the evidence on each relevant factor. We summarize below the arbitrator's analysis of the 16g factors.

The arbitrator found that all of the 16g factors were relevant, but were not entitled to equal weight. [Award at 70]. He gave greater weight to the following factors: the Borough's ability to pay; the lack of adverse impact; the interests and welfare of the public; and public sector comparability.

The arbitrator addressed "ability to pay," "lack of adverse impact," and "interests and welfare of the public" factors through analysis of factors g(1)(interests and welfare of the public), g(5)(lawful authority of the employer), g(6)(financial impact on the government unit, its residents, the property tax levy limitations, and taxpayers), and g(9)(statutory restrictions imposed on the employer). He found that: his Award serves the interest and welfare of the public through a thorough weighing of the statutory criteria after due consideration of the Hard Cap; his Award would not cause the Borough to exceed its lawful authority or prohibit it from meeting its statutory obligations; the Borough did not claim an inability to pay up to the statutory permitted levels; and his Award would not have an adverse impact on the Borough, its residents, or taxpayers. [Award at 75-76].

In addressing comparability to public employment (factors g(2)(b) and (c)), the arbitrator explained why he gave less weight to private sector employment comparisons (factor g(2)(a)), and greater weight to comparisons with other public sector law enforcement units. He cited submissions by the parties and trends in average interest arbitration awards and settlements, concluding that the PBA's economic benefits through his Award are competitive and within the range of those benefits received in other law enforcement units. [Award at 76-77].

The arbitrator granted less weight to the remaining statutory factors, addressing them as follows. For overall compensation (factor g(3)), he found that: the evidence does not require full implementation of either party's final offer; his Award is fair, reasonable, and competitive; and his Award serves the interests and welfare of the public because the salary increases do not exceed the Hard Cap and the modifications for new hires will improve the Borough's ability to manage its operations within statutory limitations. [Award at 78]. For stipulations of the parties (factor g(4)), the arbitrator noted that the partes stipulated to the Borough's ability to pay up to the Hard Cap, and to the health care contribution amount paid by officers at or above top pay with full family medical coverage. [Award at 78]. For cost of living (factor g(7)), the arbitrator cited consumer price index statistics but granted this factor

little weight, finding that it not does not impact his awarded salary increases which will not exceed the Hard Cap. [Award at 79]. Finally, for continuity and stability of employment (factor g(9)), the arbitrator noted that he considered the evidence on this factor. He concluded that the modifications awarded are reasonable under the circumstances, that the Borough's proposals would have had more of a negative impact on this factor, and that the Award is consistent with recent trends and will maintain the continuity and stability of employment. [Award at 79-80].

New Jersey Arbitration Act

Finally, we address the PBA's assertion in the notice of appeal that the arbitrator's award violated section N.J.S.A. 2A:24-8(d) of the New Jersey Arbitration Act due to the award's alleged failure to comply with N.J.S.A. 34:13A-16g. N.J.S.A. 2A:24-8(d) provides that the arbitration award should be vacated:

> d. Where the arbitrators exceeded or so imperfectly executed their powers that a mutual, final and definite award upon the subject matter submitted was not made.

The PBA's brief did not address N.J.S.A. 2A:24-8(d), but its notice of appeal essentially argued that because the arbitrator insufficiently explained or analyzed the N.J.S.A. 34:13A-16g standards, the award violated N.J.S.A. 2A:24-8 as well. As the previous section of this decision addressed the PBA's 16g factors argument and concluded that the arbitrator's award complied with N.J.S.A. 34:13A-16g, and no separate arguments have been made for

the asserted N.J.S.A. 2A:24-8(d) violation, we find no basis for finding that the arbitrator's award violated the Arbitration Act. See Borough of Englewood Cliffs, P.E.R.C. No. 2012-35, 38 NJPER 273 (¶94 2012).

ORDER

The interest arbitration award is affirmed.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Boudreau and Eskilson voted in favor of this decision. Commissioners Jones and Voos voted against this decision. Commissioner Wall recused himself. Commissioner Bonanni was not present.

ISSUED: June 25, 2015

Trenton, New Jersey

P.E.R.C. NO. 2016-1

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

INTERNATIONAL ASSOCIATION OF FIREFIGHTERS LOCAL 198,

Petitioner,

-and- Docket No. IA-2015-010

CITY OF ATLANTIC CITY,

Respondent.

SYNOPSIS

The Public Employment Relations Commission affirms an interest arbitration award, notwithstanding a minor revision removing the word "seriously" from the sick leave provision, establishing the terms of a successor agreement between the International Association of Firefighters Local 198 and the City of Atlantic City. The IAFF and the City cross-appealed. Overall, the Commission holds that the arbitrator addressed all of the N.J.S.A. 34:13A-16g statutory factors, adequately explained the relative weight given, analyzed the evidence on each relevant factor, and did not violate N.J.S.A. 2A:24-9.

With respect to economic issues, the IAFF argued the award was not supported by substantial credible evidence or the 16g statutory factors. The City argued that the arbitrator failed to properly apply the statutory factors of interests and welfare of the public and the financial impact on the municipality, its residents, and taxpayers. The Commission finds that the IAFF's economic proposals were inappropriate due to the City's financial condition while the City's economic proposals were not realistic and would result in a dramatic reduction in firefighters' pay.

With respect to non-economic issues, the IAFF argued that "parent of child" be included as "immediate family" for purposes of sick leave, that a change in acting out-of-title pay procedures was not justified by evidence, and that the arbitrator cited no direct evidence supporting a change in prescription co-payments, the deductible for dental services, or retiree health benefit service requirements. With respect to sick leave, the Commission finds there was insufficient testimony to include "parent of child" and no explanation for adding "seriously" before the word "ill." The Commission also finds that the arbitrator properly factored internal comparability into the change in acting out-of-title pay procedures and heavily weighed all of the statutory factors regarding the City's financial condition with respect to the change in health benefits.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

P.E.R.C. NO. 2016-1

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

INTERNATIONAL ASSOCIATION OF FIREFIGHTERS LOCAL 198,

Petitioner,

-and- Docket No. IA-2015-010

CITY OF ATLANTIC CITY,

Respondent.

Appearances:

For the Petitioner, O'Brien, Belland, Bushinsky, LLC (Mark E. Belland and David F. Watkins, of counsel)

For the Respondent, Cleary, Giacobbe, Alfieri Jacobs LLC (Matthew Giacobbe of counsel)

DECISION

This case comes to us by way of cross-appeals[1/] of an interest arbitration award pertaining to the International Association of Firefighters Local 198 (IAFF) and the City of Atlantic City (City).[2/] The award involves a unit of approximately 235 firefighters. The arbitrator conducted two days of hearings during which IAFF submitted the written report and testimony of a financial analyst and the City submitted testimony

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1/ IAFF filed its appeal on June 22, the City filed its cross-appeal and opposition brief to the IAFF's appeal on June 29, and the IAFF filed its brief in opposition to the City's cross-appeal on July 2.

2/ In response to a scope of negotiations petition filed by the City, we issued a decision preliminarily declaring some proposed issues mandatorily negotiable and others not mandatorily negotiable. City of Atlantic City, P.E.R.C. No. 2015-63, 41 NJPER 439 (¶137 2015).

and written reports of two financial analysts and the testimony of its State Monitor.

On June 4, 2015, the arbitrator issued a 186-page Opinion and Award with a three-year term covering the period of January 1, 2015 through December 31, 2017. The arbitrator issued a conventional award as she was required to do pursuant to P.L. 2010, c. 105, effective January 1, 2011. A conventional award is crafted by an arbitrator after considering the parties' final offers in light of statutory factors. The Award addressed a myriad of economic and non-economic issues that were raised by the parties during the proceedings. Our decision focuses only on those issues raised in IAFF's appeal and the City's cross-appeal. We affirm the arbitrator's Award except for a minor revision noted herafter in Section II, A.

I. Standard of Review

N.J.S.A. 34:13A-16g requires that an arbitrator state in the award which of the following factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor:

> (1) The interests and welfare of the public . . .;
>
> (2) Comparison of the wages, salaries, hours, and conditions of employment of the employees 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 . . .;
>
> (b) in public employment in general . . .;
>
> (c) in public employment in the same or comparable jurisdictions;
>
> (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 . . .;
>
> (6) The financial impact on the governing unit, its residents and taxpayers . . .;
>
> (7) The cost of living;
>
> (8) The continuity and stability of employment including seniority rights . . .; and
>
> (9) Statutory restrictions imposed on the employer. . . .
>
> [N.J.S.A. 34:13A-16g]

The standard for reviewing interest arbitration awards is well established. We will not vacate an award unless the

appellant demonstrates that: (1) the arbitrator failed to give "due weight" to the subsection 16g factors judged relevant to the resolution of the specific dispute; (2) the arbitrator violated the standards in N.J.S.A. 2A:24-8 and -9; or (3) the award is not supported by substantial credible evidence in the record as a whole. Teaneck Tp. v. Teaneck FMBA, Local No. 42, 353 N.J. Super. 289, 299 (App. Div. 2002), aff'd o.b. 177 N.J. 560 (2003) (citing Cherry Hill Tp., P.E.R.C. No. 97-119, 23 NJPER 287 (¶28131 1997)). Within the parameters of our review standard, we will defer to the arbitrator's judgment, discretion and labor relations expertise. City of Newark, P.E.R.C. No. 99-97, 25 NJPER 242 (¶30103 1999). However, an arbitrator must provide a reasoned explanation for an award and state what statutory factors he or she considered most important, explain why they were given significant weight, and explain how other evidence or factors were weighed and considered in arriving at the final award. N.J.S.A. 34:13A-16g; N.J.A.C. 19:16-5.9; Borough of Lodi, P.E.R.C. No. 99-28, 24 NJPER 466 (¶29214 1998).

P.L. 2010, c. 105 amended the interest arbitration law, imposing a 2% "Hard Cap" on annual base salary increases for arbitration awards where the preceding collective negotiations agreement (CNA) or award expired after December 31, 2010 through April 1, 2014. P.L. 2014, c. 11, signed June 24, 2014 and retroactive to April 2, 2014, amended the interest arbitration law and extended the 2% salary cap, along with other changes, to December 31, 2017. N.J.S.A. 34:13A-16.7 provides:

Definitions relative to police and fire arbitration; limitation on awards

a. As used in this section:

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

"Non-salary economic issues" means any economic issue that is not included in the definition of base salary.

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

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

II. Economic Issues

The economic issues in the Award center around the payment of salary increments and increases, educational incentives, longevity and terminal leave.

A. Payment of Salary Increments and Increases

The salary schedule in the expired agreement contains two tiers - Tier 1 for employees hired before January 1, 2012 and Tier 2 for employees hired after January 1, 2012. Both tiers contain sixteen titles ranging from Apprentice 1 to Chief of Fire Prevention and annual salaries from $57,309 to $137,690 on Tier 1 and $45,000 to $125,000 on Tier 2.

The City proposed zero salary increases or increment payments, and to make a general salary range for Apprentice I through Senior Journeyman of $40,000 - $70,000 in place of specified salaries for each title.[3/] The IAFF proposed a 2% increase for employees annually. The arbitrator awarded increment payments to eligible employees on their anniversary date, continuation of the two-tiered salary guide, and an increase of $1,000 to employees in the senior journeyman and above title only.

B. Educational Incentive

The expired agreement provides an educational incentive for Tier 1 employees ranging from 2% to 10% of base salary which is driven by completed credit hours or degree achieved. The educational incentive for Tier 2 employees ranges from $1,000 on

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3/ Pursuant to a pending clarification of unit petition that the City filed on September 8, 2014, it is seeking to remove fire superiors from the agreement. CU-2015-004.

top of base salary to $2,500 and is degree driven. The arbitrator found that the average incentive pay for firefighters currently receiving the benefit is $7,276, and all employees currently receiving this benefit are in Tier 1. The City proposed to remove this benefit entirely. The arbitrator froze the current value of employees' educational incentive pay for the life of the contract.

C. Longevity

The expired agreement provides a longevity schedule for Tier 1 employees ranging from 2% to 10% depending on years of service. For Tier 2 employees, longevity is paid in flat payments of $1,140 to $8,000 depending on years of service. The City proposed to eliminate longevity entirely. IAFF proposed to increase longevity at certain benchmarks for Tier 2 employees in the amount of $550. The arbitrator froze longevity rates at their current level for Tier 1 employees and eliminated longevity entirely for Tier 2 employees.

D. Terminal Leave

The expired agreement currently provides for terminal leave for employees upon retirement. The City proposed to cap terminal leave at $15,000 for employees hired after 2010.

The arbitrator found that the terminal leave benefit is a significant expense to the City, which in 2012, 2013 and 2014 cost the City $1,506,523, $2,138,027 and $3,086,418 respectively. She found that these payments are extravagant for any municipality, and particularly burdensome for the City given its

financial condition. The arbitrator found that employees' cash out for paid sick leave is a benefit earned which cannot be eliminated for current employees. Therefore, the arbitrator found it appropriate to scale back the benefit by eliminating terminal leave for newly hired employees, capping the benefit at $15,000 for employees hired after January 1, 2010, and permitting cash out at the maximums set forth in the contract for employees hired prior to January 1, 2010.

E. Parties' Arguments Regarding Economic Issues

With regard to the economic issues, the IAFF argues generally that the arbitrator's award is not supported by substantial credible evidence, the requisite statutory factors, and violates N.J.S.A. 2A:24-9. The City responds that with regard to the economic issues, the Award is supported by substantial credible evidence, is consistent with the statutory factors and does not violate N.J.S.A. 2A:24-9. However, in its cross-appeal the City also argues that with regard to the economic issues, the arbitrator failed to properly apply the statutory factors of interests and welfare of the public and the financial impact on the municipality, its residents and taxpayers. In response to the City's cross-appeal, IAFF asserts that the arbitrator provided a reasonable explanation of all statutory criteria with regard to her award on the economic issues.

F. Analysis on Economic Issues

On the whole, the arbitrator found that the City's proposals on economic issues were not realistic and would result in a dramatic reduction in firefighters' pay. She also generally found that IAFF's economic proposals were not appropriate due to the City's financial condition. The arbitrator conducted a general analysis of all of the statutory factors throughout the Award and placed substantial weight on interests and welfare of the public (a statutory factor that implicates virtually all of the factors), financial impact on the governing unit, its residents and taxpayers, and the City's statutory budget limitations. She also weighed, albeit less heavily, continuity and stability of the unit, cost of living, comparison of the wages with other employees both internally and externally, and existing wages and benefits. Award at 34-35.

She set forth thorough findings of fact with regard to the City's financial condition. Award at 49-78. She found that the Casino Revenue Fund has steadily declined since 2006 (Award at 50-51); the City's tax base has been eviscerated to one third of the level it was at five years ago (Award at 52-54); the City's receipt of Transitional Aid in 2014 is dependent upon it detailing its plan to reduce its reliance on such aid (Award at 54-55); the City has had an increase in tax appeals totaling 6,000 this year (Award at 55); and there is pending legislation to set a flat rate for casino taxes to aid in the City's tax appeals and loss of tax base. She also reviewed evidence regarding the City's surplus balance, appropriations, funded

debt, pension and healthcare costs, ratables and levy caps. (Award at 58-73, 76-78). She noted that an Emergency Manager has been appointed to analyze the City's financial condition and place its finances in stable condition on a long-term basis. She also noted the City's reliance on SAFER grants which are grants funded at the federal level to insure that fire industry minimum manning standards are met. Award at 49-78.

With regard to financial impact of the Award on the City, its residents and taxpayers, the arbitrator weighed most heavily that the City's overall appropriations budget in 2014 was $261 million, and its goal was to reduce it in 2015 to $192 million. In 2014, the amount budgeted for the Fire Department was $22,807,914; however it actually spent $20,414,487, leaving in reserve $1,153.427. In 2014, 27 firefighters retired and their pro-rated salaries were included in the 2014 total base salary. By not carrying these firefighters, the savings in 2015 will be an additional $1,567,728. Given the savings realized by the fire department, the arbitrator found that it had already conceded its share of the City's goal in reducing spending and such savings would help to fund the very modest increases that she awarded. She also noted that in the Award leading to the 2012-2014 contract, the interest arbitrator not only created a new lower pay scale for new hires, but also significantly reduced educational incentive, longevity and terminal pay for Tier 2 employees. Award at 97.

The arbitrator found that the only cost impact to the City for the payment of increments is $11,062 since all firefighters who are increment eligible, except one, are paid through the federal SAFER grant. She found that the cost of the $1,000 increase for the 184 firefighters at top pay is $92,000 in July, 2016 and an additional $92,000 in 2017. The arbitrator found that these very modest increases do not place the City at risk of violating the arbitration cap, the tax levy cap, or the appropriations cap. She also found that delaying the increases to 2016 would provide additional time for the City to stabilize its finances.

