



**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. 2010, c. 105 and P.L. 2014, c. 11**

**2020 REPORT (Issued March 2021)**

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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 Commission’s 2014 Biennial Report, which can be found on the Commission’s website.<sup>1/</sup> After certain provisions of the 2010 amendments, such as the 2% Cap, expired on April 1, 2014, Governor Christie signed P.L. 2014, c. 11 on June 24, 2014, effective retroactive to April 2, 2014. P.L. 2014, c. 11 continued certain provisions of P.L. 2010, c. 105 and amended others.

The 2014 amendments to the Reform Act included the following changes: the first meeting with the arbitrator is a mandatory mediation session; increased time from 45 to 90 days to issue award; increased time to file appeal of award to the Commission from 7 to 14 days; increased time for Commission to decide appeal from 30 to 60 days; increased

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<sup>1/</sup>  
<https://www.state.nj.us/perc/documents/Biennial%20Report%202%20January%202014.pdf>

maximum cost of arbitrator per case from \$7,500 to \$10,000; and allowed the 2% annual salary increase cap to be compounded annually over the contract term. These changes are outlined in more detail in the 2016 Biennial Report.<sup>2/</sup>

On December 31, 2017, the 2% Cap provision of P.L. 2014, c. 11 expired, except for parties whose collective negotiations agreements expired prior to or on December 31, 2017 but for whom a final settlement had not yet been reached. Effectively, parties whose current or most recent agreements expired January 1, 2018 or later are not subject to the 2% Cap on annual salary increases in an interest arbitration award.

The Reform Act was also amended by P.L. 2016, c. 4, which added subsections N.J.S.A. 34:13A-16(i) and N.J.S.A. 34:13A-16(j) to the interest arbitration law. Those provisions allow the state Director of the Division of Local Government Services in the Department of Community Affairs to notify the Commission that a municipality deemed “in need of stabilization and recovery” will not participate in any impasse procedures, including interest arbitration, and provide that the State Local Finance Board may subject an interest arbitration award involving such a municipality to the review and approval of the Director of Local Government Services. These changes are outlined in more detail in the 2018 Biennial Report.<sup>3/</sup> This section of the interest arbitration law has not been invoked since the 2018 Biennial Report.

This report, the third submitted since the adoption of P.L. 2014, c. 11, the fifth submitted since the adoption of P.L. 2010, c. 105, and the twelfth submitted under the

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<sup>2/</sup> <https://www.state.nj.us/perc/documents/2016%20Biennial%20Report.pdf>

<sup>3/</sup> <https://www.state.nj.us/perc/documents/Biennial%20Report%202018%20with%20Appendix%20and%20Errata.pdf>

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 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, labor and management representatives, and the public in general. This report describes the Commission's actions to implement and administer the Reform Act, as amended by 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**

This 2020 Biennial Report provides historical data and information about the implementation and impact of the interest arbitration law, with primary focus on changes and developments in the two years (2018-2019) since the previous report. For interest arbitration statistics and appeals information going back further than what is contained in this report, one may access the prior biennial reports from the Commission's website by selecting the "Biennial Reports" link under the "Reports" dropdown tab on the homepage.<sup>4/</sup> Since the 2018 Biennial Report, there have been no amendments to the interest arbitration law or to the interest arbitration regulations promulgated by the Commission to implement the law. The current statute and regulations are contained in the Appendix, Tabs 1 and 2.

### **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

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<sup>4/</sup> <https://www.state.nj.us/perc/reports/biennial/>

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. Currently, the panel consists of five members who meet the Commission's high standards.

The Commission continues to utilize its computer program to randomly select arbitrators. A description of the computer program is included in the Appendix, Tab 3, along with an October 9, 2018 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 is required by N.J.S.A. 34:13A-16.1 to conduct regular continuing education programs for the Special Panel. The Commission's most recent programs have focused on current impasse issues in interest arbitration, health benefits and premium sharing issues arising in mediation, as well as local government finance and ethics issues. (Appendix, Tab 4). The programs have been presented by Commission staff and have included the Assistant Director of Rutgers University's Bloustein Local Government Research Center as a guest

speaker. The Commission's continuing education programs also 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 Survey**

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 survey required by the Reform Act, N.J.S.A. 34:13A-16.6. The first survey, 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. Since 1997, the surveys also show changes in average wages by industry sector. Beginning with the 2002 survey, the NJLWD uses the North American Industry Classification System ("NAICS") to assign and tabulate economic data by industry.<sup>5/</sup> Beginning with the 2015 survey, the wage surveys 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.

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<sup>5/</sup> 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 surveys describes the system and how it differs from its predecessor, the 1987 Standard Industrial Classification System.



The two most recent annual surveys reflect wage data for calendar years 2016-2017 (2018 survey) and 2017-2018 (2019 survey) and are included in the Appendix, Tab 5.<sup>6/</sup> The 2018 survey shows that from 2016-2017, private sector wages increased 2.1%, total government wages increased 1.9%, state government wages increased 1.6%, and local government wages increased 1.9%. The 2019 survey shows that from 2017-2018, private sector wages increased 2.5%, total government wages increased 2.9%, state government wages increased 5.5%, and local government wages increased 1.8%.

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<sup>6/</sup> The 2018 survey was issued on July 11, 2018 and the 2019 survey was issued on July 2, 2019.

## **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. N.J.S.A. 34:13A-8.2 requires that public employers “file with the Commission a copy of any contracts it has negotiated with public employee representatives following consummation of negotiations.” In 2006, the Commission began posting on its website all collective negotiations agreements and contract summary forms filed pursuant to a public employer’s statutory obligation to file contracts with the Commission. Contracts are searchable by employer, employee organization, employer type, and county.

The Division of Local Government Services (DLGS) has assisted the Commission in collecting collective negotiations agreements by including a question about compliance with N.J.S.A. 34:13A-8.2 in its annual “Best Practices Inventory” that each municipality must complete and achieve a minimum score on in order to secure state financial aid.<sup>7/</sup> On the Calendar Year 2018 Best Practices questionnaires, 78%, or 440, of municipalities answered “Yes” to the question of whether they had filed their most recent collective

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<sup>7/</sup> For information about the “Best Practices” program, including the Worksheet/Questionnaires, Answers, and Local Finance Notices about the program, see: [https://www.nj.gov/dca/divisions/dlgs/programs/best\\_practices.html#3](https://www.nj.gov/dca/divisions/dlgs/programs/best_practices.html#3)

negotiations agreements with the Commission. On the Calendar Year 2019 Best Practices questionnaires, 82%, or 465, responded “Yes.”

In addition, pursuant to N.J.S.A. 34:13A-16.8(d)(2), the Commission designed a summary form which summarizes all costs and their impact associated with newly negotiated agreements. In the case of police and fire units, the summary form distinguishes between costs for base salary items, costs for other economic items, and medical insurance costs. In August 2016, the Commission revised the summary form to assist employers in accounting for all base salary items in police and fire contract settlements, inclusive of increments, longevity, and other salary increases. The 2016 revised Police and Fire Collective Negotiations Agreement Summary Form<sup>8/</sup> and Instructions<sup>9/</sup> are available on the Commission’s website and included in the Appendix, Tab 6. The Commission’s Conciliation and Arbitration staff have increased efforts to remind public employers who submit new contracts to also submit properly completed summary forms. These efforts have been successful in increasing compliance and transparency for agreements settled without interest arbitration. In 2018, 66 public employers submitted police/fire summary forms to the Commission. In 2019, 50 public employers submitted police/fire summary forms to the Commission.

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8/  
<https://www.state.nj.us/perc/documents/New%202016%20Police%20&%20Fire%20Contract%20Summary%20Form.pdf>

9/  
<https://www.state.nj.us/perc/documents/Police%20Fire%20CNA%20Summary%20Form%20Instructions%208-17-16%20B.pdf>

As discussed in the 2018 Biennial Report, the amendments to the interest arbitration regulations published in 2017 and finalized in 2018 included changes to and codification of an expedited interest arbitration scope of negotiations pilot program that the Commission had introduced in 2012. These regulations provide that the Commission Chair may decide whether to issue an expedited scope of negotiations determination on issues that are actively in dispute in interest arbitration proceedings. N.J.A.C. 19:16-5.5(c)(4).<sup>10/</sup> From 2018-2019, the Commission considered only one expedited scope of negotiations petition. See Pemberton Tp., P.E.R.C. No. 2019-28, 45 NJPER 293 (¶75 2019); (Appendix, Tab 7).

### **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. 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 fact finding, at their own cost, 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 voluntary mediation or fact finding. N.J.S.A. 34:13A-16(b)(2). However, the 2014 amendments require the interest arbitrator to

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<sup>10/</sup> “If the Commission Chair determines not to issue an expedited scope of negotiations ruling, then any negotiability issues pending in interest arbitration may be raised to the interest arbitrator and either party may seek a negotiability determination by the Commission as part of an appeal from an interest arbitration award.” N.J.A.C. 19:16-5.5(c)(8); See N.J.A.C. 19:16-5.7(l).

conduct an initial mediation session, regardless of whether the parties attempted voluntary mediation. N.J.S.A. 34:13A-16(b)(3).

In the most recent biennial period (2018-2019), 25 impasse petitions were filed in police or fire units. That is more than the 16 filed in 2016-2017, but less than the 34 filed in 2014-2015. There was one fact finding request from a police or fire unit in 2018-2019, compared to zero in 2016-2017 and one in each in the two prior biennial periods (2014-2015 and 2012-2013). Of the 25 impasse petitions filed from 2018-2019, 14 contracts were settled, six proceeded to interest arbitration (with four of those settling through arbitrator-led mediation and two resulting in interest arbitration awards), and five have not yet resolved their contracts in mediation. In other words, less than 25% of impasse petitions led to interest arbitration during 2018-2019. Excluding the five impasse petitions that have not yet been resolved one way or another, the settlement rate in 2018-2019 prior to interest arbitration was 70% (14 out of 20), while the overall settlement rate including those impasses that settled during interest arbitration was 90% (18 out of 20).

## **INTEREST ARBITRATION PETITIONS, AWARDS, AND SETTLEMENTS**

### **Statistical Overview**

The following chart reflects the number of petitions filed, arbitrators appointed, and awards issued each year under the interest arbitration law from 2012 through 2019. Note that in some cases, petitions filed in one year might have had their arbitrators appointed or decisions issued in a later year.

<b>Calendar Year</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>
<b>IA Petitions Filed</b>	48	28	88	20	9	29	12	17
<b>Arbitrators Appointed</b>	46	22	26	22	14	13	22	15
<b>IA Voluntary Settlements</b>	29	8	16	9	7	5	16	6
<b>IA Awards Issued</b>	37	27	12	6	8	4	2	6

As we noted in the 2016 and 2018 Biennial Reports, the number of interest arbitration petitions filed decreased significantly following the January 1, 2011 effective date of the initial 2% Cap law. 2014 was an outlier in that trend attributable to 74 filings made within a few days of the April 1, 2014 expiration of P.L. 2010, c. 105. After the enactment of the amended 2% Cap law in 2014, interest arbitration filings again significantly decreased. Since 2014, annual interest arbitration filings have ranged from a low of nine to a high of 29, with the numbers of 2018 and 2019 filings falling in between those points (12 and 17, respectively).

The number of interest arbitration awards issued over the last two years remained low (two in 2018; six in 2019) as in the prior biennial period. As noted in the 2016 and 2018 Biennial Reports, the average number of awards in the initial three years that the 2% Cap law was in effect (2011-2013) was approximately 32, which was double the

average number of awards (16) in the three years prior to the 2% Cap (2008-2010). However, from 2014-2019, the average annual number of awards decreased significantly to an average of 6.33 per year.

The number of voluntary settlements made after filing for interest arbitration has remained significantly lower than prior to 2011, with 16 such settlements in 2018 and six in 2019. The average numbers of these “IA Voluntary Settlements” in the three years prior to the initial 2% Cap law (2008-2010) was approximately 48, which decreased by about half to 25 per year in the initial three years after the 2% Cap law, and has now decreased further to an average of 7.17 per year from 2014-2019.

For the years 2012-2019, the average annual salary increases in interest arbitration awards were:<sup>11/</sup>

<b>Year</b>	<b>IA Awards (non-2% Cap)</b>	<b>IA Awards (2% Cap)</b>	<b>IA Awards TOTAL*</b>
<b>2012</b>	1.77%	1.99%	<b>1.82%</b>
<b>2013</b>	1.83%	1.89%	<b>1.85%</b>
<b>2014</b>	1.73%	1.69%	<b>1.71%</b>
<b>2015</b>	N/A	1.71%	<b>1.71%</b>
<b>2016</b>	3.83%	1.94%	<b>2.65%</b>
<b>2017</b>	1.64%	2.05%	<b>1.74%</b>
<b>2018</b>	N/A	2.01%	<b>2.01%</b>

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<sup>11/</sup> The awards subject to the statutory 2% Cap include all base salary items such as salary increments/steps and longevity pay, while the non-2% Cap awards may or may not include increases due to increments/steps and longevity. Note that 2% Cap awards following the 2014 amendments allowed for 2% annually compounded average salary increases, which explains why the 2017-2019 2% Cap averages slightly exceed 2%.

<b>2019</b>	3.62%	2.06%	<b>3.36%</b>
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\* The “IA Awards TOTAL” average annual salary increase percentages do not simply average the first two columns (the “IA Awards non-2% Cap” and “IA Awards 2% Cap” averages), but are appropriately weighted for the numbers of non-2% Cap and 2% Cap interest arbitration awards in that year.

In 2018 and 2019, the average salary increases in awards subject to the 2% Cap were 2.01% and 2.06% respectively, a slight increase from the prior two biennial periods. The numbers of IA Awards in each year from 2012-2019 along with the average annual salary increases can be seen in the Appendix, Tab 8, while the numbers for 2003-2011 are in the Appendix, Tab 9. While there were two 2% Cap awards and no non-2% Cap awards issued in 2018, five of the six awards issued in 2019 were non-2% Cap awards, reflecting the expiration and continued phase out of the applicability of the 2% Cap.<sup>12/</sup> (Appendix, Tab 8).

As for voluntary settlements made after filing for interest arbitration, the average annual salary increases from 2012-2019 were:<sup>13/</sup>

<b>Year</b>	<b>IA Voluntary Settlements</b>
<b>2012</b>	1.82%
<b>2013</b>	1.96%
<b>2014</b>	1.61%
<b>2015</b>	1.73%

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<sup>12/</sup> “[A]fter 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.” N.J.S.A. 34:13A-16.9.

<sup>13/</sup> The average annual salary increases in IA Voluntary Settlements may or may not include increases due to increments/steps and longevity.



<b>2016</b>	2.69%
<b>2017</b>	1.86%
<b>2018</b>	1.75%
<b>2019</b>	1.64%

The average annual salary increases in IA Voluntary Settlements were 1.75% in 2018 and 1.64% in 2019, which is slightly lower than in previous years. The numbers of IA Voluntary Settlements in each year from 2012-2019 along with the average annual salary increases can be seen in the Appendix, Tab 8, while the numbers for 2003-2011 are in the Appendix, Tab 9.

The Commission also continues to collect data concerning average annual salary increases in police and fire contracts that settled without filing for interest arbitration. As discussed earlier, employer submission of the modified 2016 summary form outlining contract costs enables the Commission to report average salary increases for such non-IA settlements. The Commission received 66 police/fire non-IA settlement summary forms in 2018 and 50 in 2019. The average annual salary increases in non-IA settlements were 3.89% in 2018 and 4.26% in 2019. Those figures, like 2% Cap awards, include increases due to increments/steps and longevity as accounted for on the summary forms. The 2018-2019 average annual salary increases in non-IA settlements were slightly higher than the 3.53% average for the 86 non-IA settlements in 2017, which was the first complete year in which the 2016 modified summary form was in use.

## INTEREST ARBITRATION APPEALS

The following chart reflects the numbers of interest arbitration appeals and their dispositions from 2012-2019. Some cases may have been appealed and disposed in different calendar years.

<b>Calendar Year</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>
<b>Appeals to Commission</b>	22	9	5	3	6	2	0	2
<b>Appeals Withdrawn</b>	1	1	0	0	2	0	0	0
<b>Appeals Dismissed</b>	3	1	0	0	0	0	0	0
<b>Awards Affirmed</b>	9	6	2	2	0	2	0	2
<b>Awards Modified</b>	0	1	1	1	1	0	0	0
<b>Awards Remanded</b>	9	3	1	1	3	0	0	0
<b>Appeals to Appellate Division</b>	7	5	2	2	1	0	1	1
<b>Petition for Certif. to Supreme Court</b>	0	0	0	1	1	0	1	0

Appeals of interest arbitration awards to the Commission have continued to decrease significantly following the spike seen in 2012 following the passage of P.L. 2010, c. 105. There were zero interest arbitration appeals to the Commission in 2018 and two in 2019. The decreased number of appeals could be attributable to the following 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;
- 2) the overall number of interest arbitration filings has decreased in recent years; and
- 3) strong settlement rates during the interest arbitration mediation process (IA Voluntary

Settlements) have resulted in fewer interest arbitration filings proceeding to final interest arbitration awards.

The two interest arbitration awards appealed to the Commission in 2019 were both non-2% Cap awards based on the expiration date of their most recent contract.<sup>14/</sup> The Commission affirmed both awards. They are summarized below.

In Hopewell Tp., P.E.R.C. No. 2020-10, 46 NJPER 117 (¶26 2019), the PBA appealed an interest arbitration award, arguing that the arbitrator improperly relied on a 2% Cap on base salary increases and failed to account for savings realized by the Township from employees who had retired or been promoted out of the unit in the year before the award term. (Appendix, Tab 10). The Commission affirmed the award, finding that the arbitrator did not limit salary increases to 2% per year and properly accounted for the Township's reduced costs from retirements and promotions out of the unit when she considered the statutory factors of impact on the taxpayers and the Township's ability to pay.

In Bedminster Tp., P.E.R.C. No. 2020-11, 46 NJPER 119 (¶27 2019), the PBA appealed an interest arbitration award, arguing that the award failed to apply and give due weight to the statutory factors, was not supported by substantial credible evidence, and violated N.J.S.A. 2A:24-8. (Appendix, Tab 10). The PBA contested the award's determinations on salary, health benefits contributions, sick leave, and uniform allowance

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14/ A 2019 Commission interest arbitration decision that is not included in the chart above because it was not an appeal of an interest arbitration award was Franklin Lakes Bor., P.E.R.C. No. 2020-16, 46 NJPER 165 (¶40 2019). (Appendix, Tab 10). In that case, the Commission granted the PBA's motion to dismiss the Borough's interest arbitration petition. The Commission found that because the parties had signed and ratified a Memorandum of Agreement, there was not an expired agreement between the parties, which is a prerequisite to filing the petition for interest arbitration.

as not being supported by the external comparables submitted by the PBA. The Commission affirmed the award, finding that the arbitrator explained the weight he afforded to the statutory factors, demonstrated his consideration of the parties' evidence and arguments on each proposal, and explained his reasoning for each element of the award in light of the evidence and statutory factors. The PBA appealed to the Superior Court, Appellate Division, which affirmed the Commission's decision. Bedminster Tp., 2020 N.J. Super. Unpub. LEXIS 1503 (App. Div. 2020). (Appendix, Tab 11).

In 2018, the Appellate Division issued a decision on the union's (STFA) appeal of a 2016 Commission decision, State of New Jersey (Division of State Police), P.E.R.C. No. 2017-20, 43 NJPER 133 (¶42 2016). As discussed in the 2018 Biennial Report, the Commission decision affirmed the arbitrator's application of the 2% Cap, as well as non-salary economic items, but modified the award by removing the arbitrator's grant of two years of previously frozen increments on the last day of the award. In State (Div. of State Police) v. State Troopers Fraternal Ass'n, 2018 N.J. Super. Unpub. LEXIS 1613 (App. Div. 2018), the Appellate Division vacated and remanded the Commission's decision, holding that neither the Commission nor the arbitrator addressed the State's failure to comply with the terms of the parties' previous collective negotiations agreement when the State unilaterally stopped paying salary increments prior to filing for interest arbitration. (Appendix, Tab 11). The court did not address the issue on appeal regarding the Commission's modification of the increments in the award, but held: "Thus, in light of the Supreme Court's decision in Cty. of Atl. [Matter of County of Atlantic, 230 N.J. 237 (2017)], we vacate the September 22, 2016 final agency decision and remand for PERC to reconsider the terms of the CNA and the Division's non-compliance with those terms in

the context of the parties' arbitration and the statutory cap on interest arbitration awards.” The State filed a petition for certification with the Supreme Court of New Jersey to review the Appellate Division’s ruling, but the parties subsequently settled the dispute. Due to the settlement, the State withdrew its Supreme Court petition and the Commission no longer had to issue a remand decision pursuant to the Appellate Division’s order.

Finally, we discuss a 2019 Appellate Division decision that was not an appeal of a Commission interest arbitration appeal, but was an appeal of a Chancery Court ruling on an interest arbitration matter. In City v. City of Orange Twp., 2019 N.J. Super. Unpub. LEXIS 959 (App. Div. 2019), the Appellate Division affirmed a Chancery Court ruling that the City was barred from challenging a supplemental interest arbitration award because it failed to file an appeal with the Public Employment Relations Commission. (Appendix, Tab 11). Following the issuance of the arbitration award and the expiration of the City’s period for filing an appeal with the Commission, the FOA filed a complaint in the Chancery Division seeking to enforce the award. The Chancery Division confirmed the arbitration award, directed the City to comply with it, and ruled that because the City had failed to appeal to the Commission, the court did not have the authority to entertain the City’s counterclaims. The City appealed to the Appellate Division, which held that the plain language of the Interest Arbitration Reform Act states that an appeal of an interest arbitration award must be taken to the Commission and that the decision by the Commission, in turn, can be appealed to the Appellate Division. See N.J.S.A. 34:13A-16(f)(5)(a).

## CONCLUSION

At approximately ten years since the initial fast track resolution and 2% Cap amendments to the Reform Act and more than six years since the 2014 amendments to the Reform Act, the numbers of interest arbitration petitions filed and awards issued have decreased, and the average annual salary increases in awards and settlements made in interest arbitration have decreased. Most of the challenges and disputes arising over the interpretation and application of the 2010 and 2014 amendments have now been settled by Commission and Appellate Division decisions such that the parties and interest arbitrators now better understand their responsibilities in the interest arbitration process, both in 2% Cap and non-cap cases. Although the 2% Cap portion (N.J.S.A. 34:13A-16.7) of the Reform Act expired on January 1, 2018 (except for parties still in negotiations whose most recent contracts ended on or before December 31, 2017), the Commission's case law, interest arbitration rules amendments, and administrative efforts to increase compliance with contract summary forms have all contributed to greater transparency of true salary costs in interest arbitration awards and police and fire contracts generally. The Commission is not recommending any statutory changes, as that is primarily the purview of the Legislature. In administering the Act, the Commission will promulgate new rules as necessary; will continue to encourage pre-arbitration mediation and arbitrator-assisted settlement; will maintain a highly qualified Special Panel of Interest Arbitrators; will continue to provide panel members with pertinent continuing education; will ensure fast track resolution of interest arbitration cases within 90 days; and will process interest arbitration appeals within 60 days.

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# **2020 BIENNIAL REPORT**

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**Chapter 13A**  
**NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS**  
**ACT**

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**34:13A-1. Short title.**

This act shall be known and may be cited as "New Jersey Employer-Employee Relations Act."

L. 1941, c. 100, p. 228, § 1; Amended by L. 1968, c. 303, § 2, eff. July 1, 1968.

**34:13A-2. Declaration of policy**

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.

L. 1941, c. 100, p. 228, s. 2. Amended by L. 1968, c. 303, s. 3, eff. July 1, 1968.

### **34:13A-3. Definitions.**

When used in this act:

(a) The term "board" shall mean New Jersey State Board of Mediation.

(b) The term "commission" shall mean New Jersey Public Employment Relations Commission.

(c) The term "employer" includes an employer and any person acting, directly or indirectly, on behalf of or in the interest of an employer with the employer's knowledge or ratification, but a labor organization, or any officer or agent thereof, shall be considered an employer only with respect to individuals employed by such organization. This term shall include "public employers" and shall mean the State of New Jersey, or the several counties and municipalities thereof, or any other political subdivision of the State, or a school district, or any special district, or any authority, commission, or board, or any branch or agency of the public service. The term shall also include the Delaware River Port Authority, established pursuant to R.S.32:3-1 et seq.

(d) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer unless this act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of or in connection with any current labor dispute or because of any unfair labor practice and who has not obtained any other regular and substantially equivalent employment. This term, however, shall not include any individual taking the place of any employee whose work has ceased as aforesaid, nor shall it include any individual employed by his parent or spouse, or in the domestic service of any person in the home of the employer, or employed by any company owning or operating a railroad or railway express subject to the provisions of the Railway Labor Act. This term shall include any public employee, i.e., any person holding a position, by appointment or contract, or employment in the service of a public employer, including the Delaware River Port Authority, except elected officials, members of boards and commissions, managerial executives and confidential employees.

(e) The term "representative" is not limited to individuals but shall include labor organizations, and individual representatives need not themselves be employed by, and the labor organization serving as a representative need not be limited in membership to the employees of, the employer whose employees are represented. This term shall include any organization, agency or person authorized or designated by a public employer, public employee, group of public employees, or public employee association to act on its behalf and represent it or them.

(f) "Managerial executives" of a public employer, in the case of the State of New Jersey, means persons who formulate management policies and practices, but shall not mean persons who are charged with the responsibility of directing the effectuation of such management policies and practices, except

that in the case of the Executive Branch of the State of New Jersey, "managerial executive" shall include only personnel at or above the level of assistant commissioner.

In the case of any public employer other than the State of New Jersey, "managerial executive" of a public employer means persons who formulate management policies and practices, and person who are charged with the responsibility of directing the effectuation of such management policies and practices, except in any school district this term shall include only the superintendent or other chief administrator, and the assistant superintendent of the district.

(g) "Confidential employees" of a public employer means employees whose functional responsibilities or knowledge in connection with the issues involved in the collective negotiations process would make their membership in any appropriate negotiating unit incompatible with their official duties. "Confidential employees" of the State of New Jersey means employees who have direct involvement in representing the State in the collective negotiations process making their membership in any appropriate negotiating unit incompatible with their official duties.

L. 1941, c. 100, p. 228, s. 3. Amended by L. 1941, c. 299, p. 812, s. 1; L. 1968, c. 303, s. 4, eff. July 1, 1968; L. 1974, c. 123, s. 2; L. 2009, c. 314, eff. January 18, 2010.

### **34:13A-4. State Board of Mediation; establishment; membership.**

There is hereby established in the Department of Labor and Industry a board to be known as the New Jersey State Board of Mediation. The membership of such board shall consist of seven persons to be appointed by the Governor, by and with the advice and consent of the Senate. Of such members, two shall be representative of employees, two shall be representative of employers and three shall be representative of the public. Of the members first appointed, one shall be appointed for a term of 1 year; two for a term of 2 years and two for a term of 3 years. Of the two additional members provided for by this amendment, the original appointees shall hold office for 2 years. Their successors shall be appointed for terms of 3 years. The chairman of the board shall be a member who shall have been designated a representative of the public and who shall be named as chairman by the Governor: the chairman so named shall serve as chairman during his term as a member of the board. A vacancy occurring in the membership of the board for any cause, other than expiration of term, shall be filled by the Governor and the person so appointed shall hold office for the unexpired term of the member whose office has become vacant.

Of the members whose terms have not expired, the Governor shall designate each as a representative of either employees or employers or the public, which designation shall be filed with the Secretary of State, and all appointments hereafter made shall include a designation indicating that such appointee is to be a representative of employees, employers or the public, as the case may be.

For the purpose of complying with the provisions of Article V, Section IV, paragraph 1 of the New Jersey Constitution, the New Jersey State Board of Mediation is hereby allocated within the Department of Labor and Industry and assigned for administrative purposes to the Assistant Commissioner of Labor for Labor Relations and Work Place Standards, but notwithstanding said allocation and assignment, the board shall be independent of any supervision or control by the department or by any board or officer thereof.

L. 1941, c. 100, p. 229, s. 4. Amended by L. 1945, c. 32, p. 88, s. 1; L. 1973, c. 326, s. 1, eff. Dec. 18, 1973; L.2009, c.210

### **34:13A-5. Objective.**

It shall be the objective of the board hereby established to take such steps as will most effectively and expeditiously carry out the policy declared in section two of this act and the powers and duties conferred and imposed upon the board by this act or by law shall at all times be performed and discharged with the accomplishment of such objective as the ultimate goal.

L. 1941, c. 100, p. 230, s. 5.

#### **34:13A-5.1. Establishment of division of public employment relations and division of private employment dispute settlement.**

There is hereby established a Division of Public Employment Relations and a Division of Private Employment Dispute Settlement.

(a) The Division of Public Employment Relations shall be concerned exclusively with matters of public employment related to determining negotiating units, elections, certifications and settlement of public employee representative and public employer disputes and grievance procedures. For the purpose of complying with the provisions of Article V, Section IV, paragraph 1 of the New Jersey Constitution, the Division of Public Employment Relations is hereby allocated within the Department of Labor and Workforce Development, and located in the city of Trenton, but notwithstanding said allocation, the office shall be independent of any supervision or control by the department or by any board or officer thereof.

(b) The Division of Private Employment Dispute Settlement shall assist the New Jersey State Board of Mediation in the resolution of disputes in private employment. The New Jersey State Board of Mediation, its objectives and the powers and duties granted by this act and the act of which this act is amendatory and supplementary shall be concerned exclusively with matters of private employment and the office shall continue to be located in the city of Newark.

(c) In the case of a private employer not regulated by the National Labor Relations Board pursuant to the National Labor Relations Act (29 U.S.C. 151 et seq.), the New Jersey State Board of Mediation shall designate a representative for a unit of employees of the private employer for the purposes of collective bargaining when:

(1) In any case in which the board determines that only one employee organization is seeking to be the majority representative, that organization demonstrates that a majority of employees in the unit have shown their preference to have that organization be their representative by signing authorization cards indicating that preference; or

(2) The employees in the unit have selected a representative by an election that conforms with the procedures outlined in section 159 of the National Labor Relations Act (29 U.S.C. s.159).

For the purposes of paragraph (1) of this subsection, an authorization card indicating preference shall not be valid unless it is printed in a language understood by the employee who signs it.

Any employer who refuses to provide information requested by the New Jersey State Board of Mediation or otherwise acts to prevent the board from carrying out its responsibilities pursuant to this subsection (c) shall have violated this subsection and shall be

liable to a fine of not more than \$1,000, to be recovered under the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.) in the name of the board and to be used by the board for costs of implementing this subsection. In addition, an employee organization seeking to represent the employees of the employer may institute an action in a court of competent jurisdiction to obtain an injunction to restrain any continuation of the violation, to reimburse the employee organization or any effected employee for any damages caused by the violation plus reasonable costs and attorney's fees of the action.

The provisions of this subsection (c) shall not apply to religious or parochial schools or their employees or to any private nonprofit organization exempt from federal taxation under section 501 of the Internal Revenue Code of 1986 (26 U.S.C. 501).

(d) In the case of a private employer regulated by the National Labor Relations Board pursuant to the National Labor Relations Act (29 U.S.C. 151 et seq.), the New Jersey State Board of Mediation shall, based on the mutual agreement of the private employer and an organization seeking to represent employees of the employer, designate a representative for a unit of employees of the private employer for the purposes of collective bargaining when:

(1) In any case in which the board determines that only one employee organization is seeking to be the majority representative, that organization demonstrates, in a manner mutually agreed upon by the representative and the employer, that a majority of employees in the unit have shown their preference to have that organization be their representative by signing authorization cards indicating that preference; or

(2) the employees in the unit have selected the representative by an election that conforms with the procedures outlined in section 159 of the National Labor Relations Act (29 U.S.C. s.159).

(e) For the purposes of subsections (c) and (d) of this section, "employee unit" means an appropriate group of employees for the purposes of collective bargaining as determined, if necessary, by the New Jersey State Board of Mediation.

L. 1968, c. 303, s. 5. Amended by L. 1973, c. 326, s. 2, eff. Dec. 18, 1973; Amended by L. 2005, c. 161, eff. July 19, 2005.  
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#### **34:13A-5.2. Public Employment Relations Commission.**

There is hereby established in the Division of Public Employment Relations a commission to be known as the New Jersey Public Employment Relations Commission. This commission, in addition to the powers and duties granted by this act, shall have in the public employment area the same powers and duties granted to the labor mediation board in sections 7 and 10 of P.L. 1941, c.100, and in sections 2 and 3 of P.L. 1945, c.32. This commission shall make policy and establish rules and regulations concerning employer-employee relations in public employment relating to dispute settlement, grievance procedures and administration including enforcement of statutory provisions concerning representative elections and related matters and to implement fully all the provisions of this act. The commission shall consist of seven members to be appointed by the Governor, by and with the advice and consent of the Senate. Of such members, two shall be representative of public employers, two shall be representative of public employee organizations and three shall be representative of the public including the appointee who is designated as chairman. Of the first appointees, two shall be appointed for two years, two for a term of three years and three, including the chairman, for a term of four years. Their successors shall be appointed for terms

of three years each, and until their successors are appointed and qualified, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the member whose office has become vacant.

The members of the commission, other than the chairman, shall be compensated at the rate of \$250.00 for each six hour day spent in attendance at meetings and consultations and shall be reimbursed for necessary expenses in connection with the discharge of their duties except that no commission member who receives a salary or other form of compensation as a representative of any employer or employee group, organization or association, shall be compensated by the commission for any deliberations directly involving members of said employer or employee group, organization or association. Compensation for more, or less than, six hours per day, shall be prorated in proportion to the time involved.

The chairman of the commission shall be its chief executive officer and administrator, shall devote his full time to the performance of his duties as chairman of the Public Employment Relations Commission and shall receive such compensation as shall be provided by law.

L. 1968, c. 303, s. 6 eff. July 1, 1968. Amended by L. 1974, c. 123, s. 3; L. 1987, c. 456, s. 1, eff. Jan. 19, 1988.

### **34:13A-5.3. Employee organizations; right to form or join; collective negotiations; grievance procedures.**

Except as hereinafter provided, public employees shall have, and shall be protected in the exercise of, the right, freely and without fear of penalty or reprisal, to form, join and assist any employee organization or to refrain from any such activity; provided, however, that this right shall not extend to elected officials, members of boards and commissions, managerial executives, or confidential employees, except in a school district the term managerial executive shall mean the superintendent of schools or his equivalent, nor, except where established practice, prior agreement or special circumstances dictate the contrary, shall any supervisor having the power to hire, discharge, discipline, or to effectively recommend the same, have the right to be represented in collective negotiations by an employee organization that admits nonsupervisory personnel to membership, and the fact that any organization has such supervisory employees as members shall not deny the right of that organization to represent the appropriate unit in collective negotiations; and provided further, that, except where established practice, prior agreement, or special circumstances dictate the contrary, no policeman shall have the right to join an employee organization that admits employees other than policemen to membership. The negotiating unit shall be defined with due regard for the community of interest among the employees concerned, but the commission shall not intervene in matters of recognition and unit definition except in the event of a dispute.

Representatives designated or selected by public employees for the purposes of collective negotiation by the majority of the employees in a unit appropriate for such purposes, by the majority of the employees voting in an election conducted by the commission as authorized by this act or, at the option of the representative in a case in which the commission finds that only one representative is seeking to be the majority representative, by a majority of the employees in the unit signing authorization cards indicating their preference for that representative, shall be the exclusive representatives for collective negotiation concerning the terms and conditions of employment of the employees in such unit. An authorization card indicating preference shall not be valid unless it is printed in a language understood by the employee who

signs it. Nothing herein shall be construed to prevent any official from meeting with an employee organization for the purpose of hearing the views and requests of its members in such unit so long as (a) the majority representative is informed of the meeting; (b) any changes or modifications in terms and conditions of employment are made only through negotiation with the majority representative; and (c) a minority organization shall not present or process grievances. Nothing herein shall be construed to deny to any individual employee his rights under Civil Service laws or regulations. When no majority representative has been selected as the bargaining agent for the unit of which an individual employee is a part, he may present his own grievance either personally or through an appropriate representative or an organization of which he is a member and have such grievance adjusted.

A majority representative of public employees in an appropriate unit shall be entitled to act for and to negotiate agreements covering all employees in the unit and shall be responsible for representing the interest of all such employees without discrimination and without regard to employee organization membership. Proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established. In addition, the majority representative and designated representatives of the public employer shall meet at reasonable times and negotiate in good faith with respect to grievances, disciplinary disputes, and other terms and conditions of employment. Nothing herein shall be construed as permitting negotiation of the standards or criteria for employee performance.

When an agreement is reached on the terms and conditions of employment, it shall be embodied in writing and signed by the authorized representatives of the public employer and the majority representative.

Public employers shall negotiate written policies setting forth grievance and disciplinary review procedures by means of which their employees or representatives of employees may appeal the interpretation, application or violation of policies, agreements, and administrative decisions, including disciplinary determinations, affecting them, provided that such grievance and disciplinary review procedures shall be included in any agreement entered into between the public employer and the representative organization. Such grievance and disciplinary review procedures may provide for binding arbitration as a means for resolving disputes. Except as otherwise provided herein, the procedures agreed to by the parties may not replace or be inconsistent with any alternate statutory appeal procedure nor may they provide for binding arbitration of disputes involving the discipline of employees with statutory protection under tenure or civil service laws, except that such procedures may provide for binding arbitration of disputes involving the minor discipline of any public employees protected under the provisions of section 7 of P.L.1968, c.303 (C.34:13A-5.3), other than public employees subject to discipline pursuant to R.S.53:110. Grievance and disciplinary review procedures established by agreement between the public employer and the representative organization shall be utilized for any dispute covered by the terms of such agreement. For the purposes of this section, minor discipline shall mean a suspension or fine of less than five days unless the employee has been suspended or fined an aggregate of 15 or more days or received more than three suspensions or fines of five days or less in one calendar year.

Where the State of New Jersey and the majority representative have agreed to a disciplinary review procedure that provides for binding arbitration of disputes involving the major discipline of any public employee protected under the provisions of this section, other than public employees subject to discipline pursuant to R.S.53:110, the grievance and disciplinary review procedures

established by agreement between the State of New Jersey and the majority representative shall be utilized for any dispute covered by the terms of such agreement. For the purposes this section, major discipline shall mean a removal, disciplinary demotion, suspension or fine of more than five days, or less where the aggregate number of days suspended or fined in any one calendar year is 15 or more days or unless the employee received more than three suspensions or fines of five days or less in one calendar year.

In interpreting the meaning and extent of a provision of a collective negotiation agreement providing for grievance arbitration, a court or agency shall be bound by a presumption in favor of arbitration. Doubts as to the scope of an arbitration clause shall be resolved in favor of requiring arbitration.

L. 1968, c. 303, s. 7, eff. July 1, 1968. Amended by 1974, c. 123, s. 4; L. 1982, c. 103, s. 1, eff. July 30, 1982; L. 1996, c. 115, s. 4, eff. Jan. 9, 1997; L. 2003, c. 119, s. 2, eff. July 1, 2003, L. 2005, c. 161; L. 2005, c. 380

**34:13A-5.4. Unfair practices; proceedings for enforcement; determination of questions within scope of collective negotiations; appeal; rules for representation elections and negotiations; order of enforcement.**

a. Public employers, their representatives or agents are prohibited from:

(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act.

(2) Dominating or interfering with the formation, existence or administration of any employee organization.

(3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act.

(4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under this act.

(5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative.

(6) Refusing to reduce a negotiated agreement to writing and to sign such agreement.

(7) Violating any of the rules and regulations established by the commission.

b. Employee organizations, their representatives or agents are prohibited from:

(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act.

(2) Interfering with, restraining or coercing a public employer in the selection of his representative for the purposes of negotiations or the adjustment of grievances.

(3) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit.

(4) Refusing to reduce a negotiated agreement to writing and to sign such agreement.

(5) Violating any of the rules and regulations established by the commission.

c. The commission shall have exclusive power as hereinafter provided to prevent anyone from engaging in any unfair practice listed in subsections a. and b. above. Whenever it is charged that anyone has engaged or is engaging in any such unfair practice, the commission, or any designated agent thereof, shall have authority to issue and cause to be served upon such party a complaint stating the specific unfair practice charged and including a notice of hearing containing the date and place of hearing before the commission or any designated agent thereof; provided that no complaint shall issue based upon any unfair practice occurring more than 6 months prior to the filing of the charge unless the person aggrieved thereby was prevented from filing such charge in which event the 6-month period shall be computed from the day he was no longer so prevented.