With regard to comparability of the firefighters' salaries and continuity and stability of employment, the arbitrator found the City's firefighters' existing salary and benefits package is in line with or above average for comparable jurisdictions.[4/] She found the most relevant comparison to be to the City's other uniformed officers - salaries for the City's top paid police officers in Tier 1 is about $4,000 higher than a firefighter and Tier 2 is $10,000 higher than a firefighter. While the salary guide for police officers was frozen for the length of their contract, increments were paid to those still in steps. Police captains received an increase of 2%, 2% and 1.88% over the length of their contract. She noted that this unit has had a salary freeze for the past two years and found that extending the

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4/ She noted that the salaries for this unit included holiday pay while it was possible that comparable fire districts did not.

freeze for another three years would impact unit continuity and give no recognition to cost of living increases or salary levels in other comparable fire departments. Award at 94-96.

With regard to the arbitrator scaling back but not entirely eliminating educational pay incentive and longevity, she generally found that the drawback to completely removing these benefits is that it would reduce firefighters salaries by several thousand dollars, but more significantly would reduce their pensionable income. She found that given that there are 39 employees with 20 or more years of service, if such changes were made to pensionable income, it would result in numerous retirements of experienced firefighters, which would affect unit continuity and would not be in the public interest.

We find with regard to the economic issues the arbitrator adequately evaluated all of the statutory criteria, placing primary importance on those factors touching upon the City's financial condition and its ability to meet its statutory budget limitations. She explained why she gave more weight to some factors and less weight to others and issued a comprehensive Award that reasonably determined the economic issues, is supported by substantial credible evidence in the record, and does not violate N.J.S.A. 2A:24-9.

II. Non-Economic Issues

A. Sick Leave

The expired agreement contains a sick leave provision but it does not include a definition of when sick leave may be used. The union proposed to add the following provision:

> Sick leave is hereby defined to mean an absence from the post of duty by a bargaining unit member, due to illness, accident, injury, disability, and/or exposure to contagious disease or the necessity to attend to and care for an ill member if his or her immediate family. The term "immediate family" for the purpose of this Article shall include the following: a) spouse; b) parent; c) step-parent; d) child; e)step-child; f) foster child; g) parent of child; and h) any other relative residing in the bargaining unit member's household.

The arbitrator awarded the union's proposal, finding that it was reasonable, consistent with the parameters of the Family and Medical Leave Act and the New Jersey Family Leave Act, and added clarity to the Agreement. However, she did not include the term "parent of child" as she saw no basis for this inclusion. IAFF appeals this ruling. We agree with the arbitrator's finding that the testimony offered in this regard did not provide enough of a basis for inclusion of this term. The arbitrator also inserted the word "seriously" before the word "ill" in the Award. Since the arbitrator provided no explanation for adding this term, its inclusion was likely an oversight. We revise the Award to omit the term "seriously."

B. Acting Out-of-Title

The expired agreement contains provisions addressing the procedures for acting out-of-title. The City sought, inter alia, to add a requirement that a firefighter must act out-of-title for

30 days before acting pay took effect. The arbitrator awarded that a firefighter must act out-of-title for 8 days before acting pay takes effect. Her explanation for this addition was that the City's PBA contract contained an identical provision, and the arbitrator found internal comparability on this issue necessary to promote fairness and harmony. IAFF appeals, arguing that the City did not provide enough evidence to justify this change. In issuing a conventional award, the arbitrator has the latitude to fashion the award as she deems appropriate. Consistent with her treatment of the other issues, internal comparability was an important factor, particularly as it relates to the other factors touching upon the City's financial conditions.

C. Procedure for Suspensions

The expired agreement contains provisions providing for a right to a hearing before the Mayor or his designee and then another hearing before the Fire Chief/Fire Director if a firefighter is suspended. The City sought to delete the provision providing for a hearing before the Mayor or his designee. IAFF sought to delete the provision providing for a hearing before the Fire Chief/Fire Director and replace it with a provision allowing for a hearing before a mutually agreed upon neutral. The arbitrator awarded the City's proposal, finding that an employee does not need two disciplinary hearings, and explaining that the hearing officer for the internal disciplinary hearing is appointed by the Employer and there is no pretense of neutrality. Since the City is a Civil Service Jurisdiction, once

the City conducts the hearing and if a final notice of disciplinary action is issued, that decision is appealable to either an arbitrator or the Office of Administrative Law, where an employee will be afforded full due process. She also found that if she awarded IAFF's proposal, the cost of the neutral would have added another layer of expense to the process. We find that the arbitrator provided a reasoned explanation for this proposal.

D. Health Benefits

The arbitrator awarded the City's proposals for an increase in prescription co-payments (to $15.00 for generic drugs and $35.00 for non-generic drugs), a $50.00 deductible for covered dental services, and a requirement that newly hired firefighters have 25 years of service with the City (as opposed to 25 years of general service) to qualify for retiree health benefits. IAFF argues that the arbitrator cited no direct evidence supporting this part of the Award. However, the arbitrator explained that the level of prescription co-payments in the expired agreement had been in effect since 2009, and that an increase was necessary to help mitigate the rising costs of prescriptions. She also found that the dental coverage was generous by today's standards and the award of a modest deductible was warranted. Finally, she found that requiring 25 years of service with the City to qualify for retiree health benefits was warranted so that the City would not have to shoulder the retiree health costs of a firefighter who transferred mid-career to the City. It is clear from the

arbitrator's explanation that in awarding the City's proposals regarding health benefits, she weighed heavily all of the statutory factors touching upon the City's financial condition.

ORDER

The Award is affirmed, except for deleting the word "seriously" from the sick leave provision awarded.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Boudreau, Eskilson, Voos and Wall voted in favor of this decision. Commissioner Jones voted against this decision. Commissioner Bonanni recused himself.

ISSUED: August 13, 2015

Trenton, New Jersey

P.E.R.C. NO. 2016-11

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY,

Appellant,

-and- Docket No. IA-2015-003

FOP LODGE 91,

Respondent.

SYNOPSIS

The Public Employment Relations Commission affirms in part, and modifies in part, an interest arbitration award on remand establishing the terms of the first collective negotiations agreement between the State of New Jersey and FOP Lodge 91. The State and FOP cross-appealed. The Commission denies the FOP's requests to reconsider its decision in an earlier appeal from the arbitrator's initial award regarding the applicability of the statutory 2% Hard Cap (P.E.R.C. 2015-50), and to reconsider its negotiability determination on major discipline made as part of a scope of negotiations case decided when the parties were in negotiations (P.E.R.C. No. 2014-50).

With respect to the salary award and calculations, the State argued the award violated the statutory 2% Hard Cap. The Commission finds that the arbitrator's methodology complies with the interest arbitration statute and Commission precedent. The Commission makes no modification to the retiree health benefits clause because the award already contains the non-arbitrability clause sought by the State, even if some of the award's reasoning did not support it. The Commission denies the State's request to vacate the duty officer compensation clause, finding that the arbitrator's award is supported by the record. The Commission denies the State's request to vacate the clothing allowance clause, finding that the arbitrator's compromise award was supported by substantial credible evidence on the record including comparability to other units. The Commission denies the State's request to vacate the education incentive and continuing education reimbursement clauses, finding that the arbitrator's award was well supported by the record and that she adequately analyzed the N.J.S.A. 34:13A-16g statutory factors. The Commission finds that the minor discipline arbitrability

clause was supported by the Commission's previous negotiability determination (P.E.R.C. No. 2014-50).

The Commission modifies the eye care program clause to award the State's sunset language because the award's comparability analysis was factually flawed. The Commission removes the educational program information clause because it was not adequately supported. The Commission removes language allowing arbitration of disciplinary transfers, finding that the issue is non-negotiable and was effectively decided in a previous scope decision involving the parties (P.E.R.C. No. 2014-50).

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

P.E.R.C. NO. 2016-11

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY,

Appellant,

-and- Docket No. IA-2015-003

FOP LODGE 91,

Respondent.

Appearances:

For the Appellant, Jackson Lewis, attorneys (Jeffrey J. Corradino, of counsel)

For the Respondent, Pellettieri Rabstein & Altman, attorneys (Frank M. Crivelli, of counsel)

DECISION

On July 8, 2015, the State of New Jersey ("State") and FOP Lodge 91 ("FOP") both appealed from an interest arbitration award issued after a remand. The FOP represents approximately 136 State Investigators in various titles employed in the State's Division of Criminal Justice.[1/] On July 15, both parties filed response briefs. The Commission remanded the arbitrator's initial award in this matter for reconsideration and issuance of a new award that would comply with the salary cap imposed by

1/ We deny the FOP's request for oral argument. The issues have been fully briefed.

P.L.2014, c.11.[2/]. P.E.R.C. No. 2015-50, 41 NJPER 382 (¶120 2015).

On June 23, 2015, the arbitrator issued a 21-page remand award. The remand award retained scheduled increment payments but modified the initial award in order to comply with the statutory 2% average annual salary increase cap, primarily by reducing the amount of across-the-board raises. The remand award also rejected a previously awarded FOP proposal to require automatic advancement of Detective II's to the Detective I salary range after five years of service. The remand award retained all other items contained in the initial award. The initial award, issued on December 3, 2014, was a 314-page interest arbitration award setting the terms of a collective negotiations agreement (CNA) for the period from July 1, 2014 through June 30, 2019. The award and remand award will collectively be referred to as the "award" to reflect the combined award inclusive of modifications on remand and all previously awarded terms in the 314-page award not modified by the remand award. When referencing specific pages, the awards will be referred to as State/DCJI and State/DCJII. Our decision focuses only on those issues in the award raised in the State's and FOP's respective appeals.

2/ N.J.S.A. 34:13A-16.7.

I. Standard of Review

N.J.S.A. 34:13A-16g requires that an arbitrator state in the award which of the following factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor:

> (1) The interests and welfare of the public . . .;
>
> (2) Comparison of the wages, salaries, hours, and conditions of employment of the employees 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 . . .;
>
> (b) in public employment in general . . .;
>
> (c) in public employment in the same or comparable jurisdictions;
>
> (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 . . .;
>
> (6) The financial impact on the governing unit, its residents and taxpayers . . .;
>
> (7) The cost of living;
>
> (8) The continuity and stability of employment including seniority rights . . .; and
>
> (9) Statutory restrictions imposed on the employer. . . .
>
> [N.J.S.A. 34:13A-16g]

The standard for reviewing interest arbitration awards is well established. We will not vacate an award unless the appellant demonstrates that: (1) the arbitrator failed to give "due weight" to the subsection 16g factors judged relevant to the resolution of the specific dispute; (2) the arbitrator violated the standards in N.J.S.A. 2A:24-8 and -9; or (3) the award is not supported by substantial credible evidence in the record as a whole. Teaneck Tp. v. Teaneck FMBA, Local No. 42, 353 N.J. Super. 298, 299 (App. Div. 2002), aff'd o.b. 177 N.J. 560 (2003), citing Cherry Hill Tp., P.E.R.C. No. 97-119, 23 NJPER 287 (¶28131 1997). Within the parameters of our review standard, we will defer to the arbitrator's judgment, discretion and labor relations expertise. City of Newark, P.E.R.C. No. 99-97, 26 NJPER 242 (¶30103 1999). However, an arbitrator must provide a reasoned explanation for an award and state what statutory factors he or she considered most important, explain why they were given significant weight, and explain how other evidence or factors were weighed and considered in arriving at the final award. N.J.S.A. 34:13A-16g; N.J.A.C. 19:16-5.9; Borough of Lodi, P.E.R.C. No. 99-28, 24 NJPER 466 (¶29214 1998).

P.L.2010, c.105 amended the interest arbitration law, imposing a 2% "Hard Cap" on annual base salary increases for arbitration awards where the preceding collective negotiations agreement (CNA) or award expired after December 31, 2010 through

April 1, 2014. P.L.2014, c.11, signed June 24, 2014 and retroactive to April 2, 2014, amended the interest arbitration law and extended the 2% salary cap, along with other changes, to December 31, 2017. N.J.S.A. 34:13A-16.7 provides:

> Definitions relative to police and fire arbitration; limitation on awards
>
> a. As used in this section:
>
> "Base salary" means the salary provided pursuant to a salary guide or table and any amount provided pursuant to a salary increment, including any amount provided for longevity or length of service. It also shall include any other item agreed to by the parties, or any other item that was included in the base salary as understood by the parties in the prior contract. Base salary shall not include non-salary economic issues, pension and health and medical insurance costs.
>
> "Non-salary economic issues" means any economic issue that is not included in the definition of base salary.
>
> b. An arbitrator shall not render any award pursuant to section 3 of P.L.1977, c.85 (C.34:13A-16) which, in the first year of the collective negotiation agreement awarded by the arbitrator, increases base salary items by more than 2.0 percent of the aggregate amount expended by the public employer on base salary items for the members of the affected employee organization in the twelve months immediately preceding the expiration of the collective negotiation agreement subject to arbitration. In each subsequent year of the agreement awarded by the arbitrator, base salary items shall not be increased by more than 2.0 percent of the aggregate amount expended by the public employer on base salary items for the members of the affected employee organization in the immediately preceding year of the agreement awarded by the arbitrator.
>
> The parties may agree, or the arbitrator may decide, to distribute the aggregate monetary value of the award over the term of the collective negotiation agreement in unequal annual percentage increases, which shall not be greater than the compounded value of a 2.0 percent

> increase per year over the corresponding length of the collective negotiation agreement. An award of an arbitrator shall not include base salary items and non-salary economic issues which were not included in the prior collective negotiations agreement.

In Borough of New Milford, P.E.R.C. No. 2012-53, 38 NJPER 340 (¶116 2012), we modified our review standard to include a determination of whether the arbitrator established that the award would not exceed the Hard Cap.

II. FOP's arguments on appeal

The FOP argues that the Commission's first decision on the arbitrator's initial award (P.E.R.C. No. 2015-50) improperly rejected the arbitrator's determination that the 2% Hard Cap was inapplicable to this matter because this interest arbitration involves a newly-certified unit.

Our prior ruling is the "law of the case" on the issue of application of the 2% Hard Cap. The law of the case doctrine is a non-binding rule intended to prevent relitigation of a previously resolved issue in the same case. State v. K.P.S., 221 N.J. 266, 276, 112 A.3d 579 (2015). Underlying the law of the case doctrine are principles similar to collateral estoppel, as both doctrines are guided by the fundamental legal principle that once an issue has been fully and fairly litigated, it ordinarily is not subject to relitigation between the same parties either in the same or in subsequent litigation. Id. at 277. However, whereas collateral estoppel may bar a party from relitigating an

issue decided against it in a later and different case, law of the case may bar a party from relitigating the same issue during the pendency of the same case before a court of equal jurisdiction. Ibid. Therefore, we will not allow another challenge to our ruling in P.E.R.C. No. 2015-50.

The FOP next argues that the Commission should reconsider its decision in State of N.J. and Division of Criminal Justice NCOA, SOA and FOP Lodge No. 91, P.E.R.C. No. 2014-50, 40 NJPER 346 (¶126 2014), aff'd 2015 N.J. Super. Unpub. LEXIS ____ (App. Div. Unpub. 2015), involving these same parties. That scope of negotiations decision arose while the parties were in negotiations prior to filing for the interest arbitration that is the subject of this appeal. The FOP seeks reversal of the Commission's determination that major discipline is not reviewable through binding arbitration for this unit.

Because the FOP appealed that scope of negotiations decision to the Appellate Division (App. Div. Dkt. No. A-2689-13T1), we lack jurisdiction to reconsider any issues decided in P.E.R.C. 2014-50 that are before the Appellate Division. See N.J.S.A. 34:13A-5.4(d); N.J. Court Rules R.2:2-3(a)(2); R.2:9-1.[3/]

3/ On August 28, 2015, the Appellate Division issued an unpublished decision affirming the Commission's decision in P.E.R.C. 2014-50.

III. Compliance with the 2% Hard Cap

The State asserts that the arbitrator's method for calculating the salary award violates the 2% Hard Cap and is contrary to N.J.S.A. 34:13A-16.7(b) and Commission precedent. Specifically, it argues that the arbitrator incorrectly calculated or misrepresented increment costs for the first year of the CNA; abused her discretion by excluding the State's "corrected" exhibits which were submitted three business days after the close of the arbitration hearing; and incorrectly calculated the cost increases to base salary items in the first year of the CNA by not including the "roll-up" costs of bringing new hires from the base year up to full annual salary levels.

The FOP responds that the State miscalculated increment costs for the first year, and that the arbitrator correctly calculated a salary award compliant with the 2% cap and New Milford. The FOP argues that the arbitrator properly excluded the State's "corrected" versions of Exhibits S-11 and S-12 because the record had already been closed and the FOP was not able to cross-examine or challenge the data submitted post-hearing. The FOP asserts that the State later opposed the FOP's request to supplement the record on remand, and that the arbitrator, consistent with her decision on the State's attempted supplementation, denied the FOP's request to reopen the record.