In any such proceeding, the provisions of the Administrative Procedure Act P.L.1968, c. 410 (C. 52:14B-1 et seq.) shall be applicable. Evidence shall be taken at the hearing and filed with the commission. If, upon all the evidence taken, the commission shall determine that any party charged has engaged or is engaging in any such unfair practice, the commission shall state its findings of fact and conclusions of law and issue and cause to be served on such party an order requiring such party to cease and desist from such unfair practice, and to take such reasonable affirmative action as will effectuate the policies of this act. All cases in which a complaint and notice of hearing on a charge is actually issued by the commission, shall be prosecuted before the commission or its agent, or both, by the representative of the employee organization or party filing the charge or his authorized representative.

d. The commission shall at all times have the power and duty, upon the request of any public employer or majority representative, to make a determination as to whether a matter in dispute is within the scope of collective negotiations. The commission shall serve the parties with its findings of fact and conclusions of law. Any determination made by the commission pursuant to this subsection may be appealed to the Appellate Division of the Superior Court.

e. The commission shall adopt such rules as may be required to regulate the conduct of representation elections, and to regulate the time of commencement of negotiations and of institution of impasse procedures so that there will be full opportunity for negotiations and the resolution of impasses prior to required budget submission dates.

f. The commission shall have the power to apply to the Appellate Division of the Superior Court for an appropriate order enforcing any order of the commission issued under subsection c. or d. hereof, and its findings of fact, if based upon substantial evidence on the record as a whole, shall not, in such action, be set aside or modified; any order for remedial or affirmative action, if reasonably designed to effectuate the purposes of this act, shall be affirmed and enforced in such proceeding.

g. The Director of the Division of Local Government Services in the Department of Community Affairs may notify the commission that a municipality deemed a "municipality in need of stabilization and recovery" pursuant to section 4 of P.L.2016, c.4 (C.52:27BBBB-4) shall not be subject to the commission's authority to prevent an unfair practice pursuant to subsection a. of this section. Upon such notice, neither the commission, nor any designee, shall have the authority to issue or cause to be served upon such

municipality in need of stabilization and recovery any complaint alleging an unfair practice under subsection a. of this section or to hold any hearings with respect thereto. Nothing in this subsection shall be construed to limit the scope of any general or specific powers of the Local Finance Board or the Director set forth in P.L.2016, c4 (C.52:27BBBB-1 et al.).

L. 1974, c. 123, s. 1. Amended by L. 1979, c. 477, s. 1, eff. July 1, 1980; Amended by L. 2016, c. 4 § 7, eff. May 27, 2016.

### **34:13A-5.5. Representation fee in lieu of dues.**

a. Notwithstanding any other provisions of law to the contrary, the majority representative and the public employer of public employees in an appropriate unit shall, where requested by the majority representative, negotiate concerning the subject of requiring the payment by all nonmember employees in the unit to the majority representative of a representation fee in lieu of dues for services rendered by the majority representative. Where agreement is reached it shall be embodied in writing and signed by the authorized representatives of the public employer and the majority representative. If no agreement is reached, the majority representative may petition the commission to conduct an investigation. If the commission determines during the investigation that a majority of the employees in the negotiations unit are voluntary dues paying members of the majority representative and that the majority representative maintains a demand and return system as required by subsection c. of this section and section 3 of P.L.1979, c.477 (C.34:13A-5.6), the commission shall order the public employer to institute a payroll deduction of the representation fee in lieu of dues from the wages or salaries of the employees in the negotiations unit who are not members of the majority representative.

b. The representation fee in lieu of dues shall be in an amount equivalent to the regular membership dues, initiation fees and assessments charged by the majority representative to its own members less the cost of benefits financed through the dues, fees and assessments and available to or benefitting only its members, but in no event shall such fee exceed 85% of the regular membership dues, fees and assessments.

c. Any public employee who pays a representation fee in lieu of dues shall have the right to demand and receive from the majority representative, under proceedings established and maintained in accordance with section 3 of P.L.1979, c.477 (C.34:13A-5.6), a return of any part of that fee paid by him which represents the employee's additional pro rata share of expenditures by the majority representative that is either in aid of activities or causes of a partisan political or ideological nature only incidentally related to the terms and conditions of employment or applied toward the cost of any other benefits available only to members of the majority representative. The pro rata share subject to refund shall not reflect, however, the costs of support of lobbying activities designed to foster policy goals in collective negotiations and contract administration or to secure for the employees represented advantages in wages, hours, and other conditions of employment in addition to those secured through collective negotiations with the public employer.

L. 1979, c. 477, s. 2. Amended by L. 2002, c. 46, s. 1.

### **34:13A-5.6. Representation fee in lieu of dues by payroll deduction.**

Where a negotiated agreement is reached, pursuant to section 2 of P.L.1979, c.477 (C.34:13A-5.5), or where the public employer has been ordered by the commission to institute a payroll deduction of the representation fee in lieu of dues, a majority representative of

public employees in an appropriate unit shall be entitled to a representation fee in lieu of dues by payroll deduction from the wages or salaries of the employees in such unit who are not members of a majority representative; provided, however, that membership in the majority representative is available to all employees in the unit on an equal basis and that the representation fee in lieu of dues shall be available only to a majority representative that has established and maintained a demand and return system which provides pro rata returns as described in subsection c. of section 2 of P.L.1979, c.477 (C.34:13A-5.5). The demand and return system shall include a provision by which persons who pay a representation fee in lieu of dues may obtain review of the amount returned through full and fair proceedings placing the burden of proof on the majority representative. Such proceedings shall provide for an appeal to a board consisting of three members to be appointed by the Governor, by and with the advice and consent of the Senate, who shall serve without compensation but shall be reimbursed for actual expenses reasonably incurred in the performance of their official duties.

Of such members, one shall be representative of public employers, one shall be representative of public employee organizations and one, as chairman, who shall represent the interest of the public as a strictly impartial member not having had more than a casual association or relationship with any public employers, public employer organizations or public employee organizations in the 10 years prior to appointment. Of the first appointees, one shall be appointed for one year, one for a term of two years and the chairman, for a term of three years. Their successors shall be appointed for terms of two years each and until their successors are appointed and qualified, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the member whose office has become vacant. Nothing herein shall be deemed to require any employee to become a member of the majority representative.

L. 1979, c. 477, s. 3. Amended by L. 2002, c. 46, s. 2.

### **34:13A-5.7. Discrimination between nonmembers and members on basis of payment of fee; unfair practice.**

Any action engaged in by a public employer, its representatives or agents, or by an employee organization, its representatives or agents, which discriminates between nonmembers who pay the said representation fee and members with regard to the payment of such fee other than as allowed under this act, shall be treated as an unfair practice within the meaning of subsection 1(a) or subsection 1(b) of this act.

L. 1979, c. 477, s. 4, eff. July 1, 1980.

### **34:13A-5.8. Payment to majority representative.**

Payment of the representation fee in lieu of dues shall be made to the majority representative during the term of the collective negotiation agreement affecting such nonmember employees and during the period, if any, between successive agreements so providing, on or after, but in no case sooner than the thirtieth day following the beginning of an employee's employment in a position included in the appropriate negotiations unit, and the tenth day following reentry into the appropriate unit for employees who previously served in a position included in the appropriate unit who continued in the employ of the public employer in an excluded position and individuals being reemployed in such unit from a reemployment list. For the purposes of this section, individuals employed on a 10-month basis or who are reappointed from year to year shall be considered to be in continuous employment.

L. 1979, c. 477, s. 5, eff. July 1, 1980.

#### **34:13A-5.9. Rules and regulations.**

The commission may promulgate rules or regulations to effectuate the purposes of this act.

L. 1979, c. 477, s. 6, eff. July 1, 1980.

#### **34:13A-5.10. Findings, declarations relative to collective negotiations units for Executive Branch employees; units designated.**

a. The Legislature finds and declares that, for more than three decades, there have been broad-based collective negotiations units for the employees in the Executive Branch of State government. This existing unit structure has contributed to the stability of labor relations between the public employees and the Executive Branch and has served to avoid disruption of services to the public. To foster continued harmonious labor relations between State employees and the Executive Branch, the existing structure for collective negotiations units must be codified. In addition, the Legislature finds and declares that the structure should be expanded to permit collective negotiations for managers and deputy attorneys general who are not covered by the ten units for civilian employees of the Executive Branch.

b. (1) There shall be only twelve collective negotiations units for civilian employees of the Executive Branch of State government. The units shall be as follows: administrative and clerical; professional; primary level supervisory; high level supervisory; operations, maintenance and services; crafts; inspection and security; health care and rehabilitation services; State colleges and universities; State colleges and universities adjuncts; deputy attorneys general; and State government managers.

(2) An existing or newly established title that is not assigned managerial, executive or confidential duties, as defined in subsections (f) and (g) of section 3 of P.L.1941, c.100 (C.34:13A-3), may be placed in one of the twelve collective negotiations units for civilian employees by the Governor's Office of Employee Relations. Such placements may be challenged through a unit clarification procedure pursuant to the rules of the New Jersey Public Employment Relations Commission.

L.2005,c.142, s.1, eff. July 7, 2005; L.2009, c. 314, eff. January 18, 2010.

#### **34:13A-5.11. Short title [Workplace Democracy Enhancement Act]**

This act shall be known and may be cited as the "Workplace Democracy Enhancement Act."

L. 2018, c. 15, § 1, eff. May 18, 2018.

#### **34:13A-5.12. Findings, declarations relative to public employment relations**

The Legislature finds and declares that collective negotiations promote labor stability in the public sector and enhance the delivery and avoid the disruption of public services. The Legislature further declares that it is in the public interest to ensure that any employee organization that has been designated as the exclusive representatives of employees in a collective negotiations unit is able to effectively carry out its statutory duties by having access to and being able to communicate with the employees it represents.

L. 2018, c. 15, § 2, eff. May 18, 2018.

#### **34:13A-5.13. Access to members of negotiations units**

(a) Public employers shall provide to exclusive representative employee organizations access to members of the negotiations units.

(b) Access includes, but is not limited to, the following:

(1) the right to meet with individual employees on the premises of the public employer during the work day to investigate and discuss grievances, workplace-related complaints, and other workplace issues;

(2) the right to conduct worksite meetings during lunch and other non-work breaks, and before and after the workday, on the employer's premises to discuss workplace issues, collective negotiations, the administration of collective negotiations agreements, other matters related to the duties of an exclusive representative employee organization, and internal union matters involving the governance or business of the exclusive representative employee organization; and

(3) the right to meet with newly hired employees, without charge to the pay or leave time of the employees, for a minimum of 30 and a maximum of 120 minutes, within 30 calendar days from the date of hire, during new employee orientations, or if the employer does not conduct new employee orientations, at individual or group meetings.

(c) Within 10 calendar days from the date of hire of negotiations unit employees, public employers shall provide the following contact information to an exclusive representative employee organization in an Excel file format or other format agreed to by the exclusive representative employee organization: name, job title, worksite location, home address, work telephone numbers, and any home and personal cellular telephone numbers on file with the public employer, date of hire, and work email address and any personal email address on file with the public employer. Every 120 calendar days beginning on January 1 following the effective date [May 18, 2018] of this act, public employers shall provide exclusive representative employee organizations, in an Excel file or similar format agreed to by the employee organization, the following information for all negotiations unit employees: name, job title, worksite location, home address, work, home and personal cellular telephone numbers, date of hire, and work email address and personal email address on file with the public employer.

(d) The home addresses, phone numbers, email addresses, dates of birth, and negotiation units and groupings of employees, and the emails or other communications between employee organizations and their members, prospective members, and non-members, are not government records and are exempt from any disclosure requirements of P.L.1963, c.73 (C.47:1A-1 et seq.).

(e) Exclusive representative employee organizations shall have the right to use the email systems of public employers to communicate with negotiations unit members regarding collective negotiations, the administration of collective negotiations agreements, the investigation of grievances, other workplace-related complaints and issues, and internal union matters involving the governance or business of the union.

(f) Exclusive representative employee organizations shall have the right to use government buildings and other facilities that are owned or leased by government entities to conduct meetings with their unit members regarding collective negotiations, the administration of collective negotiations agreements, the investigation of grievances, other workplace-related complaints and issues, and internal union matters involving the governance or business of the union, provided

such use does not interfere with governmental operations. Meetings conducted in government buildings pursuant to this section shall not be for the purpose of supporting or opposing any candidate for partisan political office, or for the purpose of distributing literature or information regarding partisan elections. An exclusive representative employee organization conducting a meeting in a government building or other government facility pursuant to this section may be charged for maintenance, security and other costs related to the use of the government building or facility that would not otherwise be incurred by the government entity.

(g) Upon the request of an exclusive representative employee organization, a public employer shall negotiate in good faith over contractual provisions to memorialize the parties' agreement to implement the provisions of subsections a. through f. of this section. Negotiations shall commence within 10 calendar days from the date of a request by the employee organization, even if a collective negotiations agreement is in effect on the effective date [May 18, 2018] of this act. Agreements between a public employer and an exclusive representative employee organization implementing subsections a. through f. of this section shall be incorporated into the parties' collective negotiations agreement and shall be enforceable through the parties' grievance procedure, which shall include binding arbitration. The requirements set forth in subsections a. through f. of this section establish the minimum requirements for access to and communication with negotiations unit employees by an exclusive representative employee organization.

(h) If the parties are unable to reach agreement within 30 calendar days from the commencement of negotiations regarding access to and communications with negotiations unit members, the exclusive employee organization or the public employer may file a petition with the Public Employment Relations Commission to resolve the negotiations dispute. Upon receipt of a petition, the commission shall appoint an arbitrator, who shall issue a binding award resolving the parties' negotiations disputes consistent with subsections a. through f. of this section. The commission shall establish a panel of arbitrators to resolve negotiations pursuant to this section and shall promulgate rules to implement this section.

(i) For the purposes of this section, "exclusive representative employee organization" means an employee organization which has been designated as the exclusive representatives of employees in a collective negotiations unit.

L. 2018, c. 15, § 3, eff. May 18, 2018.

#### **34:13A-5.14. Certain actions of public employer relative to negotiations unit members prohibited**

(a) A public employer shall not encourage negotiations unit members to resign or relinquish membership in an exclusive representative employee organization and shall not encourage negotiations unit members to revoke authorization of the deduction of fees to an exclusive representative employee organization.

(b) A public employer shall not encourage or discourage an employee from joining, forming or assisting an employee organization.

(c) A public employer that violates any provision of subsection a. or b. of this section shall be regarded as having engaged in an unfair practice in violation of subsection a. of section 1 of P.L.1974, c.123 (C.34:13A-5.4), and, upon a finding that the violation has occurred, the Public Employment Relations Commission, in addition to implementing any other remedies authorized by that section, shall order the public employer to make whole the exclusive representative employee organization for any losses suffered by the organization as a result of the public employer's unlawful conduct and any other remedial relief deemed appropriate.

L. 2018, c. 15, § 4, eff. May 18, 2018.

#### **34:13A-5.15. Inclusion in negotiations unit**

(a) All regular full-time and part-time employees of the public employer who perform negotiations unit work shall be included in the negotiations unit represented by the exclusive representative employee organization.

(b) Negotiations unit work means work that is performed by any employees who are included in a negotiations unit represented by an exclusive representative employee organization without regard to job title, job classification or number of hours worked, except that employees who are confidential employees or managerial executives, as those terms are defined by section 1 of P.L.1941, c.100 (C.34:13A-3), or elected officials, members of boards and commissions, or casual employees, may be excluded from the negotiations unit. Casual employees are employees who work an average of fewer than four hours per week over a period of 90 calendar days.

(c) Employees who are performing negotiations unit work and who are not included in a negotiations unit because they did not meet the threshold of hours or percent of time worked as set forth in a certification of representative, recognition clause or other provision in a collective negotiations agreement, shall be included in the negotiations unit by operation of this act, within 90 calendar days from the effective date of this act.

(d) The Public Employment Relations Commission shall promulgate rules to implement this section, including rules to resolve disputes over the inclusion of employees performing negotiations unit work in the appropriate negotiations unit. The rules promulgated by the commission shall provide for the resolution of disputes that arise under this section, within 60 calendar days from the submission of the dispute to the commission by either the exclusive representative employee organization or the public employer.

L. 2018, c. 15, § 5, eff. May 18, 2018.

#### **34:13A-6. Powers and duties.**

(a) Upon its own motion, in an existing, imminent or threatened labor dispute in private employment, the board, through the Division of Private Employment Dispute Settlement, may, and, upon the request of the parties or either party to the dispute, must take such steps as it may deem expedient to effect a voluntary, amicable and expeditious adjustment and settlement of the differences and issues between employer and employees which have precipitated or culminated in or threaten to precipitate or culminate in such labor dispute.

(b) Whenever negotiations between a public employer and an exclusive representative 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, take such steps as it may deem expedient to effect a voluntary resolution of the impasse. In the event of a failure to resolve the impasse by mediation the Division of Public Employment Relations is empowered to recommend or invoke factfinding with recommendation for settlement, the cost of which shall be borne by the commission.

(c) The board in private employment, through the Division of Private Employment Dispute Settlement, and the commission in public employment, through the Division of Public Employment Relations, shall take the following steps to avoid or terminate labor disputes: (1) to arrange for, hold, adjourn or reconvene a conference or conferences between the disputants or one or more



of their representatives or any of them; (2) to invite the disputants or their representatives or any of them to attend such conference and submit, either orally or in writing, the grievances of and differences between the disputants; (3) to discuss such grievances and differences with the disputants and their representatives; and (4) to assist in negotiating and drafting agreements for the adjustment in settlement of such grievances and differences and for the termination or avoidance, as the case may be, of the existing or threatened labor dispute.

(d) The commission, through the Division of Public Employment Relations, is hereby empowered to resolve questions concerning representation of public employees by conducting a secret ballot election or utilizing any other appropriate and suitable method designed to ascertain the free choice of the employees. The division shall decide in each instance which unit of employees is appropriate for collective negotiation, provided that, except where dictated by established practice, prior agreement, or special circumstances, no unit shall be appropriate which includes (1) both supervisors and non-supervisors, (2) both professional and nonprofessional employees unless a majority of such professional employees vote for inclusion in such unit or, (3) both craft and non-craft employees unless a majority of such craft employees vote for inclusion in such unit. All of the powers and duties conferred or imposed upon the division that are necessary for the administration of this subdivision, and not inconsistent with it, are to that extent hereby made applicable. Should formal hearings be required, in the opinion of said division to determine the appropriate unit, it shall have the power to issue subpoenas as described below, and shall determine the rules and regulations for the conduct of such hearing or hearings.

(e) For the purposes of this section the Division of Public Employment Relations shall have the authority and power to hold hearings, subpoena witnesses, compel their attendance, administer oaths, take the testimony or deposition of any person under oath, and in connection therewith, to issue subpoenas duces tecum, and to require the production and examination of any governmental or other books or papers relating to any matter described above.

(f) In carrying out any of its work under this act, the board may designate one of its members, or an officer of the board to act in its behalf and may delegate to such designee one or more of its duties hereunder and, for such purpose, such designee shall have all the powers hereby conferred upon the board in connection with the discharge of the duty or duties so delegated. In carrying out any of its work under this act, the commission may designate one of its members or an officer of the commission to act on its behalf and may delegate to such designee one or more of its duties hereunder and, for such purpose, such designee shall have all of the powers hereby conferred upon the commission in connection with the discharge of the duty or duties so delegated.

(g) The board and commission may also appoint and designate other persons or groups of persons to act for and on its behalf and may delegate to such persons or groups of persons any and all of the powers conferred upon it by this act so far as it is reasonably necessary to effectuate the purposes of this act. Such persons shall serve without compensation but shall be reimbursed for any necessary expenses.

(h) The personnel of the Division of Public Employment Relations shall include only individuals familiar with the field of public employee-management relations. The commission's determination that a person is familiar in this field shall not be reviewable by any other body.

L. 1941, c. 100, p. 230, s. 6. Amended by L. 1968, c. 303, s. 8, eff. July 1, 1968; L. 1974, c. 123, s. 5.

### **34:13A-6.1. Priority of reorganization plan of department of labor and industry.**

To the extent that the reorganization plan of the Department of Labor and Industry which was submitted to the Legislature on May 11, 1972 (effective July 10, 1972) is inconsistent with, changes or alters the powers of either the New Jersey Public Employment Relations Commission in the Division of Public Employment Relations or the Board of Mediation in the Division of Private Employment Dispute Settlement as they existed prior to the effective date of said reorganization, such reorganization plan shall be to such extent superseded and inoperative.

L. 1973, c. 326, s. 3, eff. Dec. 18, 1973.

### **34:13A-7. Arbitration.**

Whenever a controversy shall arise between an employer and his employees which is not settled either in conference between representatives of the parties or through mediation in the manner provided by this act, such controversy may, by agreement of the parties, be submitted to arbitration, one person to be selected by the employer, one person to be selected by the employees, and a third selected by the representatives of the employer and employees, and in the event of any such appointment or selection not being made upon the request of the parties in the controversy, the department may select the third person to arbitrate the matter submitted; provided, however, that the failure or refusal of either party to submit a controversy to arbitration shall not be construed as a violation of the policy or purpose of this act, or of any provision thereof, nor shall failure or refusal to arbitrate constitute a basis for any action at law or suit in equity.

L. 1941, c. 100, p. 231, s. 7.

### **34:13A-8. Strikes.**

Nothing in this act shall be construed to interfere with, impede or diminish in any way the right of private employees to strike or engage in other lawful concerted activities.

L. 1941, c. 100, p. 231, s. 8. Amended by L. 1968, c. 303, s. 9, eff. July 1, 1968.

### **34:13A-8.1. Effect of act upon prior agreements or upon pension statutes.**

Nothing in this act shall be construed to annul or modify, or to preclude the continuation of any agreement during its current term heretofore entered into between any public employer and any employee organization nor shall any provision hereof annul or modify any pension statute or statutes of this State.