We decline to find that the arbitrator abused her discretion by choosing not to reopen the record to allow the State to submit its "corrected" versions of two of its previously submitted exhibits. The arbitrator held five days of hearing in 2014 on October 21, 28, 29, 30, and 31, and held the record open at the close of hearing until November 4. No further submissions were received during that period, and the parties were advised that the record had closed. State/DCJI at 3-4. Post-hearing briefs were due and submitted by November 14, which is when the State also tried to submit its "corrected" copy of updated exhibits. State/DCJI at 4; State/DCJII at 3, 8-9.[4/]

Contrary to the State's assertions, the Commission has consistently authorized the arbitrator's approach to calculating increases in base salary items for those unit members remaining in the unit after the base year. In New Milford, the Commission endorsed the following method for "costing out" an interest arbitration award within the parameters of the 2% Hard Cap:

> Since an arbitrator, under the new law, is required to project costs for the entirety of the duration of the award, calculation of purported savings resulting from anticipated retirements, and for that matter added costs due to replacement by hiring new staff or promoting existing staff are all too

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4/ Even if we were to credit the State's assertion supported by an e-mail apparently indicating that it "forwarded the correct Exhibits on November 5, 2014," it is admittedly still beyond the November 4 close of the record. State's Appeal Brief at 9; State's Appendix II, Tab 2.

> speculative to be calculated at the time of the award. The Commission believes that the better model to achieve compliance with P.L. 2010 c. 105 is to utilize the scattergram demonstrating the placement on the guide of all of the employees in the bargaining unit as of the end of the year preceding the initiation of the new contract, and to simply move those employees forward through the newly awarded salary scales and longevity entitlements. Thus, both reductions in costs resulting from retirements or otherwise, as well as any increases in costs stemming from promotions or additional new hires would not effect the costing out of the award required by the new amendments to the Interest Arbitration Reform Act.
>
> [New Milford at 344, emphasis added]

In Borough of Ramsey, P.E.R.C. No. 2012-60, 39 NJPER 17 (¶3 2012), we rejected the union's assertion that the arbitrator should have taken into account a recent retirement and recent promotions when projecting salary costs in the award, finding:

> In New Milford, we determined that reductions in costs resulting from retirements or otherwise, or increases in costs stemming from promotions or additional new hires, should not affect the costing out of the award. N.J.S.A. 34:13a-16.7(b) speaks only to establishing a baseline for the aggregate amount expended by the public employer on base salary items for the twelve months immediately preceding the expiration of the collective negotiation agreement subject to arbitration. The statute does not provide for a majority representative to be credited with savings that a public employer receives from any reduction in costs, nor does it provide for the majority representative to be debited for any increased costs the public employer assumes for promotions or other costs associated with maintaining its workforce.

[Ramsey at 20, emphasis added]

Subsequent Commission decisions similarly found that longevity savings from base year retirements should not be considered additional funds for the new contract. See, e.g., City of Camden, P.E.R.C. No. 2014-95, 41 NJPER 69 (¶22 2014); Township of Byram, P.E.R.C. No. 2013-72, 39 NJPER 477 (¶151 2013).

Applying New Milford and its progeny, it is clear that base year retirements should not be credited to the union as "breakage" savings from the base year permitting commensurate funds for raises in excess of the 2% cap, nor should "roll-up" costs from adjusting the partial salaries of base year new hires to full salaries in the first year of the contract be debited from the union's 2% annual allotment for raises. Not only does this method comply with N.J.S.A. 34:13A-16.7(b), but it makes logical sense by ensuring neither the employer nor the union reaps a windfall through subsequent salary savings or increases achieved from breakage or roll-up.

In this case, the composition of the unit due to sixteen new hires in the base year FY 2014 compared to only five retirements or resignations would have, based on the State's proposed calculation method, produced an aggregate unit-wide salary difference between the 1st year of the award and the base year of 5.88%. State/DCJII at 8, 11. By charging the union for roll-up costs of those new hires from partial prorated salaries in the

base year to full year salaries in year 1 of the award, the amount available for each officer's raise would actually average significantly less than the statutorily permitted 2% Hard Cap. Conversely, if roles were reversed and there were more retirements than new hires during the base year, simply adding 2% to the aggregate base year salary would effectively credit the FOP with retirement breakage savings and could actually produce average raises for the remaining/new officers which would significantly exceed the 2% Hard Cap. We cannot allow either party to have it both ways by proffering a formula that includes both breakage savings and salary roll-up costs when it is to that party's advantage depending on the salaries, timing, and numbers of retiring officers and new hires during the base year. We have thus adopted a consistent approach for how interest arbitrators are to cost-out terms of an award which apportions the statutorily permitted salary increases based on the full base salary level on the last day of the prior contract of those employees remaining in the unit at the start of the new award.

The arbitrator here, consistent with Commission precedent, applied the correct approach and properly rejected the State's projections and methodology as follows:

> [I]t appears that the State has miscalculated the cost of increments in the first year and misreported increments for the remaining years....[I]t appears that the Employer's method of calculating increment costs relied on a subtraction of the total amount spent in

> FY14 ($9,913,644.91) against the total amount projected to be spent in FY 2015 ($10,485,315.98); this method is inconsistent with the Commission's directives in Borough of New Milford, P.E.R.C. No. 2012-53, 38 NJPER 340 (¶116 2012). First, it includes the savings of amounts that no longer will be paid to employees who retired or resigned in 2014 as negative amounts. This savings, commonly referred to as "breakage", totals $223,230.88, and is improperly included in the Employer's aggregate FY 15 increase of $571,671....
>
> Further, the State's asserted increment costs for FY 2015 includes (in addition to increment costs) the amount needed to bring employees who were paid for part of the year in FY 2014 to full salary in the subsequent year. This is not a true "increment cost."
>
> In New Milford, the Commission...stated that the best method to cost out would be to take the complement of employees on the employer's payroll on the last day before the new contract, and move them forward through the steps (where increments are being awarded) and any across-the-board increases. Thus, the appropriate starting point to track costs for contract year one is the total base salaries of unit employees on the last day before the new contract begins....
>
> It appears that the Employer's "increment costs" for FY 2015 includes not only the cost of advancing employees on their respective salary guides, but also includes the roll-up costs which result from pro-rating an employee's partial salary in the year they began their employment (FY 14) to bring them up to full salary in the first year of the contract (FY 15). The cost of bringing these employees up to full pay pursuant to the salary guides (roll-up costs) is significant. It is just as inappropriate and contrary to New Milford to charge off roll-up costs against the 2% cap as it is to credit breakage amounts to the Union's benefit.

[State/DCJII at 8-11]

As the arbitrator's analysis applied the correct methodology to determine the projected costs of increases in base salary items for unit members through the duration of the award, and the State's methodology for determining first year salary costs was misguided, we find that the arbitrator's salary award complies with N.J.S.A. 34:13A-16.7(b) and Commission decisions interpreting it.

IV. Arbitrability of retiree health benefits clause

In awarding health benefits/contributions, dental care, and retiree health insurance language, the arbitrator also awarded the State's proposal that those sections not be subject to the grievance/arbitration provisions of the CNA. State/DCJI at 107-120. The arbitrator stated:

> Finally, the State proposes:
>
> > E. The provisions of Sections (A.1-3), (B), (C) and (G) of this Article are for informational purposes only and are not subject to the contractual grievance/arbitration provisions of Article ___.
>
> The State maintains that this provision appropriately excludes disputes concerning these fringe benefits from the grievance and arbitration procedure and is consistent with the language contained in the negotiated agreements between the State and its other negotiation units. The FOP asserts that there is no basis to exclude health benefits from the grievance procedure. I award the State's proposal as it is consistent with language contained in the State's other negotiations units' contracts.

Section G. of the health benefits section is entitled "Health Insurance in Retirement." The arbitrator awarded the FOP's proposed language for the section with the addition of a sub-clause regarding future legislative changes to post-retirement medical benefits. State/DCJI at 116-121. However, the State's proposal for section G. had included a subsection (f.) providing that "Violations of this Article are not subject to the grievance/arbitration procedures of this Agreement." In rejecting the State's section G. proposal, the arbitrator found that "[T]he State has not sustained its burden of justifying the exclusion of health benefits for retirees from the grievance arbitration clause." State/DCJI at 119-120.

The State asserts that the arbitrator's award concerning the arbitrability of retiree health benefits is inconsistent with her findings and conclusions. Review of awarded section E., which makes "Sections (A.1-3), (B), (C) and (G) of this Article" not arbitrable, alongside the arbitrator's reasoning for rejecting the State's proposed section G. including its non-arbitrability section, indicates that the award's reasoning is internally inconsistent on this issue. However, the State concedes that its rejected G.(f.) non-arbitrability proposal is redundant considering the awarded language of section E. which already makes the provisions of section G. not subject to the CNA's grievance/arbitration procedure. Therefore, we do not find that

this section of the award needs to be modified because the language actually awarded is not in dispute by either party. We must assume that the arbitrator's apparently conflicting reasoning for finding section G., "Health Insurance in Retirement," contractually arbitrable or non-arbitrable was due to an oversight. In any event, we are confident that the arbitrator's reasoning for awarding the State's section E. proposal, which is applicable to section G., is more specific and complies with statutory factor 16g(2)(c) because she found that "it is consistent with language contained in the State's other negotiations units' contracts." State/DCJI at 116. As argued by the State, all of the State's current agreements with other majority representatives are indeed comparable to this awarded language in that they too exclude the subject of retiree health insurance from the contractual grievance and arbitration procedure. State's Appeal Brief at 24-26; State's Appendix III.

V. Continuation or sunset of Eye Care Program

The arbitrator awarded neither party's Eye Care Program proposal in full. The State had proposed language specifying that the program would end on June 30, 2019, the last day of the proposed CNA. State/DCJI at 112. The arbitrator rejected the State's language, instead awarding the following language which would continue the program as the status quo until the parties agree otherwise in a successor contract: "It is agreed that the

State shall continue the Eye Care Program during the period of this Contract." State/DCJI at 115. She reasoned:

> Finally, I decline to include language that would sunset the clause upon the expiration of the contract. The State's proffered reason that it wants the option to terminate the program if it wishes flies in the face of collective negotiations, is inconsistent with the provisions of other State contracts, and is not in the public interest, which favors collective negotiation over unilateral action.
>
> [State/DCJI at 115; emphasis added]

The State asserts that the arbitrator's failure to award its proposal for the Eye Care Program to sunset upon expiration of the contract fails to give proper weight to statutory factor 16g(2)(c) because ten of the eleven current State agreements with other unions contain similar sunset clauses for the program. A review of the ten State contracts cited indicates that they do indeed sunset their Eye Care Program benefits on the final day of their respective contracts. State's Appeal Brief at 26-28; State's Appendix III. Because the arbitrator's determination on this issue was in part based on the factually incorrect premise that the State's proposal was inconsistent with provisions of other State contracts, we modify the award to include the State's proposed sunset language which accounts for 16g(2)(c) by bringing it into conformity with ten of eleven other State contracts. The first sentence of subsection 1. of the Eye Care Program clause regarding its continuity during the contract is therefore

replaced with the following language: "This Eye Care Program ends on June 30, 2019."

VI. Daily compensation for duty officer or unit phone monitor

The State objects to the arbitrator's award of the following provision:

> An [sic] detective who is assigned to be a duty officer or unit phone monitor shall be paid $35 per day for such assignment. Payment will be made within 30 days of completion of the period of continuous assignment.
>
> [State/DCJI at 133]

The State argues that this language should be vacated because it is not supported by substantial credible evidence and lacks any analysis of the required statutory criteria. It cites to the hearing testimony of Chief of Detectives Paul Morris that the duty officer phone averaged only two calls per week while the human trafficking unit cell phone averaged five calls per week. (5T137-139, 146-147). The FOP responds that the arbitrator adequately considered the evidence presented on the issue of compensation for various duty phone assignments, including the hearing testimony of Detective John Neggia regarding the on-call status of detectives assigned to 24/7 bias crimes and human trafficking phone hotlines. (3T149-150).

We find that the arbitrator's award of a $35 daily stipend for on-call phone assignments is supported by substantial credible evidence in the record. She reasoned:

> I award a modified version of the Union's proposal. There are three separate situations where DCJ employees are possibly "on call": duty officer, the human trafficking unit hotline, and possibly the bias crimes unit hotline. It is unclear from the record whether detectives are actually ever asked to assume the position of duty officer, as the SOP states that the responsibility is one assigned to lieutenants. It is also unclear whether they are assigned to monitor the bias crimes Unit hotline. But detectives definitely are assigned to the human trafficking phone. I agree with the Union that employees deserve some compensation for the intrusion into their personal lives when undertaking this assignment....If, as the State suggests, no detective is assigned as duty officer or assigned to monitor the bias crime hotline, then the State will have no cost to this unit associated with the assignment. The annual cost for monitoring each "hotline" would be $12,775.
>
> [State/DCJI at 132-133]

The arbitrator considered the FOP's argument and Neggia's testimony regarding how detectives assigned to these duties are subject to restrictions on their personal lives due to being on-call to answer a phone or respond to a call. The arbitrator also considered the State's argument and Morris' testimony that one of the hotlines in question - the duty officer cell phone - is actually monitored by lieutenants, but appropriately worded the provision such that no detectives will be paid for any hotline duties unless they are actually assigned to such duties.

VII. Annual clothing/equipment allowance

Upon hire, detectives are issued a "class B" uniform and two different jackets, and they are replaced when they are worn, damaged, or no longer fit. However, detectives do not have a formal dress code or uniform policy and normally wear dress pants, a polo or long-sleeve shirt, and occasionally jeans. State/DCJI at 178. The FOP proposed an annual clothing allowance of $1,000, arguing that it is necessary due to all the scenarios in which detectives' clothing may become damaged or destroyed on the job. The State proposed only replacing the detectives' class B uniform (worn about 5-8 times per year) as necessary, arguing that the detectives should not receive a clothing allowance because they are not required to wear uniforms. State/DCJI at 176-180. The arbitrator's compromise clause awarded the FOP an annual $300 clothing/equipment allowance per unit member, and no longer required the State to replace damaged or worn uniform components. The arbitrator reasoned:

> I intend to award sufficient compensation to partially defray the cost to detectives for purchasing replacement uniform components and other equipment necessary in the performance of their duties. Given their particular line of work, damage to clothing, shoes, and gear is not an incidental expense. Employees should not have to pay for the equipment needed to do their job no more than clerks should have to buy their own staplers.
>
> [State/DCJI at 180-181]

On appeal, the State asserts that the arbitrator's award is not based on any evidence - such as receipts - of the unit members' actual costs expended for clothing maintenance, and that fifteen of twenty-one County Prosecutors' offices pay no clothing allowance to detectives. The FOP responds that Neggia's testimony regarding how unit members have had to replace their own clothing and uniforms supports the award of some clothing allowance, and points out that the majority of the State's law enforcement units receive some sort of clothing allowance.

Each side has presented valid arguments supported by evidence justifying its respective position. The majority of State contracts provide clothing allowances, but the majority of County prosecutors' offices do not. State's Appendix II, Tab 5; State's Appendix III. Although many State law enforcement units only provide clothing allowances to unit members who are required to wear a uniform, the FOP detectives here are occasionally required to wear a uniform, and it is also worth noting that even some of the State's non-law enforcement units receive annual non-uniform clothing allowances of $550 depending on their job requirements (CWA, AFL-CIO and IFPTE, AFL-CIO, see State's Appendix III, Tabs 1 and 4).

We find that the arbitrator's award of a $300 annual clothing/equipment maintenance allowance is supported by substantial credible evidence in the record. She weighed the

testimony of Neggia for the FOP and Chief-of-Staff Miller for the State, and also arrived at an annual cost estimate of $40,500 for this benefit which is significantly less than the $540,000 annual cost the State estimated for the FOP's proposal. Ultimately, we must defer here to the arbitrator's discretion, adequately supported, to craft a compromise award which decreased uniform costs to the State by making unit members responsible for their uniforms, but also supplied a relatively modest allowance compared to other units to help unit members defray the costs of maintaining both their official uniforms and their much more frequently worn plain-clothes work attire.

VIII. Education/degree incentive payments

The State objects to the arbitrator's award of an Educational Incentive provision which would pay eligible unit members annual lumps sums of $1,000 for attainment of a Master's degree and $1,500 for attainment of a Ph.D./J.D. degree. The arbitrator's award was less than what the FOP proposed, and did not include any incentives for Associate's or Bachelor's degrees because she credited the State's arguments and reasoned that based on the job specifications, most detectives had already attained a BA as a prerequisite to qualify for the job. State/DCJI at 122-127. The arbitrator analyzed comparability to other units, noting that only one State law enforcement contract provides an educational incentive but that eight County

prosecutors' offices provide an incentive. State/DCJI at 123-124. She also considered other relevant 16g factors raised by the State regarding interests to the public and financial impact on taxpayers, and concluded that a better educated work group is beneficial to the State. State/DCJI at 125-126. Her cost-out of her awarded incentive resulted in $21,000 annually, as compared to the State's estimate of $121,000 annually for the FOP's proposal. State/DCJI at 125-127. For the foregoing reasons, we find that the arbitrator's educational incentive award was supported by substantial credible evidence on the record, she gave due weight to the arguments and evidence presented, and she adequately explained her reasoning in light of the 16g factors.

IX. Posting of educational programs

The State opposed the FOP's proposal which would have required the State to make "information on educational programs, if available, accessible to all employees in electronic format." State/DCJI at 265. To address the State's concerns that the proposal was too vague with no limitations regarding the scope of educational programs covered, the arbitrator awarded the following provision:

> A. To the extent information is available to the Division, it will provide such information concerning degree and certification programs offered through the State colleges and to which DCJ detectives might be eligible for tuition aid, to all employees in electronic format.