L. 1968, c. 303, s. 10, eff. July 1, 1968. Amended by L. 1974, c. 123, s. 6.

### **34:13A-8.2. Filed contracts in public employment.**

The commission shall collect and maintain a current file of filed contracts in public employment. Public employers shall file with the commission a copy of any contracts it has negotiated with public employee representatives following the consummation of negotiations.

L. 1968, c. 303, s. 11, eff. July 1, 1968.

### **34:13A-8.3. Development and maintenance of programs.**

The commission in conjunction with the Institute of Management and Labor of Rutgers, The State University, shall develop and maintain a program for the guidance of public employees and public employers in employee management relations, to provide technical advice to public employees and public employers on employee-management programs, to assist in the development of programs for training employee and management personnel in the principles and procedures of consultation, negotiation and the settlement of disputes in the public service, and for the training of employee and management officials in the discharge of their employee-management relations responsibilities in the public interest.

L. 1968, c. 303, s. 12, eff. July 1, 1968. Amended by L. 1974, c. 123, s. 7.

#### **34:13A-9. Personnel; compensation.**

(1) For the performance of its work, under this act, the board may request and shall avail itself of and utilize the service of any officer or employee of the Department of Labor and Industry who shall render such assistance as the board may require without additional compensation. The board may, within the amount available therefor by appropriation, appoint a secretary and such other assistants and employees as it may require for the consummation of its work, prescribe their duties and fix their compensation. (2) Each member of the board shall be entitled to be reimbursed for his traveling and other expenses actually and necessarily incurred by him in the performance of his duties, and, in addition, shall receive a per diem allowance of \$50.00 for each day, or part thereof, spent in the rendition of service to or for the board under this act; provided, however, that no member shall in any case receive per diem compensation as such member in an amount in excess of \$5,000.00 for any 1 fiscal year.

L. 1941, c. 100, p. 231, s. 9. Amended by L. 1945, c. 32, p. 89, s. 2; L. 1967, c. 110, s. 1, eff. June 15, 1967.

#### **34:13A-10. Disqualifications.**

No member or officer of the board having any financial or other interest in a trade, business, industry or occupation in which a labor dispute exists or is threatened and of which the board has taken cognizance, shall be qualified to participate in any way in the acts or efforts of the board in connection with the settlement or avoidance thereof.

L. 1941, c. 100, p. 232, s. 10.

#### **34:13A-10.1. Board members; participation; membership or employment in other agencies.**

No member of the board shall take any part, directly or indirectly, in any proceeding involving any relation between employees and employers before any board, bureau, commission, officer or court, unless such member in such proceeding takes the part of the same group whether employees, employers, or the public, as he represents on the Board of Mediation.

No member of the board shall be a member or employee of any other public board, body, commission, bureau or agency which deals with employer and employee relations, whether Federal, State or local, except that he may be a member of any such board, body, commission, bureau or agency if his membership thereon is as a representative of the same group, whether employees, employers or the public, as it is on the Board of Mediation.

L. 1945, c. 32, p. 90, s. 3.

#### **34:13A-11. Rules.**

The board shall have power to adopt, alter, amend or repeal such rules in connection with the voluntary mediation of labor disputes in private employment and the commission shall have the same powers in public employment, as may be necessary for the proper administration and enforcement of the provisions of this act.

L. 1941, c. 100, p. 232, s. 11. Amended by L. 1968, c. 303, s. 13, eff. July 1, 1968.

#### **34:13A-12. Construction.**

Nothing contained in this act shall be construed as interfering with, impeding or diminishing in any way any right guaranteed by law or by the Constitution of the State or of the United States.

L. 1941, c. 100, p. 232, s. 12.

#### **34:13A-13. Separability of provisions.**

If any clause, sentence, paragraph or part of this act, or the application thereof to any person or circumstances, shall for any reason be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this act, and the application of such provisions to other persons or circumstances, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof, directly involved in the controversy in which such judgment shall have been rendered and to the person or circumstances involved. It is hereby declared to be the legislative intent that this act would have been adopted had such invalid provisions not been included herein.

L. 1941, c. 100, p. 232, s. 13.

#### **34:13A-14. Findings, declaration 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 taxing 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, s. 1, eff. May 10, 1977. Amended by L. 1995, c. 425, s. 2, eff. Jan. 10, 1996.

#### **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, s. 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, s. 2, eff. May 10, 1977.

#### **34:13A-16. Negotiations between public fire, police department and exclusive representative; unfair practice charge; mediation; 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 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.104 (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" 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 paragraph (2) of 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 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 fourteen 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 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.

i. The Director of the Division of Local Government Services in the Department of Community Affairs may notify the commission, through the Division of Public Employment Relations, that a municipality deemed a "municipality in need of stabilization and

recovery" pursuant to section 4 of P.L.2016, c.4 (C.52:27BBBB-4) will not participate in any impasse procedures authorized by this section. Upon such notice, any pending impasse procedures authorized by this section shall immediately cease, and any pending petition for arbitration shall be vacated. Nothing in this subsection shall be construed to limit the scope of any general or specific powers of the Local Finance Board or the director set forth in P.L.2016, c.4 (C.52:27BBBB-1 et al.).

j. The Local Finance Board may provide that any arbitration award, including but not limited to an interest arbitration award, involving a municipality deemed a "municipality in need of stabilization and recovery" pursuant to section 4 of P.L.2016, c.4 (C.52:27BBBB-4) shall be subject to the review and approval of the Director of the Division of Local Government Services in the Department of Community Affairs, including those on a collective negotiations agreement where the matter has been submitted to an arbitrator pursuant to law, and no such award shall be binding without the approval of the director. Nothing in this subsection shall be construed to limit the scope of any general or specific powers of the Local Finance Board or the director set forth in P.L.2016, c.4 (C.52:27BBBB-1 et al.).

(50) 1977, c. 85, s. 1. Amended L. 1995, c. 425, s. 3; L. 1997, c. 183; L. 2007, c. 62, s. 14, L. 2010, c. 105, s. 1, eff. Jan. 1, 2011 12; Amended L. 2014, c. 11, § 4, eff. June 24, 2014, retroactive to April 2, 2014; Amended by L. 2016, c. 4 § 6, eff. May 27, 2016.

#### **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, s. 4., eff. Jan. 10, 1996.

#### **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, s. 5, eff. Jan. 10, 1996.

### **34:13A-16.3. Fee schedule; commission 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, s. 6, eff. Jan. 10, 1996.

### **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, s. 7, eff. Jan. 10, 1996.

### **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, s. 8, eff. Jan. 10, 1996.

### **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, s. 9, eff. Jan. 10, 1996.

### **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 aggregated 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 arbitrator. 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 negotiation agreement.

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

### **34:13A-16.8. Police and Fire Public Interest Arbitration 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 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, s. 3., eff. Jan. 1, 2011; Amended L. 2014, c. 11, § 4, 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 a negotiated agreements expiring on that effective date or any date thereafter until 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 December 31, 2017 but for whom a final settlement has not been reached.

This act shall take effect immediately and shall be retroactive to April 2, 2014.

L. 2010,c. 105, s. 4., eff. Jan. 1, 2011; Amended L. 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 subpoenas. If any person refuses to obey a subpoena, 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, s. 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, s. 5, eff. May 10, 1977. Amended by L. 1997, c. 330, s. 4, eff. June 1, 1998.

#### **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, s. 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, s. 8, eff. May 10, 1977.

### **34:13A-22. Definitions.**

As used in this act:

"Commission" means the New Jersey Public Employment Relations Commission.

"Commissioner" means the Commissioner of Education.

"Discipline" includes all forms of discipline, except tenure charges filed pursuant to the provisions of subsubarticle 2 of subarticle B of Article 2 of chapter 6 of Subtitle 3 of Title 18A of the New Jersey Statutes, N.J.S. 18A:6-10 et seq., or the withholding of increments pursuant to N.J.S.18A:29-14.

"Employees" means employees of an employer as defined by this act.

"Employer" means any local or regional school district, educational services commission, jointure commission, county special services school district, or board or commission under the authority of the commissioner or the State Board of Education.

"Extracurricular activities" include those activities or assignments not specified as part of the teaching and duty assignments scheduled in the regular work day, work week, or work year.

"Minor discipline" includes, but is not limited to, various forms of fines and suspensions, but does not include tenure charges filed pursuant to the provisions of subsubarticle 2 of subarticle B of Article 2 of chapter 6 of Subtitle 3 of Title 18A of the New Jersey Statutes, N.J.S.18A:6-10 et seq., or the withholding of increments pursuant to N.J.S.18A:29-14, letters of reprimand, or suspensions with pay pursuant to section 1 of P.L. 1971, c. 435 (C. 18A:6-8.3) and N.J.S. 18A:25-6.

"Regular work day, work week, or work year" means that period of time that all members of the bargaining unit are required to be present and at work.

"Teaching staff member" means a member of the professional staff of any employer holding office, position or employment of such character that the qualifications, for the office, position or employment, require him to hold a valid and effective standard, provisional or emergency certificate, appropriate to that office, position or employment, issued by the State Board of Examiners.

"Teaching staff member" includes a school nurse.

L. 1989, c. 269, s. 1, eff. Jan. 4, 1990.

### **34:13A-23. Assignment to extracurricular activities; subject to collective negotiations.**

All aspects of assignment to, retention in, dismissal from, and any terms and conditions of employment concerning extracurricular activities shall be deemed mandatory subjects for collective negotiations between an employer and the majority representative of the employees in a collective bargaining unit, except that the establishment of qualifications for such positions shall not constitute a mandatory subject for negotiations. If the negotiated selection procedures fail to produce a qualified candidate from

within the district the employer may employ from outside the district any qualified person who holds an appropriate New Jersey teaching certificate. If the employer is unable to employ a qualified person from outside of the district, the employer may assign a qualified teaching staff member from within the district.

L. 1989, c. 269, s. 2, eff. Jan. 4, 1990.

### **34:13A-24. Imposition of minor discipline.**

a. Notwithstanding any other law to the contrary, and if negotiated with the majority representative of the employees in the appropriate collective bargaining unit, an employer shall have the authority to impose minor discipline on employees. Nothing contained herein shall limit the authority of the employer to impose, in the absence of a negotiated agreement regarding minor discipline, any disciplinary sanction which is authorized and not prohibited by law.

b. The scope of such negotiations shall include a schedule setting forth the acts and omissions for which minor discipline may be imposed, and also the penalty to be imposed for any act or omission warranting imposition of minor discipline.

c. Fines and suspensions for minor discipline shall not constitute a reduction in compensation pursuant to the provisions of N.J.S.18A:6-10.

L. 1989, c. 269, s.3, eff. Jan. 4, 1990.

### **34:13A-25. Transfers of employees.**

Transfers of employees by employers between work sites shall not be mandatorily negotiable except that no employer shall transfer an employee for disciplinary reasons.

L. 1989, c. 269, s. 4, eff. Jan. 4, 1990.

### **34:13A-26. Withholding increment for disciplinary reasons.**

Disputes involving the withholding of an employee's increment by an employer for predominately disciplinary reasons shall be subject to the grievance procedures established pursuant to law and shall be subject to the provisions of section 8 of this act.

L. 1989, c. 269, s .5, eff. Jan. 4, 1990.

### **34:13A-27. Resolution of disputes.**

a. If there is a dispute as to whether a transfer of an employee between work sites or withholding of an increment of a teaching staff member is disciplinary, the commission shall determine whether the basis for the transfer or withholding is predominately disciplinary.

b. If the commission determines that the basis for a transfer is predominately disciplinary, the commission shall have the authority to take reasonable action to effectuate the purposes of this act.

c. If the commission determines that the basis for an increment withholding is predominately disciplinary, the dispute shall be resolved through the grievance procedures established pursuant to law and shall be subject to the provisions of section 8 of this act.

d. If a dispute involving the reason for the withholding of a teaching staff member's increment is submitted to the commission pursuant to subsection a. of this section, and the commission



determines that the reason for the increment withholding relates predominately to the evaluation of a teaching staff member's teaching performance, the teaching staff member may file a petition of appeal pursuant to N.J.S.18A:6-9 and N.J.S.18A:29-14, and the petition shall be deemed to be timely if filed within 90 days of notice of the commission's decision, or of the final judicial decision in any appeal from the decision of the commission, whichever date is later.

L. 1989, c. 269, s. 6, eff. Jan. 4, 1990.

#### **34:13A-28. Additional rights.**

Nothing in this act shall be deemed to restrict or limit any right established or provided by section 7 of P.L.1968, c.303 (C.34:13A-5.3); this act shall be construed as providing additional rights in addition to and supplementing the rights provided by that section.

L. 1989, c. 269, s. 7, eff. Jan. 4, 1990.

#### **34:13A-29. Grievance procedures; binding arbitration.**

a. The grievance procedures that employers covered by this act are required to negotiate pursuant to section 7 of P.L.1968, c.303 (C.34:13A-5.3) shall be deemed to require binding arbitration as the terminal step with respect to disputes concerning imposition of reprimands and discipline as that term is defined in this act.

b. In any grievance procedure negotiated pursuant to this act, the burden of proof shall be on the employer covered by this act seeking to impose discipline as that term is defined in this act.

L. 1989, c. 269, s. 8, eff. Jan. 4, 1990.

#### **34:13A-30. Employment with public employee labor organizations, certain; prohibited.**

During the period in which an individual, pursuant to section 504 of Pub.L.86-257 (29 U.S.C.s.504), is prohibited from serving: as a consultant or adviser to any labor organization; as an officer, director, trustee, member of any executive board or similar governing body, business agent, manager, organizer, employee or representative in any capacity of any labor organization; as a labor relations consultant or adviser to a person engaged in an industry or activity affecting commerce, or as an officer, director, agent or employee of any group or association of employers dealing with any labor organization, or in a position having specific collective bargaining authority or direct responsibility in the area of labor-management relations in any corporation or association engaged in an industry or activity affecting commerce; in a position which permits the individual to receive a share of the proceeds from providing goods or services to any labor organization, or as an officer, executive or administrative employee of any entity, the activities of which are in whole or substantial part devoted to providing goods or services to any labor organization; or in any capacity involving decision-making authority over, or custody or control of, the moneys, funds, assets or property of a labor organization, the individual shall also be prohibited from serving:

(a) As a consultant or adviser to any organization representing public employees;

(b) As an officer, director, trustee, member of any governing body, business agent, manager, organizer, employee or representative in any capacity of any organization representing public employees;

(c) As a labor relations consultant or adviser to any public employer, or as an officer, director, agent or employee of any group or association of public employers, or in a position in which the individual has collective bargaining authority or responsibility in the area of labor-management relations for a public employer;

(d) In a position which permits the individual to receive a share of the proceeds from providing goods or services to any organization representing public employees, or as an officer, executive or administrative employee of any entity the activities of which are in whole or substantial part devoted to providing goods or services to any organization representing public employees; or

(e) In any capacity involving decision-making authority over, or custody or control of, the moneys, funds, assets or property of an organization representing public employees. For the purposes of this section, "labor organization" means a labor organization as defined in section 3 of Pub.L.86-257 (29 U.S.C. s.402).

L. 1999, c. 3, s. 1, eff. Jan. 21, 1999.

#### **34:13A-31. Short title.**

This act shall be known and may be cited as the "School Employees Contract Resolution and Equity Act."

L. 2003, c. 126, s. 1, eff. July 10, 2003.

#### **34:13A-32. Definitions relative to school employee collective negotiations.**

For the purposes of this act: "Employer" or "public employer" means any local or regional school district, charter school and its board of trustees, vocational school district, educational services commission, jointure commission, county special services school district, community college, county college, or board or commission under the authority of the Commissioner of Education, the State Board of Education, or the New Jersey Commission on Higher Education.

"Majority representative" means the majority representative of the employees in a collective bargaining unit which is recognized or certified as the majority representative as the result of recognition or certification procedures under the "New Jersey Employer-Employee Relations Act," P.L.1941, c.100 (C.34:13A-1 et seq.), or is voluntarily recognized by the employer.

"Commission" means the New Jersey Public Employment Relations Commission.

L. 2003, c. 126, s. 2, eff. July 10, 2003.

#### **34:13A-33. Terms, conditions of employment under expired agreements.**

Notwithstanding the expiration of a collective negotiations agreement, an impasse in negotiations, an exhaustion of the commission's impasse procedures, or the utilization or completion of the procedures required by this act, and notwithstanding any law or regulation to the contrary, no public employer, its representatives, or its agents shall unilaterally impose, modify, amend, delete or alter any terms and conditions of employment as set forth in the expired or expiring collective negotiations agreement, or unilaterally impose, modify, amend, delete, or alter any other negotiable terms and conditions of employment, without specific agreement of the majority representative.

L. 2003, c. 126, s. 3, eff. July 10, 2003.

**34:13A-34. Participation in mandatory fact finding; report; appointment of super conciliator.**

a. In any case in which collective negotiations between an employer and a majority representative have failed to result in the parties reaching agreement on the terms of a negotiated agreement and the commission's mediation procedures have been exhausted with no final agreement having been reached, the parties shall be required to participate in mandatory fact finding, which shall be conducted by a fact finder under the jurisdiction of the commission, subject to procedures established by the commission pursuant to regulation. The fact finder shall be appointed no later than 30 days after the last meeting between the parties and the mediator in connection with the mediation pursuant to this act.

b. Following completion of such fact finding, the fact finder's report shall be made available to the parties immediately after its issuance, and to the public 10 days thereafter.

c. If the employer and the majority representative do not reach a voluntary negotiated agreement within 20 days after the issuance of the fact finder's report, the commission shall appoint a super conciliator to assist the parties, based upon procedures and subject to qualifications established by the commission pursuant to regulation.

L. 2003, c. 126, s. 4, eff. July 10, 2003.

**34:13A-35. Investigatory proceedings.**

The super conciliator shall promptly schedule investigatory proceedings. The purpose of the proceedings shall be to:

a. Investigate and acquire all relevant information regarding the dispute between the parties;

b. Discuss with the parties their differences, and utilize means and mechanisms, including but not limited to requiring 24-hour per day negotiations, until a voluntary settlement is reached, and provide recommendations to resolve the parties' differences;

c. Modify or amend the fact finder's report for reconsideration by the parties in a further effort to achieve a voluntary settlement by the parties; and

d. Institute any other non-binding procedures deemed appropriate by the super conciliator.

L. 2003, c. 126, s. 5, eff. July 10, 2003.

**34:13A-36. Final report.**

If the actions taken by the super conciliator fail to resolve the dispute, the super conciliator shall issue a final report, which shall be provided to the parties promptly and made available to the public within 10 days thereafter.

L. 2003, c. 126, s. 6, eff. July 10, 2003.

**34:13A-37. Confidentiality; exceptions.**

The mediator, fact finder, or super conciliator, while functioning in a mediatory capacity, shall not be required to disclose any files, records, reports, documents, or other papers classified as confidential which are received or prepared by him or to testify with

regard to mediation conducted by him under this act. Nothing contained herein shall exempt an individual from disclosing information relating to the commission of a crime.

L. 2003, c. 126, s. 7, eff. July 10, 2003.

**34:13A-38. Report to Governor, Legislature.**

Five years after the effective date of this act, the commission shall submit a report to the Governor and to the Legislature on the effects of this act on the negotiations and settlement between school employees and their employers with any recommendations it may have for any changes in the law.

L. 2003, c. 126, s. 8, eff. July 10, 2003.

**34:13A-39. Rules, regulations.**

The commission, in accordance with the provisions of the "Administrative Procedure Act," P.L.1968, c.410 18 (C.52:14B-1 et seq.) shall promulgate rules and regulations to effectuate the purposes of this act.

L. 2003, c. 126, s. 9, eff. July 10, 2003.

**34:13A-40. Definitions relative to employee assistance programs for certain public employees**

For the purposes of this act [C.34:13A-40 et seq.]:

“Civil union” means a civil union as defined in section 2 of P.L.2006, c.103 (C.37:1-29).

“Employee assistance program” means a program in which a public employer provides or contracts with a service provider to provide assistance to the employer’s employees and their dependents to resolve problems which may affect employee work performance, irrespective of whether the problems originate on the job, including, but not limited to, marital and family problems, emotional problems, substance abuse, compulsive gambling, financial problems, and medical problems.

“Dependent” means an employee’s spouse, civil union partner, or domestic partner, an unmarried child of the employee who is less than 31 years of age and lives with the employee in a regular parent-child relationship, or an unmarried child of the employee who is not less than 31 years of age and is not capable of self support. “Child of the employee” includes any child, stepchild, legally adopted child, or foster child of the employee, or of a domestic partner or civil union partner of the employee, who is reported for coverage and dependent upon the employee for support and maintenance.

“Domestic partner” means a domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3).

“Employee” means an employee of a public employer.

“Public employer” means the State of New Jersey, or the counties and municipalities thereof, or any other political subdivision of the State, or a school district, or any special district, or any authority, including a bi-state authority, or any commission, or board, or any branch or agency of the public service.

L. 2011, c. 69, § 1, eff. May 9, 2011

**34:13A-41. Employee assistance programs; licensure, establishment**

Employee assistance programs may provide advice, counseling, treatment, referral and other assistance, except that nothing in this act [C.34:13A-40 et seq.] shall be construed to authorize a person to provide any service in connection with an employee assistance program without holding the license required by law to provide the service. An employee assistance program may be established through a negotiated agreement between the majority representative of the employees in an appropriate bargaining unit and a public employer, or established by a public employer through the adoption of a policy which conforms to the requirements of this act.

L. 2011, c. 69, § 2, eff. May 9, 2011.

**34:13A-42. Prohibited actions by public employer**

No public employer shall take any action against an employee of the employer, including termination, because the employee or a dependent of the employee has obtained counseling, referrals or other services from an employee assistance program or has obtained treatment or other services from any program to which the employee assistance program refers the employee or dependent, unless the employee was referred by the employer to the employee assistance program due to issues related to job performance and fails to make a good faith effort to comply with the recommendations made by the employee assistance program. The provisions of this section shall not be construed as preventing the public employer from taking any action which the employer is otherwise authorized to take for workplace misconduct of the employee or poor work performance, even if the misconduct or poor performance is related to a problem for which the employee is obtaining services provided by an employee assistance program or other program to which the employee assistance program refers the employee.

L. 2011, c. 69, § 3, eff. May 9, 2011.

**34:13A-43. Confidentiality; waivers**

a. Except as provided in subsection b. of this section, each request by an employee or dependent for assistance from, referral to, participation in, or referral by, an employee assistance program shall be confidential, and no public employer, service provider or other person shall divulge to any person that an employee or dependent has requested assistance from, been referred to, or participated in, an employee assistance program or any treatment program to which the employee assistance program refers the employee or dependent. The requirement of confidentiality shall apply to all information related to an employee assistance program, including but not limited to any statements, materials, documents, evaluations, impressions, conclusions, findings, or acts taken in the course of, or in connection with, the program. If, however, a public employer documents to the employee assistance program that the employee has accepted a referral by a public employer for assistance during normal working hours with sick leave or other paid leave, the public employer shall be entitled to know whether the employee has kept his appointment and the amount of time of the appointment.

b. The requirements for confidentiality provided for in subsection a. of this section may be waived only if:

(1) the employee or dependent to whom the information applies has requested and authorized a waiver; the waiver is in writing and specifies the information to be released and the persons to whom the information may be provided; and the information released is the information authorized for release by the employee or dependent and is released only to the persons designated by the employee or dependent, provided that a public employer may not require an

employee to authorize a waiver pursuant to this subsection or take any action against an employee for not authorizing the waiver;

(2) the employee assistance program advisor reasonably believes that the employee is at substantial risk of imminent death or serious bodily injury to self or others; or

(3) the advisor is reporting suspected child abuse or neglect.

c. The provisions of this act [C.34:13A-40 et seq.] shall not be construed to affect other evidentiary privileges and recognized exceptions.

L. 2011, c. 69, § 4, eff. May 9, 2011.

**34:13A-44. Definitions relative to collective bargaining agreements and subcontracting**

“Employer” means any local or regional school district, educational services commission, jointure commission, county special services school district, county college, or board or commission under the authority of the Commissioner of Education or the State Board of Education.

“Employee” means any employee, whether employed on a full or part-time basis, of an employer.

“Subcontracting” means any action, practice, or effort by an employer which results in any services or work performed by any of its employees being performed or provided by any other person, vendor, corporation, partnership or entity.

“Subcontracting agreement” means any agreement or arrangement entered into by an employer to implement subcontracting, but shall not include any contract entered into pursuant to the “Uniform Shared Services and Consolidation Act,” P.L. 2007, c 63 (C.40A:65-1 et al.), or any contract entered into to provide services to nonpublic schools throughout the State or federal funds.

L. 2020 c. 79, § 1, eff. September 11, 2020.

**34:13A-45. Subcontracting mandatory subjects of negotiations, exceptions**

Except for actions of an employer expressly required or prohibited by the provisions of this act [C:34:13A-44 et seq.], all aspects or actions relating to or resulting from an employer’s decision to subcontract including, but not limited to, whether or not severance pay is provided, shall be mandatory subjects of negotiations.

L. 2020, c. 79 § 2, eff. September 11, 2020.

**34:13A-46. Employer entering into subcontract agreement, terms, conditions**

No employer shall enter into a subcontracting agreement which affects the employment of any employees in a collective bargaining unit represented by a majority representative during the term that an existing collective bargaining agreement with the majority representative is in effect. No employer shall enter into a subcontracting agreement for a period following the term of the current collective bargaining agreement unless the employer:

a. Provides written notice to the majority representative of employees in each collective bargaining unit which may be affected by the subcontracting agreement and to the New Jersey Public Employment Relations Commission, not less than 90 days before the employer requests bids, or solicits contractual proposals for the subcontracting agreement; and

b. Has offered the majority representative of the employees in each collective bargaining unit which may be affected by the subcontracting agreement the opportunity to meet and consult with the employer to discuss the decision to subcontract, and the opportunity to engage in negotiations over the impact of the subcontracting. The employer's duty to negotiate with the majority representative of the employees in each collective bargaining unit shall not preclude the employer's right to subcontract should no successor agreement exist.

L: 2020, c. 79, § 3, eff. September 11, 2020.

#### **34:13A-47. Rights of displaced employee**

Each employee replaced or displaced as the result of a subcontracting agreement shall retain all previously acquired seniority during that period and shall have recall rights whenever the subcontracting terminates.

L. 2020, c. 79, § 4, eff. September 11, 2020.

#### **34:13A-48. Violation, unfair practice; remedies**

An employer who violates any provision of this act [C.34:13A-44 et seq.] shall be deemed to have committed an unfair practice, and any employee or majority representative organization affected by the violation may file an unfair practice charge with the New Jersey Public Employment Relations Commission. If the employee or organization prevails on the charge, the employee is entitled to a remedy including, but not limited to, reinstatement, back pay, back benefits, back emoluments, tenure and seniority credit, attorney's fees, and any other relief the commission deems appropriate to effectuate the purposes of this act.

L. 2020, c. 79, § 5, eff. September 11, 2020.

# **2020 BIENNIAL REPORT**

## **TAB 2**

## CHAPTER 16

### NEGOTIATIONS, IMPASSE PROCEDURES, AND COMPULSORY INTEREST ARBITRATION OF LABOR DISPUTES IN PUBLIC FIRE AND POLICE DEPARTMENTS<sup>i</sup>

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##### SUBCHAPTER 1. PURPOSE OF PROCEDURES

###### 19:16-1.1 Purpose of procedures

(a) The rules of this chapter provide for implementation of the Police and Fire Public Interest Arbitration Reform Act, P.L. 1995, c. 425, as amended by P.L. 2010, c. 105, and P.L. 2014, c. 11, and codified at N.J.S.A. 34:13A-14 et seq., providing for compulsory interest arbitration of labor disputes in public fire and police departments.

(b) The Commission shall adopt such rules as may be required to regulate the time of commencement of negotiations and of the institution and termination of impasse procedures, at the request of the parties, or on its own motion, and to adhere to the time limits established in N.J.S.A. 34:13A-16, as amended.

(c) Impasse procedures that may be invoked include mediation, fact-finding, and binding conventional interest arbitration, as set forth in N.J.S.A. 34:13A-16d.

(d) Accordingly, the provisions of this chapter establish a mandatory time period for the commencement of negotiations and for institution of impasse procedures, including compulsory interest arbitration of unresolved impasses and appeals of arbitration awards.

## **SUBCHAPTER 2. COMMENCEMENT OF NEGOTIATIONS**

### **19:16-2.1 Commencement of negotiations**

(a) The parties shall commence negotiations for a new or successor agreement, or in the case of an agreed reopener provision, shall commence negotiations pursuant to such reopener provision, at least 120 days prior to the day on which their collective negotiations agreement is to expire. The following provisions shall not preclude the parties from agreeing to the automatic renewal of a collective negotiations agreement unless either party shall have notified the other party of its intention to terminate or modify the agreement.

1. 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 negotiations agreement is to expire.

2. 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 date on which their collective negotiations agreement is to expire.

3. A violation of these requirements shall constitute an unfair practice and the violator shall be subject to penalties prescribed by law and by the Commission pursuant to rule and regulation.

(b) The party initiating negotiations shall, no later than 15 days prior to the commencement date of negotiations required by this subchapter, notify the other party in writing of its intention to commence negotiations on such date, and shall simultaneously file with the Commission a copy of such notification. Forms for filing such petitions may be downloaded from the Commission's web site at: [http://www.state.nj.us/perc/NJ\\_PERC\\_Notification\\_of\\_Intent\\_to\\_Commence\\_Negotiations\\_-\\_Form.pdf](http://www.state.nj.us/perc/NJ_PERC_Notification_of_Intent_to_Commence_Negotiations_-_Form.pdf) or will be supplied upon request addressed to: Public Employment Relations Commission, PO Box 429, Trenton, NJ 08625-0429.

(c) Nothing in this subchapter shall be construed to abrogate or alter obligations of parties to newly established collective negotiations relationships, whether created by recognition or by certification.

## **SUBCHAPTER 3. MEDIATION**

### **19:16-3.1 Initiation of mediation**

(a) In the event that a public employer and an exclusive employee representative have failed to achieve an agreement through direct negotiations, either the public employer, the employee representative, or the parties jointly, may notify the Director of Conciliation and Arbitration, in writing, of the existence of an impasse and request the appointment of a mediator. An original and four copies of such notification and request shall be filed, and shall be signed and dated and shall contain the following information:

1. The name and address of the public employer that is a party to the collective negotiations; the name, address, telephone number, and title of its representative to be contacted; and the name, address and telephone number of any attorney/consultant representing the public employer;

2. The name and address of the exclusive representative that is a party to the collective negotiations; the name, address, telephone number, and title of its representative to be contacted; and the name, address and telephone number of any attorney/consultant representing the employee representative;

3. A description of the collective negotiations unit, including the approximate number of employees in the unit;

4. The dates and duration of negotiations sessions;

5. The termination date of the current agreement, if any;

6. The public employer's required budget submission date;

7. Whether the request is a joint request; and

8. A detailed statement of the facts giving rise to the request, including all issues in dispute.

(b) A blank form for filing a Notice of Impasse to request mediation may be downloaded from the Commission's web site [http://www.state.nj.us/perc/NJ\\_PERC\\_Notice\\_of\\_Impasse\\_-\\_Form.pdf](http://www.state.nj.us/perc/NJ_PERC_Notice_of_Impasse_-_Form.pdf) or will be supplied upon request addressed to: Public Employment Relations Commission, PO Box 429, Trenton, NJ 08625-0429.

(c) Upon receipt of the Notice of Impasse, the Director of Conciliation and Arbitration shall appoint a mediator if he or she determines after investigation that mediation is not being resorted to prematurely, that the parties have been unable to reach an agreement through direct negotiations, and that an impasse exists in negotiations.

(d) The Commission or the Director of Conciliation and Arbitration may also initiate mediation at any time in the absence of a request in the event of the existence of an impasse.

(e) Any mediation invoked pursuant to this section shall terminate immediately upon the filing of a petition for interest arbitration.

### **19:16-3.2 Appointment of a mediator**

(a) The mediator appointed pursuant to this subchapter may be a member of the Commission, an officer of the Commission, a member of the Commission's mediation panel, or any other appointee, all of whom shall be considered officers of the Commission for the purpose of assisting the parties to effect a voluntary settlement. The parties may jointly request the appointment of a particular mediator, but the Director of Conciliation and Arbitration shall have the authority to appoint a mediator without regard to the parties' joint request. The appointment process begins once the

Commission receives a Notice of Impasse requesting the assignment of a mediator and the Commission retains jurisdiction until the docket is closed.

(b) If an appointed mediator cannot proceed pursuant to the appointment, another mediator shall be appointed.

(c) The appointment of a mediator pursuant to this subchapter shall not be reviewable in any other proceeding before the Commission.

### **19:16-3.3 Mediator's function**

The function of a mediator shall be to assist the parties to reach a voluntary agreement. A mediator may hold separate or joint conferences as he or she deems expedient to effect a voluntary, amicable and expeditious adjustment and settlement of the differences and issues between the parties.

### **19:16-3.4 Mediator's confidentiality**

Information disclosed by a party to a mediator in the performance of mediation functions shall not be divulged voluntarily or by compulsion. All files, records, reports, documents or other papers received or prepared by a mediator while serving in such capacity shall be classified as confidential. The mediator shall not produce any confidential records of, or testify in regard to, any mediation conducted by him or her, on behalf of any party in any type of proceeding, under the New Jersey Employer-Employee Relations Act, as amended, including, but not limited to, unfair practice proceedings under N.J.A.C. 19:14.

### **19:16-3.5 Mediator's report**

(a) The mediator shall submit one or more confidential reports to the Director of Conciliation and Arbitration which shall normally be limited to the following:

1. A statement of the dates and duration of the meetings which have been held and their participants;
2. A brief description of the unresolved issues which existed at the beginning of the mediation effort;
3. A statement of the issues which have been resolved through mediation;
4. A statement of the issues which are still unresolved if any; and
5. A statement setting forth any other relevant information in connection with the mediator's involvement in the performance of his or her functions.

## **SUBCHAPTER 4. FACT-FINDING**

### **19:16-4.1 Initiation of fact-finding**

(a) If the parties fail to resolve the impasse through mediation, the public employer, the employee representative, or the parties jointly may request the Director of Conciliation and Arbitration, in writing, to invoke fact-finding and upon

receipt of such request, fact-finding with recommendations for settlement shall be invoked. An original and four copies of such request shall be filed with the Director of Conciliation and Arbitration, together with proof of service upon the other party. The request shall be signed and dated and shall contain the following information:

1. The name and address of the public employer that is a party to the collective negotiations; the name, address, telephone number, and title of its representative to be contacted; and the name, address and telephone number of any attorney/consultant representing the public employer;
2. The name and address of the exclusive representative that is a party to the collective negotiations; the name, address, telephone number, and title of its representative to be contacted; and the name, address and telephone number of any attorney/consultant representing the exclusive representative;
3. A description of the collective negotiations unit, including the approximate number of employees in the unit;
4. The name of the mediator;
5. The number and duration of mediation sessions;
6. The date of the last mediation effort;
7. Whether the request is a joint request; and
8. A detailed statement of the facts giving rise to the request, including all issues in dispute.

(b) A blank form for filing a request for fact-finding may be downloaded from the Commission's web site at: [http://www.state.nj.us/perc/NJ\\_PERC\\_Request\\_for\\_Invocation\\_of\\_Factfinding\\_with\\_Recommendations\\_for\\_Settlement\\_-\\_Form.pdf](http://www.state.nj.us/perc/NJ_PERC_Request_for_Invocation_of_Factfinding_with_Recommendations_for_Settlement_-_Form.pdf) or will be supplied upon request addressed to: Public Employment Relations Commission, PO Box 429, Trenton, NJ 08625-0429.

(c) In the absence of a joint request seeking the invocation of fact-finding, the non-filing party may submit a statement or response within seven days of receipt of the request for fact-finding, setting forth the following:

1. Any additional unresolved issues to be submitted to the fact-finder;
2. A statement as to whether it refuses to submit any of the issues listed on the request to fact-finding on the ground that such issue is not within the required scope of negotiations; and
3. Any other relevant information with respect to the nature of the impasse.

(d) Proof of service on the petitioner of the respondent's statement shall be supplied to the Director of Conciliation and Arbitration. If a party has not submitted a response within the time specified, it shall be deemed to have agreed to the invocation of fact-finding as submitted by the requesting party.



(e) Where a dispute exists with regard to whether an unresolved issue is within the required scope of negotiations, the party asserting that an issue is not within the required scope of negotiations shall file with the Commission a petition for scope of negotiations determination pursuant to chapter 13 of these rules. This petition must be filed within 10 days of receipt of the request for fact-finding or within five days after receipt of the response to a request for fact-finding. The failure of a party to file a petition for scope of negotiations determination shall be deemed to constitute an agreement to submit all unresolved issues to fact-finding.

#### **19:16-4.2 Appointment of a fact-finder**

(a) Upon the invocation of fact-finding pursuant to this subchapter, the Director of Conciliation and Arbitration shall communicate simultaneously to each party an identical list of names of three fact-finders. Each party shall eliminate no more than one name to which it objects, indicate the order of its preference regarding the remaining names, and communicate the foregoing to the Director of Conciliation and Arbitration no later than the close of business on the third working day after the date the list was submitted to the parties. If a party has not responded within the time specified, all names submitted shall be deemed acceptable. The Director of Conciliation and Arbitration shall appoint a fact-finder giving recognition to the parties' preferences. The parties may jointly request the appointment of a particular fact-finder, including the person who was appointed as mediator, if any. Notwithstanding these provisions, the Director of Conciliation and Arbitration shall have the express reserved authority to appoint a fact-finder without the submission of names to the parties whenever he or she deems it necessary to effectuate the purposes of the Act.

(b) The fact-finder appointed pursuant to this subchapter may be a member of the Commission, an officer of the Commission, a member of the Commission's fact-finding panel, or any other appointee, all of whom shall be considered officers of the Commission for the purposes of assisting the parties to effect a voluntary settlement and/or making findings of fact and recommending the terms of settlement. If an appointed fact-finder cannot proceed pursuant to the appointment, another fact-finder shall be appointed. The appointment of a fact-finder pursuant to this subchapter shall not be reviewable by the Commission.

(c) Fact-finding invoked pursuant to this section shall terminate immediately upon the filing of a petition for interest arbitration.

#### **19:16-4.3 Fact-finder's function**

(a) The appointed fact-finder shall, as soon as possible after appointment, meet with the parties or their representatives, make inquiries and investigations, hold hearings, which shall not be public unless all parties agree to have them public, or take other steps deemed appropriate in order to discharge the function of the fact-finder.

(b) For the purpose of such hearings, investigations and inquiries, the fact-finder shall have the authority and power to subpoena witnesses, compel their attendance, administer oaths, take the testimony or deposition of any person under oath, and in connection therewith, to issue subpoenas duces tecum and require the production and examination of any governmental or other books or papers relating to any matter under investigation by or in issue before the fact-finder.

(c) Information disclosed by a party to a fact-finder while functioning in a mediatory capacity shall not be divulged by the fact-finder voluntarily or by compulsion. All files, records, reports, documents or other papers received or prepared by a fact-finder while serving in a mediatory capacity shall be classified as confidential. The fact-finder shall not produce any confidential records of, or testify in regard to, any mediation conducted by him or her, on behalf of any party in any type of proceeding under the New Jersey Employer-Employee Relations Act, as amended, including, but not limited to, unfair practice proceedings under N.J.A.C. 19:14.

(d) If the impasse is not resolved during fact-finding, the fact-finder shall make findings of fact and recommend the terms of settlement as soon after the conclusion of the process as possible.

(e) Any findings of fact and recommended terms of settlement shall be limited to those issues that are within the required scope of negotiations, unless the parties have agreed to submit issues to the fact-finder which involved permissive subjects of negotiations.

(f) Any findings of fact and recommended terms of settlement shall be submitted simultaneously in writing to the parties privately and to the Director of Conciliation and Arbitration.

(g) The parties shall meet within five days after receipt of the fact-finder's findings of fact and recommended terms of settlement, to exchange statements of position and to have an opportunity to reach an agreement.

### **SUBCHAPTER 5. COMPULSORY INTEREST ARBITRATION**

#### **19:16-5.1 Scope of compulsory interest arbitration**

The provisions in this subchapter relate to notification requirements, compulsory interest arbitration proceedings, and the designation of arbitrators to resolve impasses in collective negotiations involving public employers and exclusive employee representatives of public fire and police departments. The processing of petitions to initiate compulsory interest arbitration, any related filings, the appointment of interest arbitrators, the conduct of interest arbitration hearings, appeals from interest arbitration awards, decisions reviewing awards, and all other matters stemming from interest arbitration proceedings, including schedules and fines relating to the compensation of interest arbitrators, shall adhere to the deadlines and monetary limits established by N.J.S.A. 34:13A-14 et seq., as amended.

### **19:16-5.2 Initiation of compulsory interest arbitration**

(a) Compulsory interest arbitration may be initiated through appropriate utilization of any of the following:

1. In the event of a continuing impasse following receipt of a fact-finder's findings of fact and recommended terms of settlement, a petition requesting that an impasse be resolved through compulsory interest arbitration may be filed by an employee representative and/or public employer. A blank form to file a petition to initiate compulsory interest arbitration may be downloaded from the Commission's web site at: [http://www.state.nj.us/perc/NJ\\_PERC\\_Petition\\_to\\_Initiate\\_Compulsory\\_Interest\\_Arbitration\\_-\\_Form.pdf](http://www.state.nj.us/perc/NJ_PERC_Petition_to_Initiate_Compulsory_Interest_Arbitration_-_Form.pdf) or will be supplied upon request addressed to: Public Employment Relations Commission, PO Box 429, Trenton, NJ 08625-0429.