[State/DCJI at 266]

Despite the limitations to State college degree and certification programs for which tuition aid might be available for DCJ detectives, on appeal the State maintains its opposition that the clause is too vague, has no limitations, and is unsupported by substantial credible evidence. The State argues that even though it is limited to New Jersey State College educational programs, there are no restrictions limiting the information-gathering and electronic posting obligations of the State to educational programs relevant to detectives' job duties. The State asserts that the arbitrator failed to consider the cost of this imposed undertaking and financial impact on the State and its taxpayers (factor 16g(6)), and failed to consider the public interest (factor 16g(1)) in having the State perform a function which could be more efficiently accomplished by any detective interested in pursuing career opportunities. The FOP responds that, in consideration of the State's objections, the arbitrator crafted a balanced clause that included multiple qualifiers to limit the State's educational program posting obligations.

Though we acknowledge that the arbitrator specifically took note of the State's arguments and testimony regarding its objections to the educational program posting clause, we find that the award did not adequately explain the basis for this clause either through analysis of the 16g factors deemed relevant

or through reliance on other evidentiary support. There is no analysis of how the interests and welfare of the public are served by this requirement, the financial impact of the time and effort that must be spent to search for the relevant educational programs and electronically post them, or comparability to conditions of other units. FOP members who are interested in educational programs could probably more efficiently search where state colleges have already posted information electronically, and then make tuition aid inquiries to the State as necessary once they have identified a program/college of interest. Therefore, the award is modified to remove the educational program information clause.

X. Reimbursement/Compensation for continuing education

The arbitrator, after considering competing FOP and State proposals and arguments for a Training and Continuing Professional Education clause, provided the following reasoning and award:

> The Union's theory is that the Division benefits from having licensed professionals such as CPA's and attorneys on its staff. Since maintaining such license requires the licensee to periodically take continuing education courses as a condition of the license, I understand the Union's argument that the Division should contribute to the cost of obtaining the course credits. But my first problem with the FOP's proposal is that I am unable to even estimate the cost of this proposal to the Division. Second, the Division should be permitted to have input into the selection of the course so that it

> can ensure that the course is related to the employee's area of responsibility the [sic] extent possible. I award the following:
>
> 1. The State will allow Division of Criminal Justice detectives to attend and successfully complete the necessary continuing professional education credits, in a timely manner, so they may keep their professional status in good standing with the issuing agency or entity.
>
> 2. The State will permit Division of Criminal Justice detectives time off with pay to attend these training programs.
>
> 3. Continuing education courses related to required professional certification, which are a direct requirement of the employee's current job responsibilities, may be considered for reimbursement funds if available. Reimbursement amounts will be consistent with the established tuition policy.
>
> 4. Selection of the continuing professional programs shall be made as to comply with the required regulations of the issuing agency. Selection of the individual training course will be at the discretion of the license holder but subject to the approval of the Division. Any program selected under this section must earn the licensee continuing training hours/credits to be eligible for reimbursement or direct payment.
>
> [State/DCJI at 175-176; emphasis added]

We find that the arbitrator's continuing education reimbursement award is well supported by substantial credible evidence on the record, and that she gave due weight to the interests and welfare of the public, comparability to other State contracts, and the financial impact on the State. As emphasized

in the clause above, the arbitrator appropriately curtailed the award to continuing education related to employees' current job responsibilities, and also limited reimbursement to be in accordance with the established tuition policy and only when funds are available. Indeed, section 3. of the clause is identical to the language of the State DCJ's Tuition Reimbursement Program as memorialized in SOP 2-95, section IV(D) since 1995. State/DCJI at 175. She balanced the benefits of maintaining an appropriately licensed/certified workforce of detectives who possess higher levels of training and education with the State's cost containment concerns.

XI. Arbitrability of disciplinary transfers

The State appeals the underlined portion of the following Transfers clauses awarded by the arbitrator:

> A. No employee shall be transferred on less than ten (10) days' notice to the employee of the proposed transfer, but this specific requirement does not apply to emergency assignments.
>
> B. Arbitration of the provisions of this clause is limited to the procedural aspects only with the exception of when it is alleged that a transfer was made for disciplinary reasons.
>
> [State/DCJI at 257-258; emphasis added]

Transfer and reassignment of police officers may not be submitted to binding arbitration, even if the transfer is allegedly disciplinary. State of New Jersey (Division of State

Police), P.E.R.C. No. 2009-74, 35 NJPER 225 (¶80 2009); State of New Jersey (Division of State Police), P.E.R.C. No. 2002-78, 28 NJPER 265 (¶33102 2002); City of Trenton, P.E.R.C. No. 2005-59, 31 NJPER 58 (¶27 2005). The discipline amendment to section 5.3 of our Act, as construed in State Troopers Fraternal Ass'n v. State, 134 N.J. 393 (1993) and amended in 1996, authorizes agreements to arbitrate minor disciplinary disputes, but that authorization does not extend to reassignments or transfers of police officers. Hudson Cty., P.E.R.C. No. 2010-57, 36 NJPER 40 (¶18 2010); Union Cty. Sheriff, P.E.R.C. No. 2003-2, 28 NJPER 303 (¶33113 2002); Borough of New Milford, P.E.R.C. No. 99-43, 25 NJPER 8 (¶30002 1998). N.J.S.A. 34:13A-25 is inapplicable because it prohibits disciplinary transfers of education employees, not police officers. Furthermore, although the FOP's Transfer clause proposals before us in P.E.R.C. No. 2014-50 differed from its final proposals to the interest arbitrator, our negotiability determination on the issue of involuntary transfers would have encompassed the FOP's proposed disciplinary transfer exception where we stated:

> [A]s part of its prerogative to match the best suited employees with particular assignments, an employer's decision to make involuntary transfers, and the basis it uses for doing so, are managerial prerogatives.
>
> [40 NJPER at 350]

We therefore reject the arbitrator's reasoning on this issue and modify the awarded language to exclude the disputed portion (i.e., "with the exception of when it is alleged that a transfer was made for disciplinary reasons").

XII. Arbitrability of minor discipline

The State argues that neither party proposed arbitration of minor discipline and that the award is not supported by substantial credible evidence on the record. The State also argues that the award permits grievants to proceed directly to binding arbitration without any internal review or hearing, which would result in greater expenditure of time and money due to no formalized opportunity for the parties to confer and attempt to settle the matter. The FOP responds that the arbitrator properly took notice of the Commission's scope decision regarding arbitrability of minor discipline, and awarded the provision based on that reasoning.

We find that the arbitrator's awarded clause allowing minor discipline to be challenged through binding grievance arbitration is supported by substantial credible evidence on the record and find no reason to disturb this portion of the award. The arbitrator conducted a thorough analysis of the parties' arguments and proposals for a Discipline clause. State/DCJI at 186-214. Consistent with the Commission's scope of negotiations decision in State of N.J. and Division of Criminal Justice NCOA,

SOA and FOP Lodge No. 91, P.E.R.C. No. 2014-50, 40 NJPER 346 (¶126 2014), aff'd 2015 N.J. Super. Unpub. LEXIS ____ (App. Div. Unpub. 2015), involving these same parties, the arbitrator awarded a disciplinary grievance procedure with a just cause standard and binding arbitration of minor discipline, and excluded major discipline from the grievance process. State/DCJI at 201-202, 210. She also noted comparability to other State contract language (State/DCJI at 196, 206) and explained how the State itself proposed its pre-existing just cause standard for minor discipline as contained in SOP "Discipline Procedures for Investigative Personnel." State/DCJI at 197, 202. Finally, we note that the FOP's proposed discipline clause, although extending into areas of major discipline which were not awarded, was comprehensive and included minor discipline. State/DCJI at 186; FOP's Appendix, Tab B.

ORDER

The interest arbitration award is affirmed, except for the following modifications:

1. Replace the first sentence of subsection 1. of the Eye Care Program clause with: "This Eye Care Program ends on June 30, 2019."

2. Remove the educational program information clause.

3. Remove the following language from section B. of the Transfers clause: "with the exception of when it is alleged that a transfer was made for disciplinary reasons."

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson and Voos voted in favor of this decision. Commissioners Jones and Wall voted against this decision.

ISSUED: September 3, 2015

Trenton, New Jersey

BIENNIAL REPORT

TAB 12

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-6193-11T3

IN THE MATTER OF THE COUNTY
OF UNION AND THE UNION COUNTY
SHERIFF and PBA LOCAL NO. 108.

Argued: April 9, 2014 – Decided: April 23, 2014

Before Judges Fuentes, Fasciale and Haas.

On appeal from the Public Employment Relations Commission, Docket No. IA-2012-037.

Kathryn Van Deusen Hatfield argued the cause for appellants County of Union and the Union County Sheriff (Bauch Zucker Hatfield, LLC, attorneys; Ms. Hatfield, of counsel and on the briefs; Elizabeth Farley Murphy, on the briefs).

James M. Mets argued the cause for respondent PBA Local No. 108 (Mets Schiro & McGovern, LLP, attorneys; Mr. Mets, of counsel and on the brief; Brian J. Manetta, on the brief).

Martin R. Pachman, General Counsel, argued the cause for respondent Public Employment Relations Commission (Mr. Pachman, attorney; Don Horowitz, Deputy General Counsel, on the statement in lieu of brief).

PER CURIAM

The County of Union and the Union County Sheriff (collectively the County) appeal from the July 19, 2012 final agency decision of the New Jersey Public Employment Relations Commission (PERC) upholding an interest arbitration award. We affirm.

PBA Local 108 (the Union) is the exclusive negotiating representative for all sheriff's officers and investigators employed by the County. On December 31, 2009, the parties' collective negotiation agreement (CNA) expired. After negotiations failed to produce a new CNA, the Union filed a petition for compulsory interest arbitration and the County filed a scope of negotiations petition. PERC appointed an arbitrator, who conducted an interest arbitration hearing on May 22, 2012. The arbitrator heard testimony from representatives of the County and the Union. The parties also submitted extensive documentary evidence for consideration.

On June 11, 2012, the arbitrator issued a thorough, 124-page decision establishing a five-year contract with a term of January 1, 2010 through December 31, 2014, with a wage freeze in 2010; a 2.25% salary increase effective January 1, 2011; a 2.5% increase for 2012 effective July 1, 2012; a 2% increase effective January 1, 2013; and a 2% increase effective January 1, 2014. The arbitrator also established new rules to be

followed when a sheriff's officer is involved in a "critical incident, such as a shooting, motor vehicle accident or physical altercation."[1]

In explaining why she established a five-year agreement, the arbitrator stated:

> There are several competing concerns to be considered in deciding the contract term. It is true that the economic future of the State and [the] County is filled with uncertainty and lack of predictability. Whether the County's budget woes will improve over the next few years or further deteriorate, is beyond speculation. While several of the recently settled contracts [the County has with other bargaining units] will expire in 2012, some other contracts expired in 2011. These successor contracts will likely have a termination date sometime beyond 2012. Therefore, while the County might prefer to have all of its law enforcement contracts expiring simultaneously, this is already not the case.
>
> The parties have been in negotiations for this agreement for two and a half years. If I award the County's proposal [for a three-year agreement], the parties will be returning to the bargaining table almost immediately for a successor agreement. Labor negotiations are costly, time consuming and stressful to the parties' relationship. I believe that labor relations stability will be enhanced by [approving] a contract with a longer term. Therefore, I intend to award a 5-year

[1] The arbitrator also awarded a new salary guide, modified health benefits, and entered other changes to the employees' rights. However, the County has not challenged these awards on appeal.

> agreement covering the period 2010 through 2014. I have kept the salary increases for the final two years low in recognition of the uncertain future in the County's budget.

The arbitrator also gave a detailed explanation for the annual increases she awarded. As required by N.J.S.A. 34:13A-16g, she addressed all of the statutory criteria, including the effect of the increases on the County's finances, as well as "the impact on the taxpayers and the County pattern among other bargaining units." To lessen the impact of the award, the arbitrator did not approve a salary increase for 2010 and delayed the salary increase for 2012 for six months. The arbitrator characterized the 2% increases for 2013 and 2014 as "modest" and explained that she granted them to "allow employees to keep pace with other sheriff's officers throughout the State and at the same time provide the County [with] the ability to control costs going forward." The arbitrator also stated:

> In 2013 and 2014, my award of 2.0% across-the-board increases does not exceed the 2% levy cap or the appropriations cap, although I acknowledge that the County will have the added costs of increment payments and a slight increase in the senior officer pay. However, of course, in 2013, and again in July, 2014, the County will experience additional savings from rising employee health care contributions. Therefore, the financial impact on the budget and the taxpayers of Union County will be minimal for 2013 and 2014.

Finally, the parties were unable to agree on contract language regarding the responsibility of a sheriff's officer to immediately speak to supervisors after being involved in a critical incident. After balancing the County's concern for prompt investigations of these incidents and the Union's request to "provide[] a level of consistency and uniform application of the rules to officers[,]" especially in situations where an officer requires medical treatment, the arbitrator approved the following contract language:

> When an officer is involved in a critical incident, such as a shooting, motor vehicle accident or physical altercation, said officer shall not be required to respond to any questions or supply any statement or written reports until he is released by the evaluating physician or other medical professional. Such delay shall not exceed two business days unless the officer is physically or mentally incapacitated.

The County appealed to PERC, arguing that the five-year agreement and salary increases were not supported by the record, and that the critical incident language violated public policy. On July 19, 2012, PERC issued a comprehensive twenty-eight page decision affirming the arbitrator's award.[2]

With regard to the issues the County raises on appeal, PERC

[2] PERC also dismissed the County's scope of negotiations petition. The County does not challenge this ruling on appeal.

observed that the arbitrator "considered the County's concerns regarding a five-year agreement[;] provided substantial analysis on the issue[;]" and properly rejected the County's arguments for the reasons set forth in her opinion. PERC also affirmed the arbitrator's award of salary increases in 2013 and 2014, stating:

> The arbitrator's analysis of the costs of the award and its impact on the taxpayers is exhaustive. The County disagrees with the weight that she gave to the comparison with the private sector, but that does not permit us to hold she is wrong. The arbitrator considered all the statutory criteria and evidence - including the County's financial evidence. As set forth above, we do not substitute our judgment on the weight given to a factor. . . . The arbitrator found that the impact on the budget and taxpayers will be minimal for 2013 and 2014. We accept that finding.

PERC also concluded that N.J.S.A. 34:13A-16.7, which prohibits an interest arbitrator from increasing base salary items by more than two percent, did not apply in this case. As set forth in N.J.S.A. 34:13A-16.9, the two percent cap only applies to agreements subject to interest arbitration that expire on or after January 1, 2011, through April 1, 2014, and to those agreements which expire prior to April 1, 2014, but for which a final settlement has not been reached as of April 1,

2014.[3] Because the CNA in this case expired on December 31, 2009, PERC determined that the cap did not apply to the arbitrator's award.

Finally, PERC found that "[t]he award of the language regarding critical incidents is not in violation of public policy." It noted that "[t]he arbitrator provided an exhaustive discussion of the statutory criteria and the weight she assigned to each factor" and appropriately "limited" the contract language "so as to not impede the County from investigating [critical] incidents." This appeal followed.

On appeal, the County challenges PERC's decision to affirm the arbitrator's decision to: (1) establish a five-year agreement; (2) award 2% salary increases in 2013 and 2014; and (3) modify the officers' reporting requirements when they are involved in critical incidents. It contends that PERC's decision was arbitrary and capricious and that the award was procured by "undue means" in violation of N.J.S.A. 2A:24-8a. We disagree.

In general, when parties are unable through labor negotiations to reach a new agreement, they are permitted to seek compulsory interest arbitration, pursuant to N.J.S.A. 34:13A-16b. Such arbitration "involves the submission of a

[3] The cap expired on April 1, 2014. N.J.S.A. 34:13A-16.9.

dispute concerning the terms of a new contract to an arbitrator, who selects those terms and thus in effect writes the parties' collective agreement." N.J. State Policemen's Benevolent Ass'n v. Town of Irvington, 80 N.J. 271, 284 (1979). The arbitration is subject to a statutorily mandated procedure under N.J.S.A. 34:13A-16g, which states:

> g. 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 factors set forth in paragraph (6) of this subsection in any award:
>
> (1) The interests and welfare of the public. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by P.L. 1976, c. 68 ([N.J.S.A.] 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 ([N.J.S.A.] 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.

(3) The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received.

(4) Stipulations of the parties.

(5) The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by P.L. 1976, c. 68 ([N.J.S.A.] 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 ([N.J.S.A.] 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 ([N.J.S.A.] 40A:4-45.45).
>
> [(Emphasis added).]

An arbitrator must give "due weight" to the nine statutory factors of subsection 16g. Irvington, supra, 80 N.J. at 287. "The arbitrator need not rely on all factors, but must identify and weigh the relevant factors and explain why the remaining factors are irrelevant." In re City of Camden, 429 N.J. Super. 309, 326 (App. Div.), certif. denied, 215 N.J. 485 (2013). The resulting explanation satisfies the requirement that the decision be based on the relevant statutory factors and that the arbitrator gave due weight to each factor. Ibid.; see also N.J.S.A. 34:13A-16f(5) (indicating that "[e]ach arbitrator's decision shall be accompanied by a written report explaining how each of the statutory criteria played into the arbitrator's determination of the final award").