2. On or after the date on which their collective negotiations agreement expires, either party may file a petition with the Director of Conciliation and Arbitration requesting the initiation of compulsory interest arbitration.

3. Any mediation or fact-finding shall terminate immediately upon the filing of a petition for arbitration.

(b) Prior to the expiration of their collective negotiations agreement, either party may file an unfair practice charge with the Commission alleging that the other party is refusing to negotiate in good faith because the other party has refused to schedule or attend a negotiations session within the time periods set forth in N.J.S.A. 34:13A-16a(1). The charge shall be filed and served in the manner and form specified by N.J.A.C. 19:14-1.3.

1. 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.

2. 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.

(c) The filing and resolution of the unfair practice charge shall not delay or impair the impasse resolution process.

### **19:16-5.3 Contents of the petition requesting the initiation of compulsory interest arbitration; proof of service; notice of filing**

(a) An original and four copies of a petition requesting the initiation of compulsory interest arbitration shall be filed with the Director of Conciliation and Arbitration. This document shall be signed and dated and contain the following information:

1. Name and address of the public employer that is a party to the collective negotiations; the name, address, telephone number, and title of its representative to be contacted; and the name, address and telephone number of any attorney/consultant representing the public employer;

2. Name and address of the exclusive representative that is a party to the collective negotiations; the name, address, telephone number, and title of its representative to be contacted; and the name, address and telephone number of any attorney/consultant representing the exclusive representative;

3. A description of the collective negotiations unit and the approximate number of employees involved;

4. A statement as to whether either party has previously requested mediation, whether a mediator has been appointed, the name of the mediator, and the dates and duration of mediation sessions, if any;

5. A statement as to whether fact-finding with recommendations for settlement has been invoked, whether a fact-finder has been appointed, and whether a fact-finding report and recommendations have been issued, and the date of such report, if any;

6. The termination date of the current agreement, if any;

7. The required budget submission date of the public employer;

8. Whether the request is a joint request;

9. A statement indicating which issues are in dispute, and, if applicable, identifying the issues as economic or noneconomic within the meaning of N.J.S.A. 34:13A-16(f)(2); and

10. A statement as to whether a dispute exists as to the negotiability of any of the unresolved issues.

(b) In the absence of a joint petition, the petitioner shall file proof of service of a copy of the petition on the other party.

(c) In the absence of a joint petition, the Director of Conciliation and Arbitration shall, upon receipt of the petition, send a notice of filing to the non-petitioning party advising it that it must, within five days, respond to the petition in accordance with N.J.A.C. 19:16-5.5.

### **19:16-5.4 Conventional arbitration to be terminal procedure**

The terminal procedure for the resolution of the issues in dispute shall be conventional interest arbitration.

### **19:16-5.5 Response to the petition requesting the initiation of compulsory interest arbitration**

(a) In the absence of a joint petition requesting the initiation of compulsory interest arbitration, 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, in any manner, delay the interest arbitration process. The statement of response shall include:

1. Any additional unresolved issues to be submitted to arbitration;

2. A statement as to whether it disputes the identification of any of the issues as economic or noneconomic;
3. A statement as to whether it refuses to submit any of the issues listed on the notification or petition to arbitration on the ground that such issue is not within the required scope of negotiations; and
4. Any other relevant information with respect to the nature of the impasse.

(b) Proof of service on the petitioner of the respondent's statement shall be supplied to the Director of Conciliation and Arbitration. If a party has not submitted a response within the time specified, it shall be deemed to have agreed to the request for the initiation of compulsory interest arbitration as submitted by the filing party. The substance of this response shall not provide the basis for any delay in effectuating the provisions of this chapter.

(c) Where a dispute exists with regard to whether an unresolved issue is within the required scope of negotiations, the party asserting that an issue is not within the required scope of negotiations shall file with the Commission Chair, a petition for an expedited scope of negotiations determination. The failure to file a request for a scope determination pursuant to N.J.A.C. 19:13 or this chapter shall be deemed a waiver of the negotiability objection.

1. A request for an expedited scope of negotiations determination shall be accompanied by a scope of negotiations petition in the form published on the Commission's website (<http://www.nj.gov/perc/html/forms.htm>) and shall be filed and served, where the requestor is not the party who petitioned for interest arbitration, within 10 days after receipt of the interest arbitration petition, or where the requestor is the petitioner for interest arbitration, within 10 days after receipt of the response to the interest arbitration petition.

2. The issues for which a negotiability determination is sought must be among those identified as being in dispute in either the interest arbitration petition or the response to the interest arbitration petition. 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.

3. The party filing a request for an expedited scope determination shall file a supporting brief with its request, a copy of which shall be served simultaneously upon the other party. The other party shall file with the Commission Chair a brief in response to the request within seven business days of receipt of the request and shall serve simultaneously a copy of the brief upon the party who requested the expedited scope determination. All briefs shall conform to the requirements set forth in N.J.A.C. 19:13-3.6(f). No additional briefs or submissions shall be filed.

4. Within 10 days after receipt of an expedited scope of negotiations petition, the Commission Chair will advise the parties whether the petition will be resolved using the expedited procedure. 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.

5. If the Commission Chair decides to issue an expedited scope of negotiations ruling, the Commission or Commission Chair, pursuant to the authority delegated to the Chair by the full Commission, shall issue a written decision within 21 days after the respondent's brief is due. A copy of the decision shall be simultaneously sent to the assigned interest arbitrator.

6. Any contract language or proposals that are determined in the expedited scope of negotiations ruling to be not mandatorily negotiable shall not be considered by the interest arbitrator. If time permits, and in accordance with N.J.A.C. 19:16-5.7, the interest arbitrator may allow the parties to amend their final offers to take into account the negotiability determination.

7. A decision by the Commission or Commission Chair pursuant to this expedited scope of negotiations process shall be a final agency decision. Any appeal must be made to the Superior Court, Appellate Division.

8. If the Commission Chair decides not to issue an expedited scope of negotiations ruling, then any negotiability issues pending in interest arbitration may be raised to the interest arbitrator and either party may seek a negotiability determination by the Commission as part of an appeal from an interest arbitration award. See N.J.A.C. 19:16-5.7(i).

(d) Where a dispute exists regarding the identification of an issue as economic or noneconomic, the party contesting the identification of the issue shall file with the Commission a petition for issue definition determination. This petition must be filed within five days of receipt of the notice of filing of the petition requesting the initiation of compulsory interest arbitration or within five days after receipt of the response to the petition requesting the initiation of compulsory interest arbitration. The failure of a party to file a petition for issue definition determination shall be deemed to constitute an agreement to submit all unresolved issues to compulsory interest arbitration.

#### **19:16-5.6 Appointment of an arbitrator; arbitrator training and discipline**

(a) The Commission shall maintain a special panel of interest arbitrators. Members of this panel shall be appointed for three-year terms following a screening process as set forth in N.J.S.A. 34:13A-16(e) and pursuant to the standards set forth in N.J.A.C. 19:16-5.15. Reappointments to the panel shall also be contingent upon a similar screening process. The arbitrators appointed pursuant to this subchapter shall be from this special panel. All arbitrators appointed by the

Commission shall be considered officers of the Commission while performing duties pursuant to this subchapter.

(b) In accordance with N.J.S.A. 34:13A-16e(4), members of the Commission's special panel of interest arbitrators shall be required to complete annual training offered by the State Ethics Commission.

(c) The Commission may suspend, remove, or otherwise discipline an arbitrator for violating the Police and Fire Public Interest Arbitration Reform Act or for good cause in accordance with the procedures set forth at N.J.A.C. 19:16-5.16. Any arbitrator who fails to attend the Commission's annual continuing education program may be removed from the special panel. Any arbitrator who fails to participate in the continuing education program for two consecutive years shall be removed.

(d) An arbitrator from the special panel of interest arbitrators shall be assigned to a petition through a computerized random selection process. On the first business day following receipt of an interest arbitration petition, the Commission, or its designee, independent of and without any participation by either of the parties, shall begin the computerized process of randomly selecting an arbitrator from its special panel of interest arbitrators. The selection shall be final and shall not be subject to review or appeal.

#### **19:16-5.7 Conduct of the arbitration proceeding**

(a) The conduct of the arbitration proceeding shall be under the exclusive jurisdiction and control of the arbitrator.

(b) The filing of an interest arbitration petition shall terminate formal mediation or fact-finding proceedings.

(c) The appointed arbitrator shall conduct an initial meeting as a mediation session to effect a voluntary resolution of the impasse. In addition, the appointed arbitrator, throughout formal arbitration proceedings, may mediate or assist the parties in reaching a mutually agreeable settlement.

(d) Information disclosed by a party to an arbitrator while functioning in a mediatory capacity shall not be divulged by the arbitrator voluntarily or by compulsion. All files, records, reports, documents or other papers received or prepared by an arbitrator while serving in a mediatory capacity shall be classified as confidential. The arbitrator shall not produce any confidential records of, or testify in regard to, any mediation conducted by the arbitrator, on behalf of any party in any type of proceeding under the New Jersey Employer-Employee Relations Act, as amended, including, but not limited to, unfair practice proceedings under N.J.A.C. 19:14.

(e) The arbitrator may administer oaths, conduct hearings, and require the attendance of such witnesses and the production of such books, papers, contracts, agreements, and documents as the arbitrator may deem material to a just determination of the issues in dispute, and for such purpose may issue subpoenas and shall entertain any motions to quash such subpoenas. Any

hearings conducted shall not be public unless all parties agree to have them public.

(f) The procedure to provide finality for the resolution of unsettled issues shall be conventional arbitration. The arbitrator shall separately determine whether the total net annual economic changes for each year of the agreement are reasonable under the statutory criteria set forth in N.J.S.A. 34:13A-16.g.

(g) The arbitrator, after appointment, shall communicate with the parties to arrange for a date, time, and place for a hearing. In the absence of an agreement, the arbitrator shall have the authority to set the date, time, and place for a hearing. The arbitrator shall submit a written notice containing arrangements for a hearing within a reasonable time period before hearing.

1. Such notice shall also set forth the dates, both of which shall precede the hearing, by which the public employer shall provide the arbitrator and the employee representative with the following information and the format in which it shall be provided and by which the employee representative shall respond to the information:

i. A list of all unit members during the final year of the expired agreement, their salary guide step(s) during the final year of the expired agreement, and their anniversary date of hire (that is, the date or dates on which unit members advance on the guide);

ii. Costs of increments and the specific date(s) on which they are paid;

iii. Costs of any other base salary items (for example, longevity) and the specific date(s) on which they are paid;

iv. The total cost of all base salary items for the 12 months immediately preceding the first year of the new agreement; and

v. A list of all unit members as of the last day of the year immediately preceding the new agreement, their step, and their rate of salary as of that same day.

2. At least 10 days before the hearing, the parties shall submit to the arbitrator and to each other their final offers on each economic and noneconomic issue in dispute. The parties must also submit written estimates of the financial impact of their respective last offers on the taxpayers as part of their final offer submissions. The arbitrator may accept a revision of such offer at any time before the arbitrator takes testimony or evidence or, if the parties agree to permit revisions and the arbitrator approves such an agreement, before the close of the hearing. Upon taking testimony or evidence, the arbitrator shall notify the parties that their offers shall be deemed final, binding and irreversible unless the arbitrator approves an agreement between the parties to permit revisions before the close of the hearing.

(h) The arbitrator's authority shall be limited to those issues which are within the required scope of negotiations, unless the parties have mutually agreed to submit issues to the arbitrator which involve permissive subjects of negotiation.

(i) Unless the Commission Chair decides to issue an expedited scope of negotiations determination pursuant to N.J.A.C. 19:16-5.5(c), if a party objects to an issue as being outside the scope of mandatorily negotiable subjects, the parties may state their positions to the arbitrator on the record. The arbitrator shall be permitted to take evidence and render a preliminary decision on the issue for purposes of rendering the award. Any further negotiability argument may be made to the Commission post-award if the award is appealed.

(j) The arbitrator shall have the authority to grant adjournments.

(k) The arbitrator, after duly scheduling the hearing, shall have the authority to proceed in the absence of any party who, having failed to obtain an adjournment, does not appear at the hearing. Such party shall be deemed to have waived its opportunity to provide argument and evidence.

(l) The parties, at the discretion of the arbitrator, may file post-hearing briefs. The arbitrator, after consultation with the parties, shall have the authority to set a time period for the submission of briefs, but that period shall not stay the 90-day time period, or such other period of time that may be set by N.J.S.A. 34:13A-14 et seq., for issuing an award. The parties shall not be permitted to introduce any new factual material in the post-hearing briefs, except upon special permission of the arbitrator.

(m) An arbitrator must issue an award within 90 days from appointment or within such other period of time that may be set by N.J.S.A. 34:13A-14 et seq.

(n) All interest arbitration awards shall be implemented immediately.

#### **19:16-5.8 Stenographic record**

(a) A stenographic record shall not be a procedural requirement for the conduct of a hearing. However, any party shall have the right to a stenographic record taken of the arbitration proceeding.

(b) The arrangements for a stenographic record must be made by the requesting party after the appointment of the arbitrator. The cost of such record shall be paid by the party requesting it or divided equally between the parties if both make such a request. If a stenographic record is requested by either or both parties, the party or parties making the request shall provide at its/their cost a copy of a transcript to the arbitrator.

(c) The arbitrator shall have the authority to set a deadline for the submission of the stenographic record to the arbitrator.

(d) Any delay in receiving a stenographic record shall not extend:

1. The 90-day time period, or such other period of time that may be set by N.J.S.A. 34:13A-14 et seq., for rendering an award; or

2. The 14-day time limit, or such other period of time that may be set by N.J.S.A. 34:13A-14 et seq., for submitting an appeal to the Commission.

#### **19:16-5.9 Opinion and award**

(a) If the impasse is not otherwise resolved, the arbitrator shall decide the dispute and issue a written opinion and award within 90 days, or within such other period of time that may be set by N.J.S.A. 34:13A-14 et seq., of the Director of Conciliation and Arbitration's assignment of that arbitrator. Any arbitrator who fails to issue an award within 90 days, or within such other period of time that may be prescribed by N.J.S.A. 34:13A-14 et seq., shall be fined \$ 1,000 per each day late.

(b) 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 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.

(c) Where applicable, the arbitrator's economic award must comply with the two percent cap on average annual increases to base salary items pursuant to N.J.S.A. 34:13A-16.7, as amended by P.L. 2014, c. 11. In all awards, whether or not subject to the two percent cap, the arbitrator's decision shall set forth the costs of all "base salary" items for each year of the award, including the salary provided pursuant to a salary guide or table, any amount provided pursuant to a salary increment, any amount provided for longevity or length of service, and any other item agreed to by the parties or that was included as a base salary item in the prior award or as understood by the parties in the prior contract. These cost-out figures for the awarded base salary items are necessary in order for the arbitrator to determine, pursuant to N.J.S.A. 34:13A-16.d, whether the total net annual economic changes for each year of the award are reasonable under the statutory criteria.

(d) The arbitrator shall certify that the statutory limitations imposed by the local levy cap were taken into account in making the award.

(e) The arbitrator's opinion and award shall be signed and notarized. An original and four copies of the opinion and award shall be submitted directly to the Director of Conciliation and Arbitration who will then serve the parties simultaneously. The signed original must be filed with the Director of Conciliation and Arbitration. The copies may be transmitted electronically.

(f) Any arbitrator violating the provisions of this section may be subject to suspension, removal, or discipline under N.J.A.C. 19:16-5.6.

ruling, the party shall pay a \$ 75.00 fee. Fees shall be paid by checks made payable to the "State of New Jersey"; purchase orders may be submitted.

#### **19:16-5.10 Code of Professional Responsibility for Arbitrators of Labor-Management Disputes**

Arbitrators serving on the Commission's special panel shall be guided by the objectives and principles set forth in the "Code of Professional Responsibility for Arbitrators of Labor-Management Disputes" of the National Academy of Arbitrators, the American Arbitration Association, and the Federal Mediation and Conciliation Service.

#### **19:16-5.11 Cost of arbitration**

- (a) The costs of services performed by the arbitrator shall be borne equally by the parties. Each party shall pay its share of the arbitrator's fee within 60 days of receipt of the arbitrator's bill or invoice.
- (b) The fee for services provided by the arbitrator shall not exceed \$1,000 per day, or such other amount that may be prescribed by N.J.S.A. 34:13A-14 et seq. The total cost of services provided by an arbitrator shall not exceed \$10,000, or such other amount that may be prescribed by N.J.S.A. 34:13A-14 et seq.
- (c) An assessment of not more than \$500.00 may be imposed by the arbitrator if a proceeding is cancelled without good cause. If the parties jointly cancel the proceeding the fee will be shared. Otherwise the party causing the cancellation or adjournment shall be responsible for payment of the entire fee.

#### **19:16-5.12 Fees for filing and processing interest arbitration petitions**

- (a) At the time a joint petition to initiate interest arbitration is filed pursuant to N.J.A.C. 19:16-5.2, each party shall pay a \$175.00 fee. If the petition is filed by one party only, then the petitioning party shall pay a \$ 175.00 fee upon filing the petition and the non-petitioning party shall pay a \$175.00 fee upon filing its response to the petition pursuant to N.J.A.C. 19:16-5.5.
- (b) The petition shall not be processed until the petitioning party pays the filing fee of \$175.00.
- (c) Fees shall be paid by checks made payable to the "State of New Jersey"; purchase orders may be submitted.

#### **19:16-5.13 Fees for appealing and cross-appealing interest arbitration awards and requests for special permission to appeal interlocutory rulings or orders**

At the time a party files a notice of appeal of an interest arbitration award with the Commission, the appealing party shall pay a \$200.00 fee. At the time a party files a notice of cross-appeal of an interest arbitration award with the Commission, the cross-appealing party shall pay a \$200.00 fee. At the time a party files with the Commission a request for special permission to appeal an interlocutory order or

#### **19:16-5.14 Comparability guidelines**

- (a) N.J.S.A. 34:13A-16.g identifies the factors that an interest arbitrator must consider in reviewing the parties' proposals. In addition, in every interest arbitration proceeding, the parties shall introduce evidence regarding the factor set forth in N.J.S.A. 34:13A-16.g(6): the financial impact on the governing unit, its residents, the limitations imposed upon the local unit's property tax levy pursuant to P.L. 2007, c. 62, section 10 (N.J.S.A. 40A:4-45.45), and taxpayers. The arbitrator must indicate which of the factors listed in N.J.S.A. 34:13A-16.g 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(2)(c) lists as a factor "public employment in the same or similar comparable jurisdictions...." Subsection a of section 5 of P.L. 1995, c. 425 requires that the Commission promulgate guidelines for determining the comparability of jurisdictions for the purposes of paragraph (2)(c) of subsection g.
- (b) The guidelines set forth in (c) and (d) below are intended to assist the parties and the arbitrator in focusing on the types of evidence that may support comparability arguments. The guidelines are intended to be instructive but not exhaustive. The arbitrator shall consider any and all evidence submitted pursuant to the comparability guidelines and shall apply these guidelines in addressing the comparability criterion.

1. The Public Employment Relations Commission recognizes that the extent to which a party to an arbitration proceeding asserts that comparisons to public employment in the same or similar comparable jurisdictions are relevant to that proceeding is a matter to be determined by that party. The Commission also recognizes that it is the responsibility of each party to submit evidence and argument with respect to the weight to be accorded any such evidence.
2. The Commission further recognizes that it is the arbitrator's responsibility to consider all the evidence submitted and to determine the weight of any evidence submitted based upon the guidelines in (c) and (d) below and to determine the relevance or lack of relevance of comparability in relationship to all of the factors set forth in N.J.S.A. 34:13A-16.g. Promulgation of these guidelines is not intended to require that any party submit evidence on all or any of the elements set forth in (c) and (d) below or assert that the comparability factor should or should not be deemed relevant or accorded any particular weight in any arbitration proceeding. Nothing in this section shall preclude the arbitrator from supplementing the factual record by issuing subpoenas to require the attendance of witnesses and the production of documents. Nor does anything in this section prevent the arbitrator from requesting the parties to supplement their presentations in connection with this factor or any other factor set forth in the law.

(c) The following are comparability considerations within the same jurisdiction:

1. Wages, salaries, hours and conditions of employment of law enforcement officers and firefighters;
2. Wages, salaries, hours and conditions of employment of non-uniformed employees in negotiations units;
3. Wages, salaries, hours and conditions of employment of employees not in negotiations units;
4. History of negotiations:
  - i. Relationships concerning wages, salaries, hours and conditions of employment of employees in police and fire units; and
  - ii. History of differentials between uniformed and non-uniformed employees;
5. Pattern of salary and benefit changes; and
6. Any other considerations deemed relevant by the arbitrator.