"Our scope of review of PERC decisions reviewing arbitration is sensitive, circumspect[,] and circumscribed. PERC's decision will stand unless clearly arbitrary or capricious." Twp. of Teaneck v. Teaneck Firemen's Mut. Benevolent Ass'n Local No. 42, 353 N.J. Super. 289, 300 (App. Div. 2002) (citation omitted), aff'd o.b., 177 N.J. 560 (2003). "Absent violation of standards of conduct, PERC's appellate role

is to determine whether the arbitrator considered the criteria in N.J.S.A. 34:13A-16(g) . . . and rendered a reasonable determination of the issue or issues at impasse that was supported by substantial evidence in the record." Id. at 306.

Pursuant to N.J.S.A. 2A:24-8a, a court may vacate an arbitration award if it "was procured by corruption, fraud or undue means." This statute's reference to "undue means" has been construed to include "an arbitrator's failure to follow the substantive law." In re City of Camden, supra, 429 N.J. Super. at 332. However, if we find that the arbitrator did not exceed his or her authority, considered and analyzed each statutory criterion, and made findings supported by the credible evidence in the record, we must affirm. Borough of East Rutherford v. East Rutherford PBA Local 275, 213 N.J. 190, 201-02 (2013).

Our review of the arbitrator's decision in light of these principles demonstrates that she considered each statutory factor, provided a detailed and thoughtful analysis of each relevant factor, and explained which factors she weighed more heavily than others. The arbitrator did not exceed her statutory authority in: setting a five-year duration for the agreement; approving modest salary increases for 2013 and 2014; or modifying the contract language concerning officers'

involvement in critical incidents. The record fully supports each of the arbitrator's findings.

In addition, we are satisfied that PERC applied the correct standard of review, abided by the appropriate legal standards, and properly determined that the arbitrator fairly considered the N.J.S.A. 34:13A-16g factors. PERC also rendered a reasonable determination of the issues that was supported by substantial evidence in the record, and its decision is not arbitrary or capricious. We therefore affirm substantially for the reasons set forth in PERC's July 19, 2012 decision adopting the arbitrator's award.

Affirmed.

JNOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5044-12T1

IN THE MATTER OF
BOROUGH OF TENAFLY,

Respondent-Respondent,

v.

PBA LOCAL 376,

Appellant-Appellant.

Argued November 3, 2014 – Decided January 6, 2015

Before Judges Simonelli, Guadagno, and Leone.

On appeal from the New Jersey Public Employment Relations Commission, IA-2013-018.

Michael A. Bukosky argued the cause for appellant (Loccke, Correia, Limsky & Bukosky, attorneys; Leon B. Savetsky, of counsel and on the brief).

Mark S. Ruderman argued the cause for respondent Borough of Tenafly (Ruderman & Glickman, P.C., attorneys; Mr. Ruderman, of counsel; Ellen M. Horn, on the brief).

David N. Gambert, Deputy General Counsel, argued the cause for respondent New Jersey Public Employment Relations Commission (Martin R. Pachman, General Counsel, attorney; Mr. Gambert, on the brief).

Paul L. Kleinbaum argued the cause for amicus curiae New Jersey State PBA (Zazzali, Fagella, Nowak, Kleinbaum & Friedman, attorneys; Mr. Kleinbaum, of counsel and on the brief; Marissa A. McAleer, on the brief).

PER CURIAM

PBA Local 376 (PBA), appeals the June 2013 decision of the New Jersey Public Employee Relations Commission (PERC), affirming the May 2013 public interest arbitration award of Robert C. Gifford, which established the new term of the parties' collective bargaining agreement (CBA), salary increases, benefits for new hires, and general work schedule.

PBA asserts that PERC should have proceeded by rulemaking and not adjudication; PERC erred by failing to remand and direct the arbitrator to "cost-out"[1] the modified provisions for each year of the CBA; and PERC was obligated to remand because the arbitrator did not adequately explain his decision on two of the nine statutory factors.

As PERC's findings on the sufficiency of Gifford's award are well-supported by record evidence, and PERC was firmly within its statutory authority to interpret N.J.S.A. 34:13A-16.7 via adjudication and not rulemaking, we affirm.

[1] An industry term of art for conducting a cost analysis.

I.

PBA is comprised of approximately thirty-two police officers who work for respondent Borough of Tenafly (Borough). On February 25, 2013, PBA filed a Petition to Initiate Compulsory Interest Arbitration with PERC. After the Borough filed its answer, Robert C. Gifford was randomly appointed through PERC's Special Panel of Interest Arbitrators to serve as arbitrator.

Gifford conducted an interest arbitration hearing on April 5, 2013, during which both parties examined and cross-examined witnesses, submitted substantial documentary evidence, and argued orally. After the parties submitted post-hearing summations and briefs, Gifford issued his decision and award on May 6, 2013, forty-five business days after his appointment.

PBA immediately appealed the award to PERC. PERC affirmed Gifford's award and PBA appealed, raising the following points:

> POINT I
>
> PERC HAS FAILED TO FOLLOW ITS OWN REGULATION ESTABLISHED THROUGH ADJUDICATION.
>
> POINT II
>
> IN THE INSTANT CASE PERC'S REGULATION ESTABLISHED BY ADJUDICATION IS FLAWED AND SHOULD BE REVERSED.

POINT III

PERC ERRED IN AFFIRMING THE AWARD WHICH VIOLATED N.J.S.A. 34:13A-16G (6) AND (8).

POINT IV

PERC'S DECISION SHOULD BE REVERSED AND THE MATTER SENT TO A NEW ARBITRATOR FOR DETERMINATION ON ALL ISSUES IN DISPUTE.

II.

The New Jersey Employer-Employee Relations Act (Act), N.J.S.A. 34:13A-1 to -43, includes a compulsory interest arbitration procedure for police departments and police officer representatives who reach an impasse in collective bargaining negotiations. N.J.S.A. 34:13A-16(b)(2). Once negotiations stall, either party may petition to initiate this process with PERC. Ibid. The arbitrator's award can be appealed to PERC and PERC decisions are appealed to this court. N.J.S.A. 34:13A-16(f)(5)(a).

The scope of our review of PERC decisions reviewing arbitration is "sensitive, circumspect, and circumscribed." Twp. of Teaneck v. Teaneck FMBA Local No. 42, 353 N.J. Super. 289, 300 (App. Div. 2002), aff'd o.b., 177 N.J. 560 (2003). We will only reverse a PERC decision if it is arbitrary, capricious, or unreasonable. P.F. v. N.J. Div. of Developmental Disabilities, 139 N.J. 522, 529-30 (1995). Unreasonable PERC decisions include those contrary to the language of the Act

and/or "subversive of the Legislature's intent." In re Camden Cnty. Prosecutor, 394 N.J. Super. 15, 23 (App. Div. 2007).

Due weight should be accorded to an agency decision where "substantial element[s] of agency expertise [are] implicated," such as expertise in labor relations. State v. Prof'l Ass'n of N.J. Dep't of Educ., 64 N.J. 231, 259 (1974). That said, "[j]udicial scrutiny in public interest arbitration is more stringent than in general arbitration . . . [because it] is statutorily-mandated and public funds are at stake." Hillsdale PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71, 82 (1994).

As to PERC's review, PERC defers to an arbitrator's judgment, exercise of discretion, and labor-relations expertise. City of Newark, P.E.R.C. No. 99-97, 26 NJPER 242 (¶30103 1999). As such, PERC will not vacate an interest award unless the appellant demonstrates that: (1) the arbitrator failed to give "due weight" to the factors in N.J.S.A. 34:13A-16(g) that he deemed relevant; (2) the arbitrator violated the professional standards in N.J.S.A. 2A:24-8 or -9; or (3) the award is not supported by substantial evidence in the record as a whole. See Hillsdale, supra, 137 N.J. at 82; accord In re City of Camden, 429 N.J. Super. 309, 325-26 (App. Div.), certif. denied, 215 N.J. 485 (2013).

An arbitrator must provide a reasoned explanation for the award, state which statutory factors are relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor. Hillsdale, supra, 137 N.J. at 83-84 (citing N.J.S.A. 34:13A-16(g)). "Without such an explanation, the opinion and award may not be a 'reasonable determination of the issues.'" Ibid. (quoting N.J.A.C. 19:16-5.9). An arbitrator need not rely on all factors in fashioning the award, but must consider the evidence on each. Ibid.

In 2010, legislation was passed directed at terminating abuses of the pension systems and controlling the cost of providing public employee retirement, health care, and other benefits. See Paterson Police PBA Local 1 v. City of Paterson, 433 N.J. Super. 416, 419-21 (App. Div. 2013) (describing history of bills and provisions of Special Session Joint Legislative Committee on Public Employee Benefits Reform, Final Report (N.J. 2006)).

As a result, N.J.S.A. 34:13A-16 was amended to prohibit an interest arbitration award from increasing public employer "base salary" costs by more than two percent per contract year. See N.J.S.A. 34:13A-16.7(b) (codifying L. 2010, c. 105, § 2). Base salary is a statutory term of art, defined as "salary provided

pursuant to a salary guide or table and any amount provided pursuant to a salary increment, including any amount provided for longevity[.]" N.J.S.A. 34:13A-16.7(a).

"Base salary" also includes "any other item agreed by the parties" or "understood by the parties in the prior contract." Ibid. It expressly excludes "non-salary economic issues, pension and medical insurance costs," where non-salary economic issues are defined as "any economic issue that is not included in the definition of base salary." Ibid. This seemingly circular definition is clarified by the fact that if certain items were not included in base salary in kthe previous CBA, they may not be considered as base salary items for the new award. See N.J.S.A. 34:13A-16.7(b).

As a consequence of the legislation, PERC modified the interest arbitration award review standard to insure that the arbitration awards will not increase base salary by more than two percent per contract year or six percent in the aggregate for a three-year contract award. See Borough of New Milford, and PBA Local 83, P.E.R.C. No. 2012-53, 38 NJPER 340 (¶116 2012). Because the instant award was subject to the two-percent salary cap, PERC was required to determine whether arbitrator Gifford complied with and adequately explained his awards

consistent with the requirements of both N.J.S.A. 34:13A-16(g) and N.J.S.A. 34:13A-16.7.

A.

As to PBA's first argument, PERC acted within its authority to interpret and apply N.J.S.A. 34:13A-16.7 through adjudication rather than rulemaking. It is well-settled that administrative agencies have broad discretion in fulfilling their statutory duties, including "the ability to select those procedures most appropriate to enable the agency to implement legislative policy." Texter v. Dep't of Human Servs., 88 N.J. 376, 385 (1982). To that end, an "agency has discretion to choose between rulemaking, adjudication, or an informal disposition in discharging its statutory duty[.]" Nw. Covenant Med. Ctr. v. Fishman, 167 N.J. 123, 137 (2001).

Courts generally defer to that choice "so long as the selection is responsive to the purpose and function of the agency." Texter, supra, 88 N.J. at 385-86. Indeed, agency interpretation of an existing statute by adjudication is often "inferable from the statute" itself. In re Application of Twp. of Jackson, 350 N.J. Super. 369, 378-79 (App. Div. 2002) (formal rulemaking was not required because statute and regulations implied agency adjudication of statute).

The arbitration is subject to a statutorily mandated procedure under N.J.S.A. 34:13A-16(g), which provides that "[t]he 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." This supports PERC's decision to affirm Gifford's award as to the statutory cap rather than promulgate rules.

Moreover, PERC has adjudicated N.J.S.A. 34:13A-16.7 in at least three prior decisions. See, e.g., New Milford, supra, 38 NJPER 340; Borough of Point Pleasant, P.E.R.C. No. 2013-28, 39 NJPER 203 (¶65 2013); Borough of Ramsey, P.E.R.C. No. 2012-60, 39 NJPER 17 (¶3 2012). The fact that the Legislature has not acted in response to PERC's adjudicative interpretations of N.J.S.A. 34:13A-16.7 is evidence of PERC's conformity with the Legislature's intent. Paterson, supra, 433 N.J. Super. at 429.

In Paterson, we interpreted the definition of "base salary" by relying on the language of subsection 16.7 and guidelines issued by two administrative agencies, the Division of Local Government Services (DLGS) and Division of Pension and Benefits (DPB). Ibid. Judge Espinosa, writing for our court, held that the "Legislature did not disavow the interpretation adopted by DLGS and DPB. Generally, the fact that the Legislature has not

acted in response to an agency's interpretation is 'granted great weight as evidence of its conformity with the legislative intent.'" Ibid. (quoting Klumb v. Bd. of Educ. of Manalapan-Englishtown Reg'l High Sch. Dist., 199 N.J. 14, 24-25 (2009)).

Further, and as the Borough correctly notes, those cases cited by PBA which hold that rulemaking is preferable to adjudication are distinguishable here.[2] PBA principally relies on Crema v. New Jersey Department of Environmental Protection, which held that "[w]hen the agency is concerned with 'broad policy issues' that affect the public-at-large or an entire field of endeavor or important areas of social concern, or the contemplated action is intended to have wide application and prospective effect, rulemaking becomes the suitable mode of proceeding." 94 N.J. 286, 299 (1983).

PBA failed to note, however, that the broad policy issues in Crema were pervasive environmental matters affecting the general populace, as opposed to the narrow question of interpreting base salary in a statute affecting only those public employees whose contracts are subject to compulsory interest arbitration. Id. at 302 (stating that "health and

[2] PBA also improperly relies on Mortgage Bankers Association of New Jersey v. New Jersey Real Estate Commission, 200 N.J. Super. 584 (App. Div 1985), which was reversed by our Supreme Court. 102 N.J. 176 (1986).

quality of life" and the "widespread effects upon the public at large for the indefinite future" command "special importance" in the law). Further, the agency in Crema was not merely interpreting an existing statute, but acting outside of any statutory or regulatory authority. Ibid.

Similarly, PBA relies on Vi-Concrete Co. v. New Jersey Department of Environmental Protection, which is distinguishable because it dealt with the far-reaching issue of environmental damage, and the agency there did not interpret an existing statute but offered relief (a landfill permit) outside of its statutory authority. 115 N.J. 1, 12-13 (1989). Likewise, DelRossi v. Department of Human Services is distinguishable because the agency there was specifically directed by the Legislature to discharge its duties through rulemaking and not adjudication. 256 N.J. Super. 286, 292 (App. Div. 1992).

In sum, there is no evidence or authority to suggest, let alone mandate, that PERC should have promulgated rules interpreting N.J.S.A. 34:13A-16.7 before adjudicating this matter.

B.

PBA next argues that PERC erred by failing to remand the award to a different arbitrator because Gifford did not adequately analyze the criteria of N.J.S.A. 34:13A-16(g)(6) or

(8). The Act expressly requires an arbitrator to analyze evidence on factor (6), and a failure to do so should thus be grounds for remand. N.J.S.A. 34:13A-16(f)(3) and (g). Otherwise, an arbitrator "need rely not on all factors, but only on those that the arbitrator deems relevant." Hillsdale, supra, 137 N.J. at 83.

PBA's entire argument on this point consists of the single, unsupported assertion that "[the] arbitrator basically skimmed through the criteria" in subsections (6) and (8). PBA raised this argument below and PERC dismissed it, finding:

> [T]he arbitrator addressed all nine factors on pages 143 through 154 of his decision[3]. . . . The arbitrator gave greater weight to the interests and welfare of the public, the statutory restrictions imposed on the employer (the 2% cap) and the internal comparison with the Borough's four other employee units. The arbitrator weighed the other factors and satisfactorily explained why they were not relevant.
>
> . . . .
>
> Based on the totality of the arbitrator's decision and award, taking into account the constraints placed on him based on the 2% cap, we find that the arbitrator gave due weight to the subsection 16g factors judged relevant to the resolution of this matter and explained the weight he afforded to each of the factors in an appropriate manner.

[3] This reference is to the arbitrator's conclusions. The arbitrator's analysis is found on pp. 78-142 of his award.

Upon our review of the record, we agree with PERC's assessment of Gifford's award. Gifford began with a thorough analysis of the nine statutory factors and interpretive case law. He discussed the evidence presented on all nine factors,[4] and explained that he assigned greater weight to three factors: the interests and welfare of the public; the statutory cap; and internal comparisons with other Borough units.

Gifford addressed factor six, the financial impact of the award on the governing unit, on pages 133-35 of his decision. He noted that L. 2010, c. 105 (now codified at N.J.S.A. 34:13A-16.7) amended factor six to require consideration of "the limitations imposed upon the local unit's property tax levy pursuant to section 10 of P.L. 2007, c. 62 (C40A:4-45.45)[.]"

Gifford noted that the amendment "emphasizes the importance of the restriction on raising revenue through taxes by the local government tax levy cap in rendering an award." Quoting Hillsdale, supra, 137 N.J. at 85-86, Gifford observed that our Supreme Court has held that the "considerations under this factor do not equate with a municipality's ability to pay," but instead regard the municipality's ability to raise taxes in light of the levy cap.