(d) The following are comparability considerations for similar comparable jurisdictions:

1. Geographic:
  - i. Neighboring or overlapping jurisdictions;
  - ii. Nearby jurisdictions;
  - iii. Size; and
  - iv. Nature of employing entity.
2. Socio-economic considerations:
  - i. Size, density, and characteristics of population;
  - ii. Per capita income;
  - iii. Average household income;
  - iv. Average property values;
  - v. Gain or loss of assessed value;
  - vi. Ratable increases/decreases from year to year;
  - vii. Tax increases/decreases over last few years;
  - viii. Cost-of-living (locally);
  - ix. Size and composition of police force or fire department;
  - x. Nature of services provided;
  - xi. Crime rate;
  - xii. Violent crime rate;
  - xiii. Fire incident rate; and
  - xiv. Fire crime rate.

3. Financial considerations:

i. Revenue:

- (1) Taxes:
    - (A) School;
    - (B) County;
    - (C) Municipal;
    - (D) Special district;
    - (E) State equalization valuation and ratio; and
    - (F) Other taxes;
  - (2) Tax base/ratables;
  - (3) Equalized tax rate;
  - (4) Tax collections;
  - (5) Payments in lieu of taxes;
  - (6) Delinquent tax and lien collections;
  - (7) State aid revenues;
  - (8) Federal aid revenues;
  - (9) Sale of acquired property;
  - (10) Budget surplus;
  - (11) Other miscellaneous revenues;
  - (12) Prior years surplus appropriated;
  - (13) Total revenues;
  - (14) Reserve for uncollected taxes;
  - (15) Taxes as percentage of total municipal revenues;
  - (16) All other municipal revenues;
  - (17) Any other sources of revenue;
  - (18) Total municipal revenues; and
  - (19) Budget cap considerations;
- ii. Expenditures:
- (1) Police protection;
  - (2) Fire protection;
  - (3) Total municipal functions;
  - (4) Police protection as percentage of total municipal functions;
  - (5) Fire protection as percentage of total municipal functions; and
  - (6) Percentage of net debt/bond rating;

- iii. Trends in revenues and expenditures;
- 4. Compensation and other conditions of employment:
  - i. Relative rank within jurisdictions asserted to be comparable;
  - ii. Wage and salary settlements of uniformed employees;
  - iii. Wage and salary settlements of non-uniformed employees in negotiations units;
  - iv. Wage and salary settlements of employees not in negotiations units;
  - v. Top step salaries;
  - vi. Overall compensation:
    - (1) Wage and salaries;
    - (2) Longevity;
    - (3) Holidays;
    - (4) Vacations;
    - (5) Uniform allowance;
    - (6) Medical and hospitalization benefits;
    - (7) Overtime;
    - (8) Leaves of absence;
    - (9) Pensions; and
    - (10) Other retiree benefits;
  - vii. Work schedules;
  - viii. Work hours;
  - ix. Workload:
    - (1) Number of calls or runs per officer; and
    - (2) Other relevant standards for measuring workload; and
  - x. Other conditions of employment; and
- 5. Any other comparability considerations deemed relevant by the arbitrator.

**19:16-5.15 Standards for appointment and reappointment to the special panel**

(a) Because any special panel member may be assigned to the most demanding and complex interest arbitration matter, appointments to the special panel will be limited to those labor relations neutrals who, in the Commission's expert judgment, have the demonstrated ability to mediate the most complex labor relations disputes and resolve the most demanding interest arbitration matters in the most professional, competent and neutral manner. No applicant shall have any right or expectation to be appointed or reappointed to the special panel.

(b) An applicant shall already be a member of the Commission's mediation, fact-finding and grievance arbitration panels, have an impeccable reputation in the labor-management community for professional competence, ethics and integrity, shall have complied with all applicable codes of conduct, and shall demonstrate:

1. Ability to write a well-reasoned decision consistent with applicable legal standards and within statutory deadlines;
2. Knowledge of labor relations, governmental and fiscal principles relevant to dispute settlement and interest arbitration proceedings;
3. Substantial experience both as a mediator and arbitrator; and
4. Competent performance on the Commission's mediation, fact-finding and grievance arbitration panels.

(c) An applicant's qualifications shall be determined by an overall assessment of the following considerations, with special emphasis to be given to considerations (c)1 through 3 below. An applicant shall, at a minimum, satisfy either considerations (c)1 and 2 below, or (c)2 and 3 below.

1. Demonstrated experience as an interest arbitrator and demonstrated ability to write well-reasoned interest arbitration decisions consistent with applicable legal standards and within statutory deadlines. Experience and writing ability shall be evaluated by a review of the cases where the applicant served as an interest arbitrator and a review of the quality of the arbitrator's work product.

i. To satisfy this consideration, an applicant shall have had at least 15 interest arbitration appointments in the last five years and shall have performed assignments in a superior manner. An applicant shall also submit at least five interest arbitration awards written by the applicant, which awards shall have been well-reasoned, legally sound, and promptly issued. Special emphasis shall be given to New Jersey public sector appointments and awards.

2. Demonstrated experience and acceptability as a public or private sector mediator and/or fact-finder. An applicant shall exhibit the ability to serve in complex and difficult public sector negotiations disputes and shall be evaluated by a review of his or her cases as a mediator and/or fact-finder and the quality of the applicant's performance in those cases.

i. To satisfy this consideration, an applicant shall have the equivalent of three years of mediation and/or fact-finding experience and shall have performed assignments in a superior manner. Special emphasis will be given to New Jersey public sector assignments.

3. Demonstrated experience as a public or private sector grievance arbitrator involving the ability to decide complex and difficult labor relations issues in a fair and objective manner. Experience shall be evaluated by a review of the



cases where an applicant served as a grievance arbitrator and the quality of the applicant's work product in those cases.

i. To satisfy this consideration, an applicant shall have the equivalent of three years of grievance arbitration experience. An applicant shall submit at least 10 awards written by the applicant, which awards shall have been well-reasoned, legally sound, and promptly issued. Special emphasis shall be given to New Jersey public sector awards.

4. Membership and offices in the National Academy of Arbitrators or other relevant professional organizations and panel memberships in any labor dispute settlement agency.

i. This consideration simply augments the considerations in (c)1 through 3 above.

5. Formal educational attainments, teaching positions, and professional publications demonstrating knowledge of labor relations, governmental and fiscal principles relevant to dispute settlement and interest arbitration proceedings.

i. This consideration simply augments the considerations in (c)1 through 3 above.

6. Other labor relations, arbitration, governmental or fiscal experience.

i. This consideration simply augments the considerations in (c)1 through 3 above.

(d) Every applicant shall complete an application form prepared by the Director of Conciliation and Arbitration. That form is designed to solicit information concerning the foregoing requirements and considerations. The form also allows an applicant the opportunity to submit any other information he or she deems relevant. The Director shall review all applications and make a recommendation to the Commission regarding each one within 60 days. The Commission shall notify an applicant in writing of any action taken upon an application.

(e) In addition to the requirements and considerations listed in (c) above, an applicant seeking reappointment shall have demonstrated successful service during the terms of his or her previous appointments to the special panel, as measured by:

1. The issuance of well-reasoned, legally sound, and timely awards;
2. Compliance with statutory standards and deadlines; case law requirements; agency regulations, rules, policies, administrative memoranda, and reporting procedures; and
3. Any other applicable requirements.

(f) An applicant for reappointment shall also have abided by the Code of Professional Responsibility for Interest Arbitrators adopted by the New Jersey Public Employment Relations Commission; the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes adopted by the National Academy of Arbitrators, American Arbitration

Association, and Federal Mediation and Conciliation Service; and the Code of Professional Conduct for Labor Mediators adopted by the Association of Labor Relations Agencies and the Federal Mediation and Conciliation Service. An applicant for reappointment shall also have attended the Commission's continuing education programs, as directed, per N.J.S.A. 34:13A-16.1.

(g) Satisfying one or more of the considerations listed in (c) above does not necessarily qualify an applicant for appointment or reappointment to the special panel. An appointment or reappointment depends upon the Commission's overall expert assessment of an applicant's ability to handle the most complex and demanding interest arbitration assignments.

(h) No applicant shall be appointed to the panel who, in the three years prior to the application date, has:

1. Served as an advocate for labor or management in the public or private sector;
2. Been elected or appointed to a political office or a governing body; or
3. Has served in a partisan political capacity.

#### **19:16-5.16 Suspension, removal or discipline of members of the special panel**

(a) Pursuant to N.J.S.A. 34:13A-16(e), this section provides a procedure to be followed by the Commission in deciding whether to suspend, remove, or otherwise discipline an arbitrator during his or her three-year term.

(b) If it appears that suspension, removal, or discipline may be warranted, the Director of Conciliation and Arbitration shall provide a written statement to the arbitrator specifying the reasons for the action being considered. The arbitrator shall have an opportunity to submit a prompt written response to the Director. The arbitrator shall also be given an opportunity to meet with the Director to discuss the matter.

(c) If a suspension or removal is being contemplated, if the arbitrator requests a hearing, and if it appears to the Director that substantial and material facts are in dispute, the Director may designate a hearing officer to conduct a hearing and make findings of fact.

(d) The Director may temporarily suspend an arbitrator from the panel pending any hearing.

(e) After receiving the arbitrator's response, meeting with the arbitrator, and considering the facts found at any hearing, the Director may decide to reprimand, suspend, or remove an arbitrator or may decide that no action is warranted. The Director shall send a written decision to the arbitrator.

(f) Within 14 days of receiving the Director's decision, an arbitrator may file a written appeal of that decision with the Commission. Such appeal shall specify the grounds for disagreeing with the Director's decision.

(g) A temporary suspension may be continued pending that appeal.

(h) The Commission or its designee may sustain, modify, or reverse the action taken by the Director and shall provide the arbitrator with a written statement explaining the basis for that decision.

#### **19:16-5.17 Interlocutory rulings; appeal on special permission**

(a) Interlocutory rulings or orders issued before the arbitrator's final written opinion and award under N.J.S.A. 34:13A-16f(5) and N.J.A.C. 19:16-5.9 shall not be appealed to the Commission except by special permission to appeal. All such rulings and orders shall become part of the record of the arbitration proceedings and shall be reviewed by the Commission in considering any appeal or cross-appeal from an arbitrator's final award, provided exception to the ruling or order is included in the appeal or cross-appeal filed with the Commission pursuant to N.J.A.C. 19:16-8.1 through 8.3.

(b) A request for special permission to appeal shall be filed in writing on the next business day following service of written rulings or statements of oral rulings, and shall briefly state the grounds for granting special permission to appeal and the grounds for reversing or modifying the ruling or order in question. An original and nine copies of the request shall be filed with the Chair, together with the \$75.00 fee required under N.J.A.C. 19:16-5.13 and proof of service of a copy of the request on all other parties and the arbitrator assigned to the case. A party opposing the request may file an original and nine copies of a statement in opposition within two business days of service on it of the request for special permission to appeal and shall briefly state the grounds for denying special permission to appeal and the grounds for affirming the ruling or order in question. An original and nine copies of the statement shall be filed with the Chair, together with proof of service of a copy on all other parties and the arbitrator assigned to the case.

(c) The Chair has the authority to grant or deny special permission to appeal. If the Chair grants special permission to appeal, the arbitration proceeding shall not be stayed unless otherwise ordered by the Chair. The Commission shall consider an appeal on the papers submitted to the Chair, or on such further submission as it may require.

### **SUBCHAPTER 6. DETERMINATION OF DISPUTES OVER ISSUE DEFINITION**

#### **19:16-6.1 Purpose of procedure**

The Commission has the statutory authority to resolve disputes as to whether an issue is an economic or a noneconomic issue as defined in N.J.S.A. 34:13A-16f(2). After the filing of a petition to initiate compulsory interest arbitration, the Commission will not exercise that authority until an award has been issued and will do so only if necessary to resolve an appeal of an interest arbitration award.

#### **19:16-6.2 (Reserved)**

### **SUBCHAPTER 7. FAILURE TO SUBMIT A NOTICE OR OTHER DOCUMENT**

#### **19:16-7.1 Failure to submit a notice or other document**

The failure to submit any notification, petition, statement, or other document as set forth in this chapter shall not provide the basis for any delay in these proceedings, nor shall it otherwise prevent or preclude the resolution of a dispute through compulsory interest arbitration pursuant to this chapter, except as provided by N.J.A.C. 19:16-5.12.

### **SUBCHAPTER 8. APPEALS**

#### **19:16-8.1 Appeals and cross-appeals**

(a) Within 14 calendar days, or within such other period of time that may be set by N.J.S.A. 34:13A-14 et seq., after receiving an award forwarded by the Director of Conciliation and Arbitration, an aggrieved party may file an original and nine copies of an appeal brief with the Commission, together with the \$200.00 fee required under N.J.A.C. 19:16-5.13. Any cross-appeal must also be filed within this same 14-day period and comply with the fee, briefing, and service requirements of this section.

1. The brief shall specify each alleged failure of the arbitrator to apply the criteria specified in N.J.S.A. 34:13A-16.g and each alleged violation of the standards set forth in N.J.S.A. 2A:24-8 or 2A:24-9.

2. The appellant shall simultaneously file an original and nine copies of an appendix containing those parts of the record the appellant considers necessary to the proper consideration of the issues, including such parts as the appellant should reasonably assume will be relied upon by the respondent in meeting the issues raised.

3. If a stenographic record of the hearing was prepared, the appellant shall certify to its existence and provide a copy of the transcript to the Commission upon receipt.

4. Filings shall be accompanied by proof of service of a copy to the other party.

5. The appellant shall also file a copy of the brief on the arbitrator.

(b) Within 14 days after the service of a brief in support of an appeal or cross-appeal, the respective respondents shall file an original and nine copies of an answering brief limited to the issues raised in the appeal or cross-appeal. The respective respondents may also file an original and nine copies of an appendix containing those parts of the record not included in the appellant's or cross-appellant's appendix that the respondent considers necessary to the proper consideration of the issues. Filings shall be accompanied by proof of service of a copy on the other party.

(c) No further briefs shall be filed except by leave of the Commission. A request for leave shall be in writing, accompanied by proof of service of a copy on the other party.

(d) The Commission shall render a decision within 60 days, or within such other period of time that may be set by N.J.S.A. 34:13A-14 et seq., from receipt of the appeal.

(e) The Commission decision shall be in writing and shall include an explanation as to how each statutory criterion was considered on appeal and that the statutory tax levy cap was considered.

### **19:16-8.2 Oral argument**

Any request for oral argument before the Commission shall be in writing on a separate piece of paper and shall be filed simultaneously with the appeal or cross-appeal, together with proof of service of a copy on the other party. The Commission shall notify the parties if the request for oral argument is granted and of the time and place of any oral argument.

### **19:16-8.3 Action by the Commission**

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 at random by computer.

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<sup>1</sup> Title 19, Chapter 16 -- Chapter Notes

#### **CHAPTER AUTHORITY:**

N.J.S.A. 34:13A-6(b), 34:13A-5.4(e), 34:13A-11, and 34:13A-16.5.

#### **SOURCE AND EFFECTIVE DATE:**

R.2012 d.166, effective September 7, 2012.  
See: 44 N.J.R. 562(a), 44 N.J.R. 2304(a).

Amended, R.2018, d.087, effective March 5, 2018  
See 49 N.J.R. 2509(a), 50 N.J.R. 990 (a)

#### **EXPIRATION DATE:**

Chapter 16, Negotiations, Impasse Procedures, and Compulsory Interest Arbitration of Labor Disputes in Public Fire and Police Departments, expires on September 7, 2019.

# **2020 BIENNIAL REPORT**

## **TAB 3**

New Jersey Public Employment Relations Commission

Interest Arbitrator By-Lot Selection  
Program:

Random Number Generation  
Testing for Re-Certification

By

Francis A. Steffero, PhD

October 9, 2018

## 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 PERC computer assisted system to assign interest arbitrators was re-tested in 2011 (Steffero, 2011) to confirm that the computer assisted system continues to confirm compliance with the interest arbitrator appointment procedures amended by L. 2010 c. 105 effective January 1, 2011 to assign interest arbitrators in a random manner. Re-testing continued in 2014 (Steffero, 2014) to confirm that the PERC computer assisted system assigns interest arbitrators in a random manner. The results of prior studies (Steffero, 2005, 2009, 2011, 2014) confirmed that the random number generator provided by IBM in Lotus Script generated numbers in a random manner and that the Lotus Script programming provided by Specialty Systems Inc. (SSI) selected interest arbitrators in a random manner.

The methodology of testing applied a statistical test described by Donald E. Knuth (1981, 1998), professor emeritus from Stanford University. The present study followed the methodology from the past studies (Steffero, 2005, 2009, 2011, 2014). Two tests were conducted. A "Pseudo Random Number Generator (PRNG) Test" was performed on August 27, 2018. A "Completed Application Test" was performed three times on September 7, September 13, and September 19, 2018, respectively. All test 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 3<sup>rd</sup> edition of Volume II, published in 1998, brought the treatment of this topic up to date. Reviews of the literature on this topic by subsequent writers frequently 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" directly determines the randomness of the 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. Therefore,

the seed value must vary in a random manner each time the PRNG is executed. Therefore, the computer-assisted system in the present study 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, is accomplished 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 (Steffero, 2014). There have been no changes to the computer algorithms for random assignment of interest arbitrators between the prior study (Steffero, 2014) and the present study.



### 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 and Desktop Environments*

All certification testing was performed on the production environment at PERC. The major components of the PERC production server and desktop environments were as follows at the time of this study. The production server hardware was a Dell PowerEdge R520 with dual Intel Xeon processors, 384 gigabytes (GB) of random-access memory (RAM) and a high-performance disk subsystem. The production server software environment was a “virtual machine” using VMWare vCenter Server, Version 6.0.0, Build 2656760 with vSphere Client Version 6.0.0 Build 68555219. The operating system within the virtual machine was Microsoft Windows 2012 R2 Standard Server. The application software for the PERC production system was IBM Lotus Notes 8.5, Release 8.5.2, Revision 20100811.1131.

The desktop client PCs used for testing in this study were Dell OptiPlex 9020 PCs with Intel Core i7 Processors with 4 GB RAM running Windows 7 Professional, Service Pack 1, operating system. The PERC server and desktop environment was consistent with good practices for production environments at the time of this study.

The changes to the Production Server Environment between 2014 and 2018 included performance and reliability improvements to the server and desktop environments. Changes to those environments were consistent with good practices and should have a positive, rather than negative, impact on the random selection process for interest arbitrators. The following tests were designed to ensure that performance improvements between 2014 and 2018 did not have a negative impact on the random behavior of interest arbitrator selection.

#### *PRNG Test*

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. Raw data generated by the test script were rounded to produce

integer values between 1 and 10 using Microsoft Excel 2016, Version 1809, Build 10827.20138.

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, September 7, 13 and 19, 2018, 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 behaving in a random manner. 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 and Completed Application Test for Interest Arbitrator Selection.

##### *PRNG Test*

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  
(n = 1,000)

CHOICE	TEST
1	91
2	105
3	105
4	98
5	79
6	106
7	101
8	110
9	110
10	95
k=10	1,000
Chi-square	8.38

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*

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 five interest arbitrators is behaving in a random manner.

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

Actual Arbitrator	Day 1	Day 2	Day 3
1	55	57	73
2	62	64	58
3	63	61	57
4	53	58	53
5	67	60	59
k=5	300	300	300
Chi-Square	2.27	0.50	3.87

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 was re-tested in this study and behaved in a random manner. 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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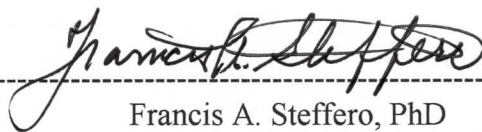
## Signature Page

**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



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Francis A. Steffero, PhD

10/8/18

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Date

# **2020 BIENNIAL REPORT**

## **TAB 4**



PUBLIC EMPLOYMENT RELATIONS COMMISSION  
Annual Continuing Education for Interest Arbitrators  
October 29, 2018

Agenda

- 4:00-4:30 p.m.                      Registration
- 4:30-4:45 p.m.                      Commission Update  
*Mary Beth Hennessy-Shotter, Director of C&A*
- 4:45-5:00 p.m.                      Chairman Update  
*Joel Weisblatt, PERC Chairman*
- 5:00-5:15 p.m.                      Annual Ethics Training  
*Christine Lucarelli-Carneiro, Acting General Counsel*
- 5:15-6:15 p.m.                      Local Government Finance Update  
Marc H. Pfeiffer, Assistant Director  
Bloustein Local Government Research Center  
Rutgers University
- 6:15-6:45 p.m.                      Dinner
- 6:45-8:00 p.m.                      Mediation Update: Health Benefits & Premium Sharing  
*Timothy Averell, Staff Mediator*  
*Anthony Bagliore, Staff Mediator*

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION  
Annual Continuing Education Program for Interest Arbitrators  
November 4, 2019

Agenda

- 4:00-4:15 p.m. Registration
- 4:15-4:30 p.m. Chairman's Update  
*Joel Weisblatt, Chairman*
- 4:30-5:00 p.m. Commission Update & Annual Ethics Training  
*Christine Lucarelli-Carneiro, PERC General Counsel*
- 5:00-6:45 p.m. Local Government Finance Update  
*Marc H. Pfeiffer, Assistant Director Bloustein Local  
Government Research Center, Rutgers University*
- 6:45-8:00 p.m. Current Impasse Issues in Interest Arbitration  
*Mary Beth Hennessy-Shotter, Director of C&A  
Timothy Averell, Staff Mediator  
Anthony Bagliore, Staff Mediator  
David Gambert, Staff Mediator  
Julian Krol, Staff Mediator*

# **2020 BIENNIAL REPORT**

## **TAB 5**



**STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION**

PO Box 429  
TRENTON, NEW JERSEY 08625-0429

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July 11, 2018

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](http://www.state.nj.us/labor).