---

[4] Gifford noted factor (4) was inapplicable because there were no party stipulations in this case.

After this analysis, Gifford found that "[t]he state of the economy directly impacts the Borough's ability to raise revenue through taxes to pay for police salary increases and benefits." He discussed New Jersey's high unemployment rate, compared layoff and unemployment statistics among different municipalities in Bergen County (where the Borough is located), and explained that "[c]ontinuing layoffs in the private and public sector in New Jersey dramatically impact the Borough's ability to pay for the salary increases and benefits sought in this interest arbitration."

Gifford then compared employment statistics of several New Jersey police forces, noting the "surge" of retirements, "struggl[es] with lean staffing," and an overall decline of four percent in police staffing levels statewide. Gifford concluded that "the continuing after effects of the deepest recession since the Great Depression of 1929 continue to impact the Borough's ability to support continuing increases in PBA salary and benefits."

In arriving at his award, Gifford found that

> the Borough's tax levy cap calculation sheet for 2012 indicates that the amount to be raised by taxation was $461,209 below the maximum allowable amount ($20,325,959 compared to $20,787,168). In addition, the Borough had an available levy cap bank from 2011 of $806,193. As to the appropriations cap, the total 2012 budget of $19,014,432

> was $2,479,111 below the total general appropriations for municipal purposes cap of $21,493,543. With respect to surplus, the Borough indicates that its surplus balance was $3,333,959 as of January 1, 2010, $2,687,167 as of January 1, 2011, $2,967,390 as of January 1, 2012, and $2,580,670 as of January 1, 2013.
>
> I have calculated the awarded base salary increases including salary, holiday pay, education pay, and longevity to be $106,222 in 2013, $107,242 in 2014 and $0 in 2015. The total cost of the awarded base salary increases that include salary, holiday pay, education pay, and longevity over the three (3) year term of the contract is $213,464.
>
> Having considered the entire record, I conclude that the financial impact of this Award as outlined above will not adversely affect the governing unit, its residents and its taxpayers[.]

As to factor eight, Gifford noted that it "requires an Interest Arbitrator to consider the 'continuity and stability of employment' in determining a reasonable economic package." He found that the Borough's proposal "will best allow the Borough to maintain and continue a stable work force and avoid additional layoffs in the Police Department and throughout the municipality," as well as "more reasonably protect the police officers' stability and continuity of employment than the PBA's demands."

Upon reviewing the evidence, he concluded that his awarded modifications "are reasonable under the circumstances presented

and will maintain the continuity and stability of employment given the legal constraints on the amount that can be awarded herein [i.e., the statutory cap]." Gifford did not give great weight to this factor.

The above record fully supports PERC's conclusion that Gifford gave "due weight" to the statutory factors and explained the weight he afforded to each of the factors in "an appropriate manner." There is no support in the record for PBA's assertion that Gifford "skimmed" through factors six and eight. Because PERC's decision was based on substantial record evidence, it was neither arbitrary, capricious, nor unreasonable.

C.

Finally, PBA argues that PERC should have remanded this matter because arbitrator Gifford failed to cost-out every modified provision for each year of the CBA. Specifically, PBA argues that the arbitrator had to cost-out his elimination of longevity pay and terminal leave and limitation of vacation and personal days for those hired after May 7, 2013. PBA makes this argument despite acknowledging that a full cost-out of these changes for new hires was impossible. Its argument that remand is required to complete an admittedly, impossible task is illogical and inapposite to controlling precedent.

New Milford speaks to an arbitrator's ability to cost-out potentially speculative costs:

> Since an arbitrator, under the new law, is required to project costs for the entirety of the duration of the award, calculation of purported savings resulting from anticipated retirements, and for that matter added costs due to replacement by hiring new staff or promoting existing staff are all too speculative to be calculated at the time of the award. The Commission [PERC] believes that the better model to achieve compliance with P.L. 2010 c. 105 [now codified at N.J.S.A. 34:13A-16.7] is to utilize the scattergram demonstrating the placement on the [salary] guide of all of the employees in the bargaining unit as of the end of the year preceding the initiation of the new contract, and to simply move those employees forward through the newly awarded salary scales and longevity entitlements. Thus, both reductions in costs resulting from retirements or otherwise, as well as any increases in costs stemming from promotions or additional new hires would not affect the costing out of the award[.]
>
> [New Milford, supra, 38 NJPER 340 (emphasis added).]

PERC next addressed the statutory cap in Borough of Ramsey, which held that speculative costs relating to new hires "should not affect the costing out of the award [because] N.J.S.A. 34:13A-16.7(b) speaks only to establishing a baseline for the aggregate amount expended by the public employer on base salary items for the twelve months immediately preceding the expiration of the [CBA]." Borough of Ramsey, supra, 39 NJPER 17.

Here, Gifford relied heavily on both New Milford and Ramsey in fashioning his award. As to costing-out, Gifford wrote:

> In accordance with PERC's standards [i.e., New Milford and Ramsey], by utilizing the same complement of officers employed by the Borough as of December 31, 2012 over a term of three (3) years, and assuming for the purposes of [projection] there are no resignations, retirements, promotions or additional hires, the increases to base salary awarded herein increase the total base salary including salary, holiday pay, education pay and longevity pay as follows:
>
> | Base Year | Total Base Salary | Increase from Prior Year |
> |---|---|---|
> | 2012 | $3,763,060 | |
> | 2013 | $3,922,636 | $106,222 |
> | 2014 | $4,029,877 | $107,242 |
> | 2015 | $4,029,877 | $0 |
>
> Total Increase: $213,464

Gifford therefore followed the directive in New Milford, to use existing personnel numbers for the twelve months preceding the new CBA to project costs over its full duration, rather than use actual (if nonexistent) figures to cost-out future expenses as PBA suggests.[5] He awarded a three-year contract effective January 1, 2013 through December 31, 2015. He used the undisputed figure of $3,763,060 from the last twelve months of

[5] PBA mistakenly argues that Gifford "did not and could not project costs resulting from its elimination and modification of longevity, terminal leave benefits, vacation and personal days for new hires." The award expressly includes those items within the base salary calculus.

the preceding contract to calculate that he could not award more than $225,784 (i.e., six percent of $3,763,060) in base salary increases over the three-year term. He ultimately awarded $213,464 in base salary increases over the full three years of the contract.

PERC found that (1) Gifford complied with PERC's guidance in Ramsey and New Milford, (2) PBA did not dispute the financial information provided by the Borough to calculate base salary in the new CBA, (3) Gifford properly calculated that he "could not award base salary increases of more than $225,784 over the three year term of the new contract," and (4) Gifford's awarded base salary increase "complied with the statutory 2% cap."

PERC further found that

> [n]either the arbitrator nor the parties had the ability to cost out the award with respect to additional new hires because it was not known at the time of the arbitration proceeding how many new employees would be hired during the term of the new contract.

PERC concluded by distinguishing this case from Point Pleasant. According to PERC, the Point Pleasant award was vacated because

> unlike in this case, "[t]here was no detailed analysis of the costs of the base year, . . . no analysis as to how these costs would be calculated in [future years of the contract,] . . . nor was there a calculation demonstrating how the award met

> the 2% salary cap requirements of N.J.S.A. 34:13A-16.7."

PERC thus implied that it found Gifford's analysis to be sufficiently detailed and his "cost-out" to comply with the requirements of N.J.S.A. 34:13A-16.7. PERC based its decision on controlling law, including its own prior guidance, and a review of arbitrator Gifford's careful calculations. PERC's decision as to costing-out was thus neither arbitrary, capricious, nor unreasonable.

We find no support for PBA's argument that a remand is required, let alone a remand to a new arbitrator.

Affirmed.

222 N.J. 310; 118 A.3d 350;
2015 N.J. LEXIS 847, *

1 of 73 DOCUMENTS

IN THE MATTER OF BOROUGH OF TENAFLY, RESPONDENT-RESPONDENT, v. PBA LOCAL 376, APPELLANT-PETITIONER.

C-1076 September Term 2014, 075516

SUPREME COURT OF NEW JERSEY

222 N.J. 310*; *118 A.3d 350*; *2015 N.J. LEXIS 847

July 14, 2015, Decided
July 20, 2015, Filed

PRIOR HISTORY: *Borough of Tenafly v. PBA Local 376, 2015 N.J. Super. Unpub. LEXIS 37 (App.Div., Jan. 6, 2015)*

JUDGES: [*1] Honorable Stuart Rabner, Chief Justice.

OPINION

ON PETITION FOR CERTIFICATION

A petition for certification of the judgment in A-005044-12 having been submitted to this Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied, with costs.

WITNESS, the Honorable Stuart Rabner, Chief Justice, at Trenton, this 14th day of July, 2015.

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4242-13T1

IN THE MATTER OF
COUNTY OF MORRIS, MORRIS
COUNTY SHERIFF'S OFFICE,
and PBA LOCAL 298.

Argued: February 10, 2015 – Decided: February 24, 2015

Before Judges Haas and Higbee.

On appeal from the Public Employment Relations Commission, Docket No. IA-2012-035.

Stephen E. Trimboli, Special County Counsel, argued the cause for appellant County of Morris/Morris County Sheriff's Office (Trimboli & Prusinowski, LLC, attorneys; Daniel O'Mullan, Morris County Counsel and Mr. Trimboli, on the brief).

Steven Backfisch argued the cause for respondent PBA Local 298 (Lindabury, McCormick, Estabrook & Cooper PC, attorneys; Donald B. Ross, Jr., on the brief).

Martin R. Pachman, General Counsel, attorney for respondent Public Employment Relations Commission (Mary E. Hennessy-Shotter, Deputy General Counsel, on the statement in lieu of brief).

PER CURIAM

This case returns to us after remand proceedings directed by our previous opinion. In re Cnty. of Morris, Morris Cnty. Sheriff's Office, No. A-1109-12T1 (App. Div. November 15, 2013)

[hereinafter Morris County]. In an April 10, 2014 final agency decision, the New Jersey Public Employment Relations Commission (PERC) approved an arbitrator's revised interest arbitration award, which established a four-year contract for the period between January 1, 2011 and December 31, 2014. Appellant County of Morris, Morris County Sheriff's Office appeals from that decision, arguing that the arbitrator and PERC exceeded the scope of our remand order by declining to limit their evaluation to the 2011 contract year. We disagree and, accordingly, affirm PERC's final decision.

We begin by referencing the essential background facts as set forth in our earlier opinion:

> PBA Local 298 (the Union) is the exclusive bargaining agent for all sheriff's officers employed by [appellant]. On December 31, 2010, the parties' collective bargaining agreement (CBA) expired. On April 17, 2012, [appellant] filed a Petition to Initiate Compulsory Interest Arbitration. PERC appointed an arbitrator, who conducted an interest arbitration hearing on May 17, 2012 and June 4, 2012. On June 18, 2012, the arbitrator issued a written decision establishing a three-year contract with a term of January 1, 2011 through December 31, 2013. The arbitrator awarded the Union step increments for 2011, with no other salary increases in that year. He further awarded the Union two percent salary increases in each of the final two years of the contract, but with no step movement in those years.
>
> [Appellant] and the Union both appealed to PERC. [Appellant] challenged the

> arbitrator's decision to award the step increases in 2011. The Union sought additional salary increases. On July 19, 2012, PERC issued a decision upholding both appeals and remanding the matter to the arbitrator. PERC found that the arbitrator failed to make adequate findings regarding the statutory factors set forth in N.J.S.A. 34:13A-16g, which govern an arbitrator's determination of an interest arbitration. Thus, PERC concluded that "[t]his award must be remanded to the arbitrator to provide an independent analysis of each of the statutory factors and to explain how the evidence and each relevant factor was considered in arriving at his award."
>
> On August 28, 2012,[1] the arbitrator issued a new decision reaffirming the terms of his prior award, including the award of step increments for 2011. [Appellant] appealed to PERC and argued that the arbitrator had again failed to consider the factors set forth in N.J.S.A. 34:13A-16g.[1] On October 11, 2012, PERC issued its decision and affirmed the arbitrator's award.
>
> [Morris County, supra, slip. op. at 2-3 (footnotes omitted).]

Appellant appealed PERC's decision to this court. Id. at 3. It "argue[d] that PERC's affirmance of the award was arbitrary and capricious. It contend[ed] that PERC should have vacated the award because the arbitrator failed to fully analyze the factors enumerated in N.J.S.A. 34:13A-16g." Id. at 4.

In our opinion, "[w]e agree[d]" with appellant's contention that the arbitrator failed to consider the statutory factors as required by N.J.S.A. 34:13A-16g. Ibid. While appellant's

appeal, and therefore much of our discussion, was focused upon the arbitrator's award, and PERC's approval, of step increments in 2011, we observed that "[w]hen an arbitrator's award fails to adequately address the criteria set forth in N.J.S.A. 34:13A-16g, the award should be vacated and the matter remanded to ensure compliance with the statutory requirement." Id. at 9.

In the decision under review in our prior opinion, the arbitrator did not adequately analyze all of the statutory factors with regard to any aspect of the award including, but certainly not limited to, the 2011 step increments. Accordingly, we were "constrained to conclude that the arbitrator failed to meet the requirements of N.J.S.A. 34:13A-16g." Id. at 10. To address this deficiency, we remanded the matter to PERC "to develop the record regarding the arbitrator's analysis of the factors established in N.J.S.A. 34:13A-16g consistent with [our] opinion[,]" and left "this task to the discretion of PERC." Id. at 13-14 (footnote omitted).

On remand, PERC appointed a new arbitrator to consider the parties' competing contentions on all aspects of the prior award. Consistent with our direction, PERC advised the arbitrator that "the entire award" had been remanded for review. The arbitrator therefore advised appellant and the Union that "all unresolved issues as set forth in the parties' final offers

and presented to [the former arbitrator] are before me for a determination." The arbitrator further explained that the entire award, rather than just a single year, had to be reviewed because

> an arbitrator's award must be based upon the entirety of the dispute and no single element can be considered independently from the whole award.
>
> In addition, an arbitrator must base his or her award upon the most updated and comprehensive facts available at the time that the award issues, rather than basing the award on financial projections or speculation.

Therefore, the arbitrator permitted the parties "to supplement the record to include both updated financial data and updated payroll information for employee bargaining unit members."

The arbitrator conducted a hearing on February 14, 2014 and considered the parties' final offers, documentary evidence, and post-hearing briefs. On March 4, 2014, the arbitrator issued a ninety-two page written decision establishing a four-year contract with a term of January 1, 2011 through December 31, 2014. In her thorough opinion, the arbitrator carefully analyzed all of the required statutory factors. With regard to "[s]alary [i]ncreases and [i]ncrements" over the four-year contract period, the award established the following terms:

> 2011 – Wage freeze and [salary] guide freeze[.]

> 2012 – Effective January 1, 2012[,] all employees at top pay shall receive a 2.5% salary increase. All employees eligible for step guide increases shall move one step on the guide on their anniversary in 2012.
>
> 2013 – Effective January 1, 2013[,] all employees at top pay shall receive a 1.632% salary increase. All employees eligible for step guide increases shall move one step on the guide on their anniversary in 2013.
>
> 2014 – Effective January 1, 2014[, a revised salary guide will be implemented and] . . . employees will move horizontally across the guide from their current step to their new step and their salaries shall be adjusted, as required [by the revised salary guide].

Appellant appealed the revised award to PERC, arguing that the arbitrator should have limited her analysis of the prior award to the 2011 contract year. In its April 10, 2014 decision, PERC rejected this contention, explaining that it "determined that the arbitrator could not solely consider the 2011 step increments without looking at the entire award [because] a change to the step increments would have an impact on the rest of the award that was appealed." Therefore, PERC "instructed the arbitrator that all aspects of the interest arbitration statute apply in this case." After considering the arbitrator's analysis of the parties' competing contentions, PERC concluded:

> The arbitrator complied with our directive on remand and was correct in

> considering the entire award and all aspects of the interest arbitration statute when formulating her award. We find that the arbitrator issued a well[-]reasoned opinion and award that complied with the relevant statutes and is supported by substantial credible evidence in the record as a whole.

This appeal followed.

On appeal, appellant again contends that the arbitrator and PERC erred by considering any contract term other than the 2011 step increases on remand.[1] We disagree.

As appellant correctly points out, the terms and scope of a remand order issued by this court bind the "tribunal of first instance[,]" in this case PERC. R. 2:9-1(b); see Flanigan v. McFeely, 20 N.J. 414, 420 (1956). However, we do not perceive our prior remand order as limiting PERC and the arbitrator's consideration of the prior award to the 2011 step increments. Rather, as discussed above, the first arbitrator's decision failed to adequately address the statutory factors set forth in N.J.S.A. 34:13A-16g for all the contract years. Thus, we remanded the matter to PERC "to develop the record regarding the arbitrator's analysis of the factors established in N.J.S.A. 34:13A-16g consistent with [our] opinion." Morris County,

[1] Appellant does not otherwise challenge the propriety of PERC's decision affirming the interest arbitration award.

supra, slip op. at 13-14. We entrusted the remand "to the discretion of PERC." Id. at 14 (footnote omitted).

In accordance with our direction, PERC determined that the entire award had to be re-evaluated after a careful consideration of all of the required statutory factors. It therefore instructed the new arbitrator to perform this task.

We discern no basis for disturbing PERC's determination. As noted above, we believe the terms and scope of our remand order were clear. However, even if they were not, PERC was not precluded, under the circumstances of this case, from ordering that the entire award be re-examined as required by N.J.S.A. 34:13A-16g. See Bubis v. Kassin, 353 N.J. Super. 415, 424 (App. Div. 2002) (holding that a "broad and open-ended" remand order did not preclude the trial court from considering remedies other than those we expressly directed be considered on remand). As PERC explained, "the arbitrator could not solely consider the 2011 step increments without looking at the entire award [because] a change to the step increments would have an impact on the rest of the award that was appealed." We agree.

Affirmed.

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2471-12T3
A-4643-12T3

IN THE MATTER OF CITY OF
CAMDEN and CAMDEN ORGANIZATION
OF POLICE SUPERIORS.

Submitted October 28, 2014 – Decided March 11, 2015

Before Judges Nugent, Accurso and Manahan.

On appeal from the Public Employee Relations Commission, Docket No. IA-2013-007.

Brown & Connery, LLP, attorneys for appellant (A-2471-12)/respondent (A-4643-12) City of Camden (Michael J. DiPiero and Michael J. Watson, on the briefs).

Alterman & Associates, attorneys for respondent (A-2471-12)/appellant (A-4643-12) Camden Organization of Police Superiors (Jessica L. Arndt and Kurt D. Raatzs, on the briefs).

Martin R. Pachman, General Counsel, attorneys for respondent (both A-2471-12 and A-4643-12) New Jersey Public Employment Relations Commission (Don Horowitz, Deputy General Counsel, on the briefs).

PER CURIAM

In these consolidated appeals, the City of Camden (the City) appeals from the Public Employee Relations Commission (PERC) decision of January 25, 2013, vacating and remanding an

arbitration award in its favor. The Camden Organization of Police Superiors (COPS) appeals the PERC decision of May 13, 2013, affirming the arbitration award in favor of the City after remand. After consideration of the record in light of the applicable law and the procedural history, we affirm the May 13 decision of PERC, and dismiss the City's appeal of the January 2013 decision as interlocutory and made moot by the subsequent decision in its favor.

When the collective bargaining agreement between the City and COPS expired on December 31, 2008, the parties engaged in negotiations. After nearly three years of negotiations, the parties failed to reach an agreement. On October 15, 2012, COPS filed a petition to initiate compulsory interest arbitration pursuant to the Police and Fire Public Interest Arbitration Reform Act (the Compulsory Interest Arbitration Act), N.J.S.A. 34:13A-14 to -21. The City filed an answer to the petition and an arbitrator was designated. After two pre-hearing sessions, the hearing took place. Following submission of closing briefs, the arbitration award was filed. The award provided for a contract with a term of January 1, 2009 to December 31, 2014. The arbitrator found in favor of the City on almost every matter at issue, including the freezing of wages and a payout limit for accumulated vacation and holiday pay for retirees.

The award, as it related to economic issues, was substantially influenced by the arbitrator's view of the "depth of the fiscal crisis" faced by the City.[1] The arbitrator noted:

> It has become very clear that the positions taken by the Union are categorically inconsistent with those of the City. Of prominent clarity is the virtually absolute refusal of the Union to recognize the depth of the fiscal crisis. In spite of years of working without a new contract the approach of the Union here has been to largely ignore the depth of that issue. Instead, the Union, seemingly guided by the achievements of others in negotiations with the City, has replicated all of the key issues which have been heard by other arbitrators and which have resulted, in some situations, to reasonably generous awards. The fact that the City has ignored those applying to its employees, which have been appealed on the basis of having no funds, seems to have been no factor.
>
> . . . .
>
> I place a great deal of emphasis on the interests of the citizens. The City is virtually in abject poverty and heavily dependent upon the Federal government and the State for financial support. That support has been the source of more than 80% of the City's budgets for several years. During recent times the actual dollar value of support has shrunk or in some instances been provided with conditions attached which require the City to eventually pay greater proportions of the required revenues. Those

[1] In a reported decision we recited the Legislature's response to the "fiscal distress" of the City and other similarly situated municipalities. See In re City of Camden, 429 N.J. Super. 309, 316-18 (App. Div. 2013).

> support programs have begun to show a long range shrinkage and in some cases a complete discontinuance of funding.

On December 27, 2012, COPS filed an appeal of the award to PERC seeking that the award be vacated. COPS argued the arbitrator failed to properly apply the statutory factors set forth in N.J.S.A. 34:13A-16(g), and the award was not based on substantial credible evidence. The City argued the award was in conformance with each of the statutory factors and was based on substantial credible evidence.

PERC issued its decision on January 25, 2013. The decision vacated the award and remanded the matter to the arbitrator for a new award within forty-five days. Upon remand PERC sought "clarification" from the arbitrator:

> The arbitrator refers throughout his award to the fiscal crisis in which the City finds itself, and points to recent arbitration awards involving other negotiating units which were unpaid due to lack of funds. Indeed, the prevalent theme throughout the award is the arbitrator's belief that the City did not have available funding to provide any increased costs that he might award. In its brief on appeal, COPS vehemently argues that all awards from previous arbitrators were in fact paid in full. During the hearings, the City denied that one of the awards had been paid, and asserted that the other was paid in part due to unexpected grants received by the City. Since the arbitrator's findings regarding the City's fiscal crisis in part relied upon its inability to fund these previous awards, clarification is needed regarding the

> payment status of these awards. On remand, the arbitrator should seek to verify if in fact these awards were paid, and the source of the funds utilized to make any payments that have occurred. The arbitrator should also explain whether and how any new information or clarification coming to him during the remand affects his ultimate conclusion regarding the existence of the City's fiscal crisis and his ultimate award.

PERC further directed the arbitrator provide clarification or explanation whether the application of the $15,000 limit for payment of accumulated vacation and holiday credits at retirement is prospective or retroactive. Additionally, the arbitrator was instructed to identify and explain the 2006 freezes referenced in the award, elaborating on the interplay, if any, between the limit and the freezes. PERC also directed the arbitrator to clarify his finding that "the appointment of officers to alternate positions was ruled upon above," as well as address the COPS assertions that the decision was not in consideration of evidence relative to the City's agreement to provide other employees with wage increases and that the arbitrator failed to address its severance proposals.

PERC ordered the new award must be within "[forty-five] days of this decision" and "[a]ny additional appeal by the parties must be filed within seven calendar days of service of the new award."

The City filed an appeal seeking to reverse the Commission's vacation and remand of the December 2012 arbitration award. During the pendency of the appeal, and after the remand by PERC, the arbitrator issued a decision which affirmed the findings of the December 2012 award and clarified the issues raised by the Commission.

COPS filed an appeal of the arbitrator's decision to PERC seeking to overturn the award and have the matter transferred to a new arbitrator. PERC affirmed the award.

In affirmation of the award and in deference to the arbitrator's "judgment, discretion and labor relations expertise[,]" PERC held:

> [T]he arbitrator properly applied each of the statutory factors and explained the weight he afforded to each of the factors. The arbitrator found the interests and welfare of the public to be the paramount factor that was given the most consideration, and reaffirmed this position in his supplemental award. He noted that the City is in abject poverty and heavily dependent on Federal and State government for financial support, and that such support has been more than 80% of the City's budget for several years. He also found that the support programs have begun to show long range shrinkage and in some cases a complete discontinuance of funding. He found that some of the State funding for hiring hew police officers is conditioned upon permanent offers of employment to those officers. He also noted the City's high level of unemployment, as evidenced by the

fact that property taxes represent only about 17% of the City's income.

With regard to comparison of wages, he found that other police are the only relevant comparisons. He found that these superior officers are well paid in comparison with other police officers within a reasonable area where data had been provided. Regarding the overall compensation presently received he found that given the City's dire financial condition, there was no evidence of availability of funds to award any increases, and that the primary focus if funds did become available should be to hire new officers. He also found that his awarding no increases under the contract was important when considering the continuity and stability of employment, so as not to endanger the loss of State or federal funding that is conditioned upon the City making permanently hired officers. Given the City's dire financial condition, he did not place great weight on the cost of living factor since he found that the City could not absorb the impact of any increases to be paid under the Award. He found that given that he awarded the City's proposal of freezing the salary schedule, the lawful authority of the employer, the financial impact on the governing unit and the residents, and the statutory restrictions imposed on the City was given no weight.

As to the "supplemental award," PERC found:

[T]he arbitrator expanded on the issues that we identified as needing clarification in our January 25, 2013 decision. He found that the COPS' assertion the City had paid in full recent arbitration awards was without merit and that any payments were made after he issued his original award and therefore are outside of the record presented to him. He confirmed the $15,000 limitation for the accrual of accumulated

> vacation and holiday time for retirees. In response to COPS assertion that he failed to consider evidence that the City has recently voluntarily agreed to provide other employees with wage increases that were on par with those requested by COPS, he found that this information was not presented to him during the initial arbitration hearing. Additionally, he stated that white and blue collar employees are not an appropriate comparison for police superiors who enjoy more generous wages and benefits. We also asked him to clarify his findings on COPS proposal that all supervisory officers be appointed based on established Civil Service. He found that such proposal was within the purview of the Civil Service Commission and that COPS had presented no evidence that the City had violated any Civil Service standards or promotional examinations. Given the expanded analysis provided by the arbitrator on the remanded issues, we now affirm the award.

COPS filed an appeal of PERC's decision. The City filed a motion to consolidate the appeals which we granted.

I.

We commence our analysis by addressing the appeal filed by the City. PERC is a state administrative agency. An aggrieved party may appeal to this court as a matter of right from a final decision by PERC. R. 2:2-3(a)(2). Where a decision by PERC is not final, the aggrieved party must seek leave to appeal. R. 2:2-4.

The rule of finality applicable to judgments of the court is also applicable to the decision of an administrative agency.

See In re Donohue, 329 N.J. Super. 488, 494-95 (App. Div. 2000). An agency action is not final "until all avenues of internal administrative review have been exhausted." Bouie v. N.J. Dep't. of Cmty. Affairs, 407 N.J. Super. 518, 527 (App. Div. 2009) (citation omitted). In its Case Information Statement, PERC noted the decision to vacate and remand the award "was not a final administrative decision as it does not resolve all issues as to all parties." We agree.

By the terms of the order vacating and remanding the matter, PERC implicitly, if not explicitly, retained jurisdiction. Significant to our determination of finality, the January 25 decision neither addressed nor made findings on the substantive claims of COPS relating to vacation of the award based on claimed statutory and evidential deficiencies. Further, PERC retained control of the proceedings by directing both the timeframe for the issuance of the new award and any appeal therefrom. We therefore conclude the order under appeal was not final, as the administrative process was not exhausted. As such, the City was required to seek leave to appeal the decision which it failed to do. R. 2:2-3(a). The consequence thereof is dismissal of the appeal. Vitanza v. James, 397 N.J. Super. 516, 519 (App. Div. 2008).

In reaching our determination, we acknowledge that the doctrine of exhaustion of administrative remedies is one of judicial "convenience." Abbott v. Burke, 100 N.J. 269, 297 (1985). However, under the circumstances presented herein, we are not convinced that the "interests of justice dictate the extraordinary course of by-passing the administrative remedies made available by the Legislature." Roadway Express, Inc. v. Kingsley, 37 N.J. 136, 141 (1962); see also Nolan v. Fitzpatrick, 9 N.J. 477, 486-87 (1952).

Even if the City's appeal was not procedurally defective, given the favorable determination of PERC to its position after remand, the City would have no justiciable basis upon which it could obtain relief. As we have held, "courts should not decide cases where a judgment cannot grant relief" nor render decisions that "can have no practical effect." City of Plainfield v. N.J. Dep't of Health & Senior Servs., 412 N.J. Super. 466, 483-84 (App. Div.) (citations and internal quotation marks omitted), certif. denied., 203 N.J. 93 (2010).

II.

We next address the appeal of PERC's decision to affirm the award after remand. COPS contends that PERC's decision to affirm the arbitration award was arbitrary and capricious and

was not supported by sufficient evidence in the record and violated the applicable statutory provisions. We disagree.

Pursuant to the Compulsory Interest Arbitration Act, the arbitrator is required to "decide the dispute based on a reasonable determination of the issues, giving due weight to [enumerated statutory factors] that are judged relevant for the resolution of the specific dispute." N.J.S.A. 34:13A-16(g).

The factors are:

> (1) The interests and welfare of the public. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by P.L.1976, c.68 (C.40A:4-45.1 et seq.).
>
> (2) Comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally:
>
> (a) In private employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.
>
> (b) In public employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.
>
> (c) In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L.1995, c.425 (C.34:13A-16.2); provided, however, that each party shall have the

right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.

(3) The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received.

(4) Stipulations of the parties.

(5) The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by 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 . . . .

(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).

[N.J.S.A. 34:13A-16(g).]

The arbitrator must give "due weight" to these statutory criteria. N.J. State Policeman's Benevolent Ass'n, Local 29 v. Town of Irvington, 80 N.J. 271, 287 (1979) [hereinafter Irvington]. The arbitrator must "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[.]" N.J.S.A. 34:13A-16(g).

"The arbitrator need not rely on all factors, but must identify and weigh the relevant factors and explain why the remaining factors are irrelevant." In re City of Camden, supra note 2, 429 N.J. Super. at 326. However, the resulting explanation must satisfy the requirement that the decision be based on the relevant statutory factors and that the arbitrator gave due weight to each factor. Ibid.; see also N.J.S.A. 34:13A-16(f)(5) (indicating that "[e]ach arbitrator's decision shall be accompanied by a written report explaining how each of the statutory criteria played into the arbitrator's determination of the final award"). Moreover, N.J.A.C. 19:16-5.9b provides that:

> [e]ach arbitrator's decision shall be accompanied by a written report explaining how each of the statutory criteria played into the arbitrator's determination of the final award. The opinion and award shall be

> signed and based on a reasonable determination of the issues, giving due weight to those factors listed in N.J.S.A. 34:13A-16(g) which are judged relevant for the resolution of the specific dispute. In the award, the arbitrator 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. The opinion and award shall set forth the reasons for the result reached.

"No one factor is dispositive," but the factors "reflect the significance of fiscal considerations." In re City of Camden, supra, 429 N.J. Super. at 326-27. Three of the statutory factors, the "interests and welfare of the public"; the "lawful authority of the employer"; and the "financial impact [of an award] on the governing unit, its residents and taxpayers, were so phrased as to insure that budgetary constraints were giv[en] due weight prior to the rendition of an award." Irvington, supra, 80 N.J. at 291 (alteration in original) (citations and internal quotation marks omitted).

When an arbitrator's award fails to adequately address the criteria set forth in N.J.S.A. 34:13A-16(g), the award should be vacated and the matter remanded to ensure compliance with the statutory requirement. See Hillsdale PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71, 82 (1994) (arbitrator's award failed to identify the relevant statutory factors, analyze the evidence pertaining to those factors, and explain why other factors were

irrelevant); In re City of Camden, supra, 429 N.J. Super. at 335 (arbitrator did not provide an adequate explanation of the statutory criteria or how they factored into the determination of the award).

Pursuant to N.J.S.A. 2A:24-8(a), a court may vacate an arbitration award if it "was procured by corruption, fraud or undue means." This statute's reference to "undue means" has been construed to include "an arbitrator's failure to follow the substantive law." In re City of Camden, supra, 429 N.J. Super. at 332. However, if we find that the arbitrator did not exceed his or her authority, considered and analyzed each statutory criterion, and made findings supported by the credible evidence in the record, we must affirm. See Borough of E. Rutherford v. E. Rutherford PBA Local 275, 213 N.J. 190, 201-02 (2013).

Our review of the arbitrator's decisions in light of these principles demonstrates that he considered each statutory factor, provided a detailed and thoughtful analysis of each relevant factor, and explained which factors he weighed more heavily than others. In sum, the arbitrator acted within his statutory authority.

In the December 17, 2012 award, the arbitrator properly addressed the proposals of the parties and the inter-relation of the proposals when applied to the statutory factors. The

arbitrator explained why his analysis of the factors justified the award. Although the arbitrator gave substantial weight to one factor, relative to the fiscal impact upon a financially distressed municipality, that does not render the analysis erroneous. After the remand, the arbitrator properly addressed the issues raised by PERC requiring clarification in his May 5 decision. That the award was not modified after remand does not alter our finding of the legal adequacy of the arbitral process.

With respect to our scope of review of the PERC decision affirming the award, it is "sensitive, circumspect[,] and circumscribed. PERC's decision will stand unless clearly arbitrary or capricious." Twp. of Teaneck v. Teaneck Firemen's Mut. Benevolent Ass'n Local No. 42, 353 N.J. Super. 289, 300 (App. Div. 2002) (citation omitted), aff'd o.b., 177 N.J. 560 (2003). "Absent violation of standards of conduct, PERC's appellate role is to determine whether the arbitrator considered the criteria in N.J.S.A. 34:13A-16(g) . . . and rendered a reasonable determination of the issue or issues at impasse that was supported by substantial evidence in the record." Id. at 306.

We are satisfied that PERC applied the correct standard of review, abided by the appropriate legal standards, and properly determined that the arbitrator fairly considered the N.J.S.A.

34:13A-16(g) factors. PERC also rendered a reasonable determination of the issues that was supported by substantial evidence in the record, and its decision was not arbitrary or capricious. We therefore affirm substantially for the reasons set forth in PERC's decision adopting the arbitrator's award.

The remaining arguments raised are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(E)

Affirmed.

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3111-13T2

IN THE MATTER OF
STATE OF NEW JERSEY and
NEW JERSEY LAW ENFORCEMENT
SUPERVISORS ASSOCIATION.

APPROVED FOR PUBLICATION

January 15, 2016

APPELLATE DIVISION

Argued September 21, 2015 – Decided January 15, 2016

Before Judges Messano, Simonelli and Carroll.

On appeal from the New Jersey Public Employment Relations Commission, PERC Docket No. IA-2014-003.

Frank M. Crivelli argued the cause for appellant New Jersey Law Enforcement Supervisors Association (Crivelli & Barbati, LLC, attorneys; Mr. Crivelli and Donald C. Barbati, on the brief).

Jeffrey J. Corradino argued the cause for respondent State of New Jersey (Jackson Lewis P.C., attorneys; Mr. Corradino, of counsel and on the brief; James J. Gillespie, on the brief).

Don Horowitz, Acting General Counsel, attorney for respondent New Jersey Public Employment Relations Commission (Mary E. Hennessy-Shotter, Deputy General Counsel, on the statement in lieu of brief).

The opinion of the court was delivered by

SIMONELLI, J.A.D.

Appellant New Jersey Law Enforcement Supervisors Association (NJLESA) appeals from that part of the March 10, 2014 final decision of respondent Public Employment Relations Commission (PERC), which affirmed a compulsory interest arbitration salary award rendered pursuant to the Police and Fire Public Interest Arbitration Reform Act (Act), N.J.S.A. 34:13A-14 to -21. On appeal, NJLESA contends that PERC erred in affirming the arbitrator's acceptance of the scattergram and methodology offered by respondent State of New Jersey (State) to calculate the salary award within the confines of N.J.S.A. 34:13A-16.7(b), commonly known as "the 2% salary cap."[1] For the following reasons, we affirm.

We begin with a review of the pertinent authority. At the time of the arbitration in this matter, the Act prohibited an interest arbitrator from rendering a salary award

> which, on an annual basis, increases base salary items by more than 2.0 percent of the aggregate amount expended by the public employer on base salary items for the members of the affected employee organization in the twelve months

[1] We decline to address NJLESA's additional contention, raised for the first time on appeal, that PERC's and the arbitrator's failure to consider its unique status as an intermediary, transitional bargaining unit led to an improper determination of the amount of monies available for distribution in a salary award rendered under the 2% salary cap. See Bryan v. Dep't of Corr., 258 N.J. Super. 546, 548 (App. Div. 1992) (citing Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973)).

> immediately preceding the expiration of the collective negotiation agreement subject to arbitration; provided, however, the parties may agree, or the arbitrator may decide, to distribute the aggregate monetary value of the award over the term of the collective negotiation agreement in unequal annual percentages.
>
> [N.J.S.A. 34:13A-16.7(b).[2]]

In rendering an award, the arbitrator must provide a reasoned explanation for the award, state which factors in N.J.S.A. 34:13A-16(g) were relevant, satisfactorily explain why the other factors were not relevant, and provide an analysis of the evidence on each relevant factor. Hillsdale PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71, 83-84 (1994). An arbitrator need not rely on all factors in fashioning the award, but must consider the evidence on each. Ibid.

In cases where the 2% salary cap applies, "the arbitrator must state what the total base salary was for the last year of the expired contract and show the methodology as to how base salary was calculated." Borough of New Milford and PBA Local 83, P.E.R.C. No. 2012-53, 38 N.J.P.E.R. ¶340, 2012 N.J. PERC LEXIS 18 at 13 (2012). Where the parties dispute the actual base salary amount, "the arbitrator must make the determination

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[2] N.J.S.A. 34:13A-16.7(b) was amended, effective June 24, 2014, retroactive to April 2, 2014. P.L. 2014, c. 11, § 2. The amendment does not apply in this case.

and explain what was included based on the evidence submitted by the parties." Ibid. The arbitrator must then "calculate the costs of the award to establish that the award will not increase the employer's base salary costs in excess of 6% in the aggregate." Ibid. In calculating the award, the arbitrator must

> review the scattergram of the employees' placement on the guide to determine the incremental costs in addition to the across-the-board raises awarded. The arbitrator must then determine the costs of any other economic benefit to the employees that was included in base salary, but at a minimum this calculation must include a determination of the employer's cost of longevity.
>
> [Ibid.]

"Once these calculations are made, the arbitrator must make a final calculation that the total economic award does not increase the employer's costs for base salary by more than 2% per contract year[.]" Id. at 13-14.

In reviewing an interest arbitration award, PERC must determine whether: (1) the arbitrator failed to give due weight to the N.J.S.A. 34:13A-16(g) factors he deemed relevant to the resolution of the specific dispute; (2) the arbitrator violated the standards in N.J.S.A. 2A:24-8 and -9; or (3) the award is not supported by substantial credible evidence in the record as

a whole. Hillsdale, supra, 137 N.J. at 82. In cases where the 2% salary cap applies, PERC must also determine whether the award does not increase the employer's costs for base salary by more than 2% per contract year or, in this case, 8% in the aggregate. New Milford, supra, P.E.R.C. No. 2012-53, 38 N.J.P.E.R. ¶340, 2012 N.J. PERC LEXIS 18 at 13-14.

"Judicial scrutiny in public interest arbitration is more stringent than in general arbitration . . . [because it] is statutorily-mandated and public funds are at stake." Hillsdale, supra, 137 N.J. at 82. Accordingly, the "scope of our review of PERC's decisions reviewing arbitration is 'sensitive, circumspect, and circumscribed.'" In re City of Camden and the Int'l Ass'n of Firefighters, Local 788, 429 N.J. Super. 309, 327 (App. Div.) (quoting Twp. of Teaneck v. Teaneck Firemen's Mut. Benevolent Ass'n Local No. 42, 353 N.J. Super. 289, 300 (App. Div. 2002)), certif. denied, 215 N.J. 485 (2013). We defer to PERC's decisions because of its expertise and will only reverse if the decision is clearly demonstrated to be arbitrary, capricious, or unreasonable. In re Hunterdon Cty. Bd. of Chosen Freeholders, 116 N.J. 322, 328 (1989).

The record in this case reveals that NJLESA represents 665 primary-level law enforcement supervisors in several negotiation units. NJLESA and the State were parties to a collective

negotiations agreement (CNA) that expired on June 30, 2011. Following unsuccessful negotiations and mediation, on September 16, 2013, NJLESA filed a petition with PERC seeking compulsory interest arbitration pursuant to the Act.

Regarding the salary award, the arbitrator first determined that $56,945,856.70 was total base-year salary in the final twelve months of the CNA. The arbitrator then multiplied two percent of the total base-year salary ($1,138,917) by four and determined that $4,555,668 was the amount of money available under the 2% salary cap for the four-year successor CNA. The arbitrator next determined the amount the State would expend during the successor CNA based on each NJLESA member being moved through the salary schedule over the four years by achieving annual step movement, or annual increments, pursuant to the salary schedule regardless of whether they continued to be employed beyond the date the monies were projected to be spent. Using the State's scattergram, the arbitrator determined the cost of the step movement alone to be $3,734,295 or 6.56% of the original base salary amount. The arbitrator concluded that $821,373 remained to be awarded under the 2% salary cap, and ultimately granted a total salary award of $757,833, which was within the 2% salary cap. The arbitrator found that although

$821,373 was available to be awarded, there was "no basis for the expenditure or that requires any additional amounts."

NJLESA did not claim that the arbitrator failed to comply with N.J.S.A. 34:13A-16(g) or violated the standards in N.J.S.A. 2A:24-8 and -9, and agreed that $56,945,856.70 was the total base-year salary in the final twelve months of the CNA. Instead, NJLESA challenged the arbitrator's acceptance of the State's scattergram and methodology to calculate the costs of the salary award to establish that the award would not violate the 2% salary cap. NJLESA asserted that its scattergram provided a more accurate "cost out" of the salary award because it contained the actual salary expenditures for fiscal years 2012 and 2013, the first two years of the successor CNA, which reflected savings the State realized in those fiscal years from retirements and attrition. In contrast, the State's scattergram contained projected salary figures for fiscal years 2012 and 2013, and moved all NJLESA members through the salary guide regardless of whether they retired after fiscal year 2011 or new members joined the unit.

PERC determined that the arbitrator's acceptance of the State's scattergram was consistent with New Milford, and rejected NJLESA's argument that the savings the State realized in fiscal years 2012 and 2013 should be credited. Citing

Borough of Ramsey and Ramsey PBA Local No. 155, P.E.R.C. No. 2012-60, 39 N.J.P.E.R. ¶17 (2012), PERC held that "[w]hether speculative or known, . . . any changes in financial circumstances benefitting the employer or majority representative [were] not contemplated by the statute or to be considered by the arbitrator." This appeal followed.

On appeal, NJLESA argues that the arbitrator's decision to accept the State's scattergram and methodology, and PERC's affirmance of that decision, contravened PERC's prior decisions in New Milford, supra, and City of Atlantic City and Atlantic City PBA Local 24, P.E.R.C. No. 2013-82, 39 N.J.P.E.R. ¶161, 2013 N.J. PERC LEXIS 38 (2013), which compelled the arbitrator to adopt NJLESA's scattergram and methodology. In particular, NJLESA emphasizes a passage in New Milford, where PERC said:

> Since an arbitrator, under the new law, is required to project costs for the entirety of the duration of the award, calculation of purported savings resulting from anticipated retirements, and for that matter added costs due to replacement by hiring new staff or promoting existing staff are all too speculative to be calculated at the time of the award. The Commission believes that the better model to achieve compliance with P.L. 2010 c. 105 is to utilize the scattergram demonstrating the placement on the guide of all of the employees in the bargaining unit as of the end of the year preceding the initiation of the new contract, and to simply move those employees forward through the newly awarded salary scales and longevity entitlements.

> Thus, both reductions in costs resulting from retirements or otherwise, as well as any increases in costs stemming from promotions or additional new hires would not effect [sic] the costing out of the award required by the new amendments to the Interest Arbitration Reform Act.
>
> [New Milford, supra, P.E.R.C. No. 2012-53, 38 N.J.P.E.R. ¶340, 2012 N.J. PERC LEXIS 18 at 15.]

NJLESA argues that this passage prevents an arbitrator from adopting a scattergram that contains "speculative" figures.

NJLESA also points to a passage in City of Atlantic City, where PERC said:

> We further clarify that the above information must be included for officers who retire in the last year of the expired agreement. For such officers, the information should be prorated for what was actually paid for the base salary items. Our guidance in New Milford for avoiding speculation for retirements was applicable to future retirements only.
>
> [City of Atlantic City, supra, P.E.R.C. No. 2013-82, 39 N.J.P.E.R. ¶161, 2013 N.J. PERC LEXIS 38 at 10.]

NJLESA argues that this passage requires an arbitrator to use actual paid salary when that data is available. NJLESA notes that the retirements in fiscal years 2012 and 2013, which enabled the State to realize savings, were not speculative because they actually occurred. NJLESA, thus, argues that the arbitrator should have used its scattergram, which reflected the

State's savings from those retirements, and thus showed more salary available for distribution to NJLESA members under the 2% salary cap.

NJLESA's argument fails for two reasons. First, PERC specifically rejected it:

> We note that the cap on salary awards in the new legislation does not provide for the PBA to be credited with savings that the Borough receives from retirements or any other legislation that may reduce the employer's costs. It is an affirmative calculation based on the total 2011 base salary costs regardless of any changes in 2012. Likewise, the PBA will not be debited for any increased costs the employer assumes for promotions or other costs associated with maintaining its workforce.
>
> [New Milford, supra, P.E.R.C. No. 2012-53, 38 N.J.P.E.R. ¶340, 2012 N.J. PERC LEXIS 18 at 16 (emphasis added).]

Since New Milford, PERC has consistently maintained that the State's savings on salary expenditures may not be considered when calculating a salary award under the 2% salary cap, and PERC has never suggested otherwise. For example, immediately after New Milford, PERC explained that

> [t]he statute does not provide for a majority representative to be credited with savings that a public employer receives from any reduction in costs, nor does it provide for the majority representative to be debited for any increased costs the public employer assumes for promotions or other costs associated with maintaining its workforce.

> [Borough of Ramsey, supra, P.E.R.C. No. 2012-60, 39 N.J.P.E.R. ¶17 at 9 (emphasis added).]

More recently, PERC reiterated its guidance in New Milford, and rejected essentially the same argument advanced by NJLESA:

> Additionally, the [union] asserts that the arbitrator miscalculated longevity in 2014 because she failed to deduct the "offsetting decreased cost in longevity from employees who left the bargaining unit due to retirements, promotions and terminations from the base year 2013." We squarely addressed this issue in New Milford wherein we stated as follows:
>
> . . . .
>
> Based on the clear guidance we provided in New Milford, we reject the union's argument that the arbitrator miscalculated longevity for 2014 because she did not offset costs resulting from retirements.
>
> [City of Camden and IAFF Local 788, P.E.R.C. No. 2014-95 (2014) at 8-9 (emphasis added).]

A fair reading of Atlantic City does not change the analysis. That case involved a dispute over the base salary calculation for the twelve months preceding the expiration of the collective bargain agreement. City of Atlantic City, supra, P.E.R.C. No. 2013-82, 39 N.J.P.E.R. ¶161, 2013 N.J. PERC LEXIS 38 at 2. It did not purport to change the New Milford analysis, but instead reiterated it. Id. at 6-7. Accordingly, PERC's decision in this case was not arbitrary, capricious, or unreasonable because it conformed to New Milford and subsequent

decisions by refusing to credit NJLESA with savings from retirements or attrition.

Second, NJLESA misreads N.J.S.A. 34:13A-16.7(b) and ignores our standard of review. The language of the 2% salary cap provision prohibits an interest arbitrator from rendering an award that "increases base salary items by more than 2.0 percent of the aggregate amount expended by the public employer on base salary items for the members of the affected employee organization in the twelve months immediately preceding the expiration of the collective negotiation agreement subject to arbitration." N.J.S.A. 34:13A-16.7(b). The statute sets a maximum salary award, but does not require the arbitrator to award any specified amount or prescribe the methodology for calculating the salary award. As PERC recognized in New Milford:

> Arriving at an economic award is not a precise mathematical process. Given that the statute sets forth general criteria rather than a formula, except as set forth [in the two percent salary cap provision, N.J.S.A. 34:13A-16.7(b),] the treatment of the parties' proposals involves judgment and discretion and an arbitrator will rarely be able to demonstrate that an award is the only "correct" one.
>
> [New Milford, supra, P.E.R.C. No. 2012-53, 38 N.J.P.E.R. ¶340, 2012 N.J. PERC LEXIS 18 at 11.]

Thus, except for failure to comply with the 2% salary cap provision, we will not set aside an interest arbitration award for failure to apply a specific methodology. However, NJLESA does not suggest that the arbitrator's salary award exceeded the 2% salary cap. Instead, it argues that the arbitrator should have used its methodology and awarded a credit for the State's savings from retirements and attrition in fiscal years 2012 and 2013. NJLESA cites to no authority that required the arbitrator or PERC to do so. Rather, the relevant authority requires us to defer to PERC's decision to affirm the arbitrator's exercise of discretion, which was based on his special expertise in labor relations. See State v. Prof'l Ass'n of N.J. Dep't of Educ., 64 N.J. 231, 259 (1974). Stated differently, the deferential standard of review for interest arbitration awards does not permit us to substitute our judgment for PERC's judgment by requiring the arbitrator to adopt NJLESA's methodology.

In sum, contrary to NJLESA's argument, PERC's decision was not arbitrary, capricious or unreasonable. The decision fully comported with New Milford and its progeny, and the award complied with the 2% salary cap provision.

Affirmed.

SUPREME COURT OF NEW JERSEY
C-793 September Term 2015
077217

IN THE MATTER OF
STATE OF NEW JERSEY AND
NEW JERSEY LAW ENFORCEMENT
SUPERVISORS ASSOCIATION

ON PETITION FOR CERTIFICATION

(NEW JERSEY LAW ENFORCEMENT
SUPERVISORS ASSOCIATION -
PETITIONER)

FILED

APR 29 2016

CLERK

To the Appellate Division, Superior Court:

A petition for certification of the judgment in A-003111-13 having been submitted to this Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied, with costs.

WITNESS, the Honorable Stuart Rabner, Chief Justice, at Trenton, this 26th day of April, 2016.

CLERK OF THE SUPREME COURT

The foregoing is a true copy
of the original on file in my office.

CLERK OF THE SUPREME COURT
OF NEW JERSEY