The first table shows changes in average wages in employment for major industry groups in New Jersey between 2016 and 2017. 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 2016 and 2017. 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 charts depict the average annual wage and percentage change in average annual wage for private, federal, state and local employees in New Jersey.

**NEW JERSEY  
AVERAGE ANNUAL WAGES  
FOR JOBS COVERED BY UNEMPLOYMENT INSURANCE  
BY NAICS INDUSTRY SECTOR  
2016 and 2017**

NAICS Industry Sector	2016	2017	Net Change	% Change
Total Private Sector *	\$62,424	\$63,738	\$1,314	2.1%
Utilities	\$118,627	\$120,303	\$1,676	1.4%
Construction	\$68,755	\$71,145	\$2,390	3.5%
Manufacturing	\$78,580	\$78,813	\$233	0.3%
Wholesale Trade	\$87,115	\$87,575	\$460	0.5%
Retail Trade	\$33,241	\$33,830	\$589	1.8%
Transportation/Warehousing	\$53,881	\$53,343	-\$538	-1.0%
Information	\$105,135	\$108,621	\$3,486	3.3%
Finance/Insurance	\$122,204	\$127,116	\$4,912	4.0%
Real Estate/Rental/Leasing	\$62,909	\$64,146	\$1,237	2.0%
Professional/Technical Services	\$106,455	\$109,146	\$2,691	2.5%
Management of				
Companies/Enterprises	\$160,326	\$167,477	\$7,151	4.5%
Administrative/Waste Services	\$41,477	\$43,677	\$2,200	5.3%
Educational Services	\$49,510	\$50,264	\$754	1.5%
Health Care/Social Assistance	\$51,705	\$52,489	\$784	1.5%
Arts/Entertainment/Recreation	\$34,434	\$34,792	\$358	1.0%
Accommodation/Food Service	\$22,392	\$22,791	\$399	1.8%
Other Services **	\$33,980	\$35,057	\$1,077	3.2%
Total Government	\$64,840	\$66,063	\$1,223	1.9%
Federal Government	\$78,234	\$80,142	\$1,908	2.4%
State Government	\$70,606	\$71,740	\$1,134	1.6%
Local Government	\$61,242	\$62,416	\$1,174	1.9%
TOTAL	\$62,774	\$64,070	\$1,296	2.1%

\* 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](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  
2016 and 2017**

County	2016	2017	% Change
Atlantic	\$ 40,362	\$ 41,682	3.3%
Bergen	\$ 63,323	\$ 63,997	1.1%
Burlington	\$ 53,456	\$ 54,639	2.2%
Camden	\$ 49,585	\$ 51,162	3.2%
Cape May	\$ 33,248	\$ 33,359	0.3%
Cumberland	\$ 41,038	\$ 41,775	1.8%
Essex	\$ 64,966	\$ 66,718	2.7%
Gloucester	\$ 43,404	\$ 43,661	0.6%
Hudson	\$ 72,935	\$ 76,401	4.8%
Hunterdon	\$ 62,442	\$ 68,166	9.2%
Mercer	\$ 70,162	\$ 70,010	-0.2%
Middlesex	\$ 62,739	\$ 63,215	0.8%
Monmouth	\$ 51,158	\$ 52,554	2.7%
Morris	\$ 80,897	\$ 83,743	3.5%
Ocean	\$ 39,584	\$ 40,165	1.5%
Passaic	\$ 49,469	\$ 50,266	1.6%
Salem	\$ 55,888	\$ 56,310	0.8%
Somerset	\$ 86,965	\$ 86,078	-1.0%
Sussex	\$ 41,662	\$ 43,087	3.4%
Union	\$ 68,054	\$ 70,317	3.3%
Warren	\$ 47,047	\$ 48,527	3.1%
Total			
Private Sector*	\$ 62,424	\$ 63,738	2.1%

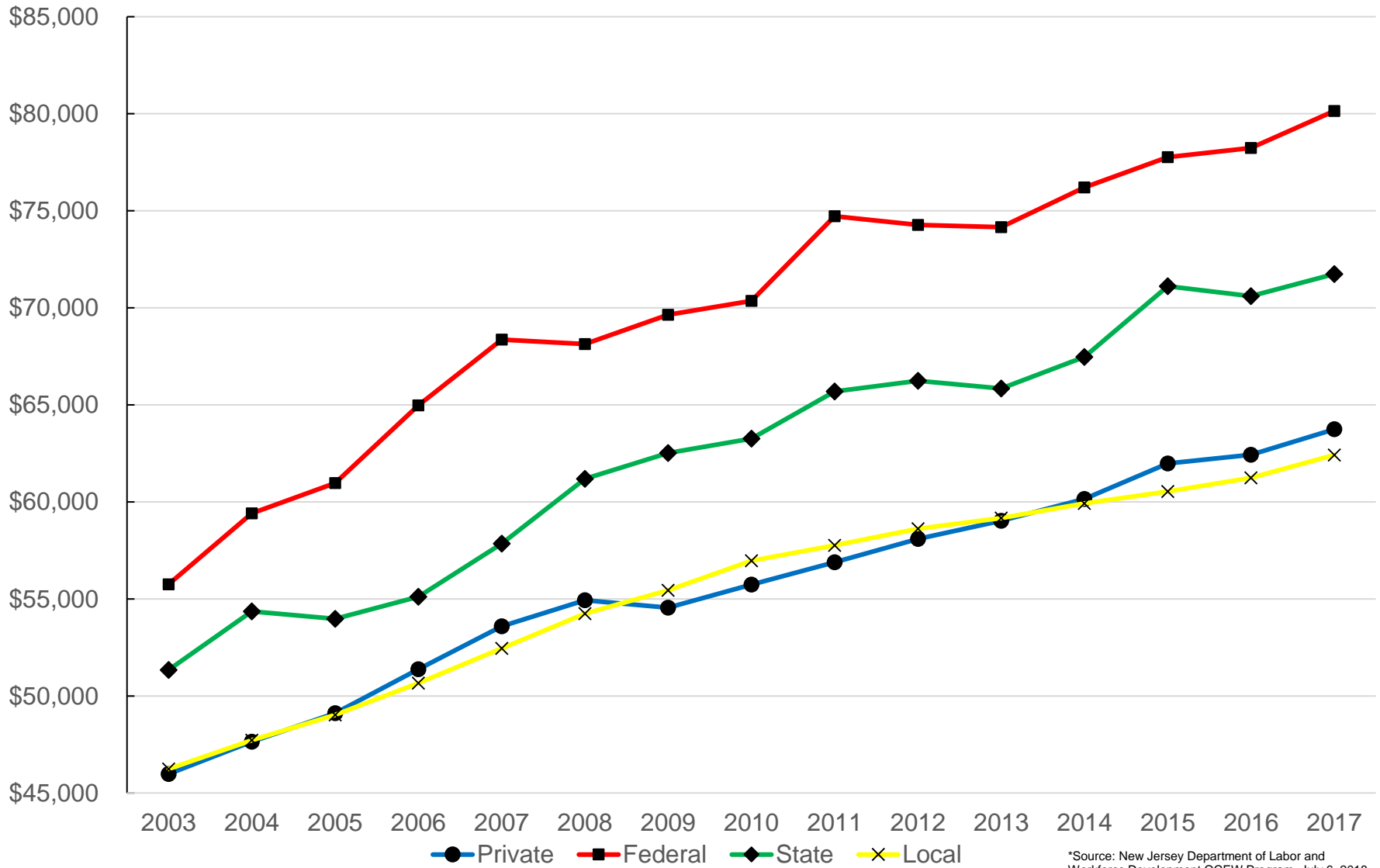
\* Includes firms which have failed to provide sufficient geographical information as to the location of the business.

\*\*\* 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](http://lwd.dol.state.nj.us/labor/lpa/employ/qcew/qcew_index.html)

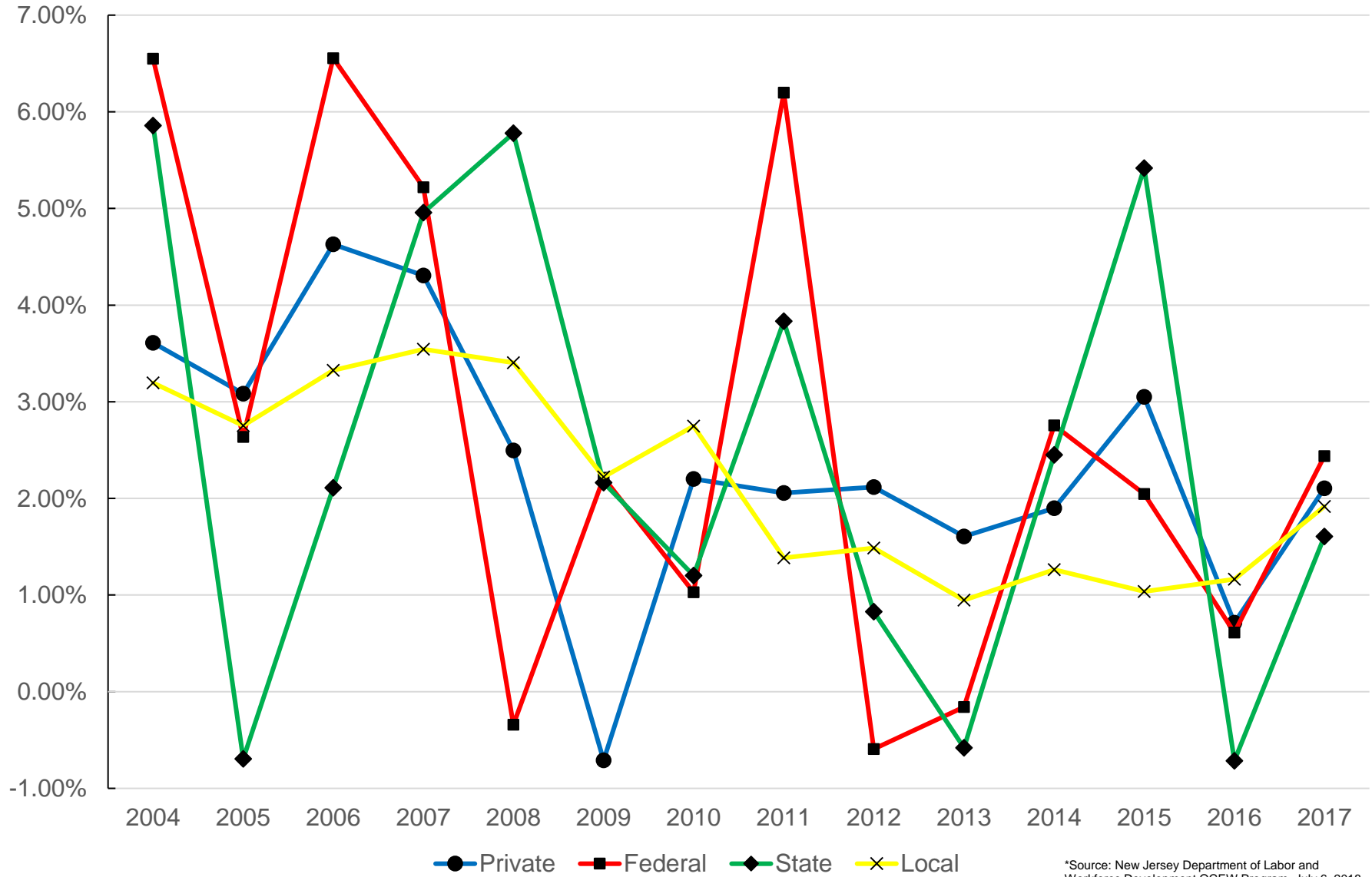
Source: QCEW Report, New Jersey Department of Labor and Workforce Development

# New Jersey Average Annual Wage 2003 - 2017\*



\*Source: New Jersey Department of Labor and Workforce Development QCEW Program, July 6, 2018

## New Jersey Percentage Change in Average Annual Wage 2004 - 2017\*



\*Source: New Jersey Department of Labor and Workforce Development QCEW Program, July 6, 2018





**STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION**

PO Box 429  
TRENTON, NEW JERSEY 08625-0429

[www.state.nj.us/perc](http://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](mailto:mail@perc.state.nj.us)

July 2, 2019

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.nj.gov/labor](http://www.nj.gov/labor).

The first table shows changes in average wages in employment for major industry groups in New Jersey between 2017 and 2018. 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 2017 and 2018. 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 charts depict the average annual wage and percentage change in average annual wage for private, federal, state and local employees in New Jersey.

**NEW JERSEY  
AVERAGE ANNUAL WAGES  
FOR JOBS COVERED BY UNEMPLOYMENT INSURANCE  
BY NAICS INDUSTRY SECTOR  
2017 and 2018**

NAICS Industry Sector	2017	2018	Net Change	% Change
Total Private Sector *	\$63,738	\$65,355	\$1,617	2.5%
Utilities	\$120,303	\$123,352	\$3,049	2.5%
Construction	\$71,145	\$72,658	\$1,513	2.1%
Manufacturing	\$78,813	\$80,089	\$1,276	1.6%
Wholesale Trade	\$87,575	\$88,781	\$1,206	1.4%
Retail Trade	\$33,830	\$34,618	\$788	2.3%
Transportation/Warehousing	\$53,343	\$54,246	\$903	1.7%
Information	\$108,621	\$114,630	\$6,009	5.5%
Finance/Insurance	\$127,116	\$130,607	\$3,491	2.7%
Real Estate/Rental/Leasing	\$64,146	\$67,104	\$2,958	4.6%
Professional/Technical Services	\$109,146	\$112,051	\$2,905	2.7%
Management of				
Companies/Enterprises	\$167,477	\$170,665	\$3,188	1.9%
Administrative/Waste Services	\$43,677	\$45,080	\$1,403	3.2%
Educational Services	\$50,264	\$51,587	\$1,323	2.6%
Health Care/Social Assistance	\$52,489	\$53,649	\$1,160	2.2%
Arts/Entertainment/Recreation	\$34,792	\$37,382	\$2,590	7.4%
Accommodation/Food Service	\$22,791	\$23,948	\$1,157	5.1%
Other Services **	\$35,057	\$36,518	\$1,461	4.2%
Total Government	\$66,063	\$68,003	\$1,940	2.9%
Federal Government	\$80,142	\$83,702	\$3,560	4.4%
State Government	\$71,740	\$75,706	\$3,966	5.5%
Local Government	\$62,416	\$63,526	\$1,110	1.8%
<b>TOTAL</b>	<b>\$64,070</b>	<b>\$65,729</b>	<b>\$1,659</b>	<b>2.6%</b>

\* 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](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  
2017 and 2018**

County	2017	2018	% Change
Atlantic	\$ 41,682	\$ 42,850	2.8%
Bergen	\$ 63,997	\$ 65,378	2.2%
Burlington	\$ 54,639	\$ 56,829	4.0%
Camden	\$ 51,162	\$ 52,445	2.5%
Cape May	\$ 33,359	\$ 34,088	2.2%
Cumberland	\$ 41,775	\$ 42,780	2.4%
Essex	\$ 66,718	\$ 68,966	3.4%
Gloucester	\$ 43,661	\$ 44,692	2.4%
Hudson	\$ 76,401	\$ 79,307	3.8%
Hunterdon	\$ 68,166	\$ 66,403	-2.6%
Mercer	\$ 70,010	\$ 71,432	2.0%
Middlesex	\$ 63,215	\$ 64,725	2.4%
Monmouth	\$ 52,554	\$ 54,742	4.2%
Morris	\$ 83,743	\$ 84,371	0.7%
Ocean	\$ 40,165	\$ 41,141	2.4%
Passaic	\$ 50,266	\$ 50,955	1.4%
Salem	\$ 56,310	\$ 57,876	2.8%
Somerset	\$ 86,078	\$ 89,517	4.0%
Sussex	\$ 43,087	\$ 44,491	3.3%
Union	\$ 70,317	\$ 68,975	-1.9%
Warren	\$ 48,527	\$ 48,314	-0.4%
Total Private Sector*	\$ 63,738	\$65,355	2.5%

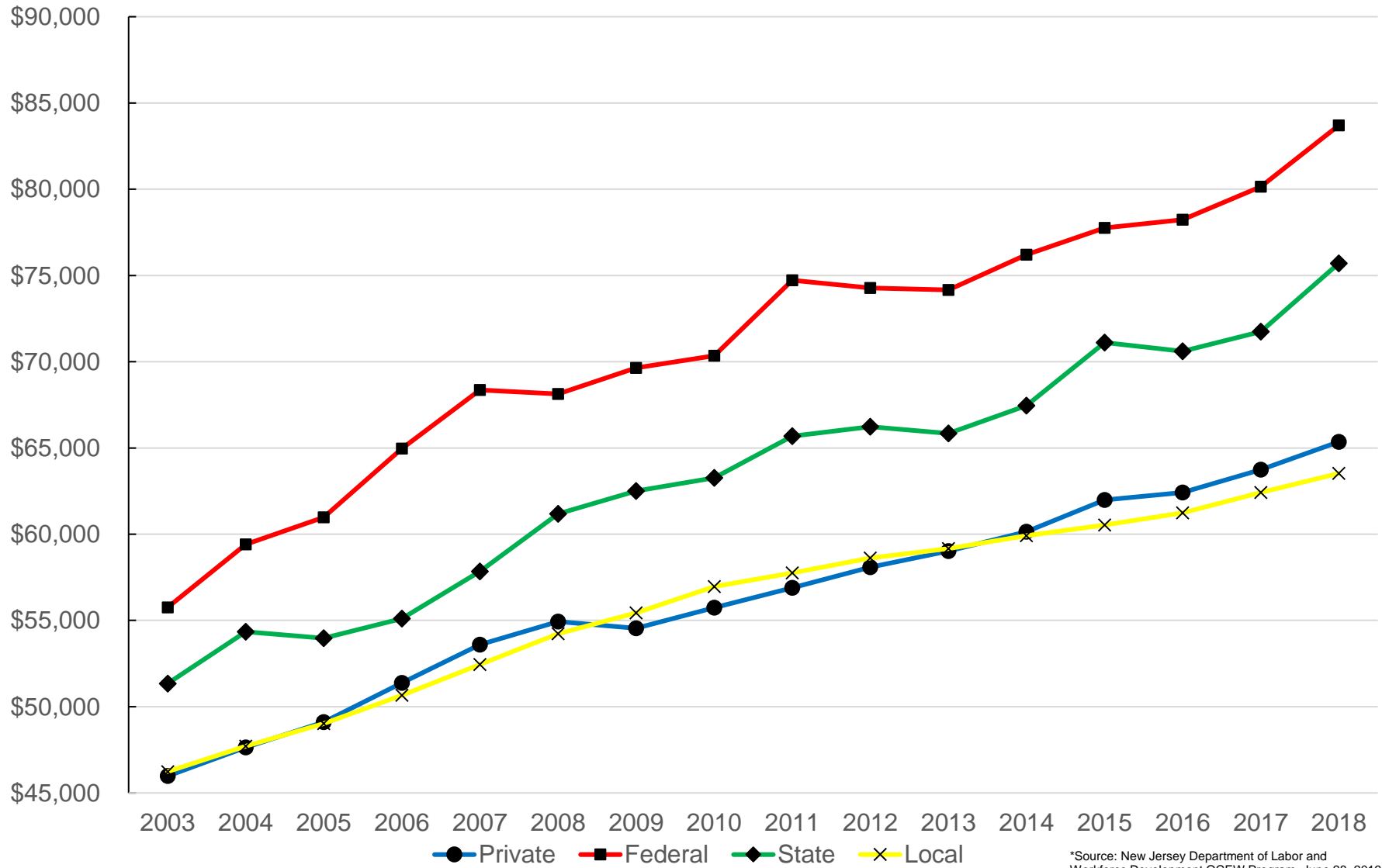
\* Includes firms which have failed to provide sufficient geographical information as to the location of the business.

\*\*\* 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](http://lwd.dol.state.nj.us/labor/lpa/employ/qcew/qcew_index.html)

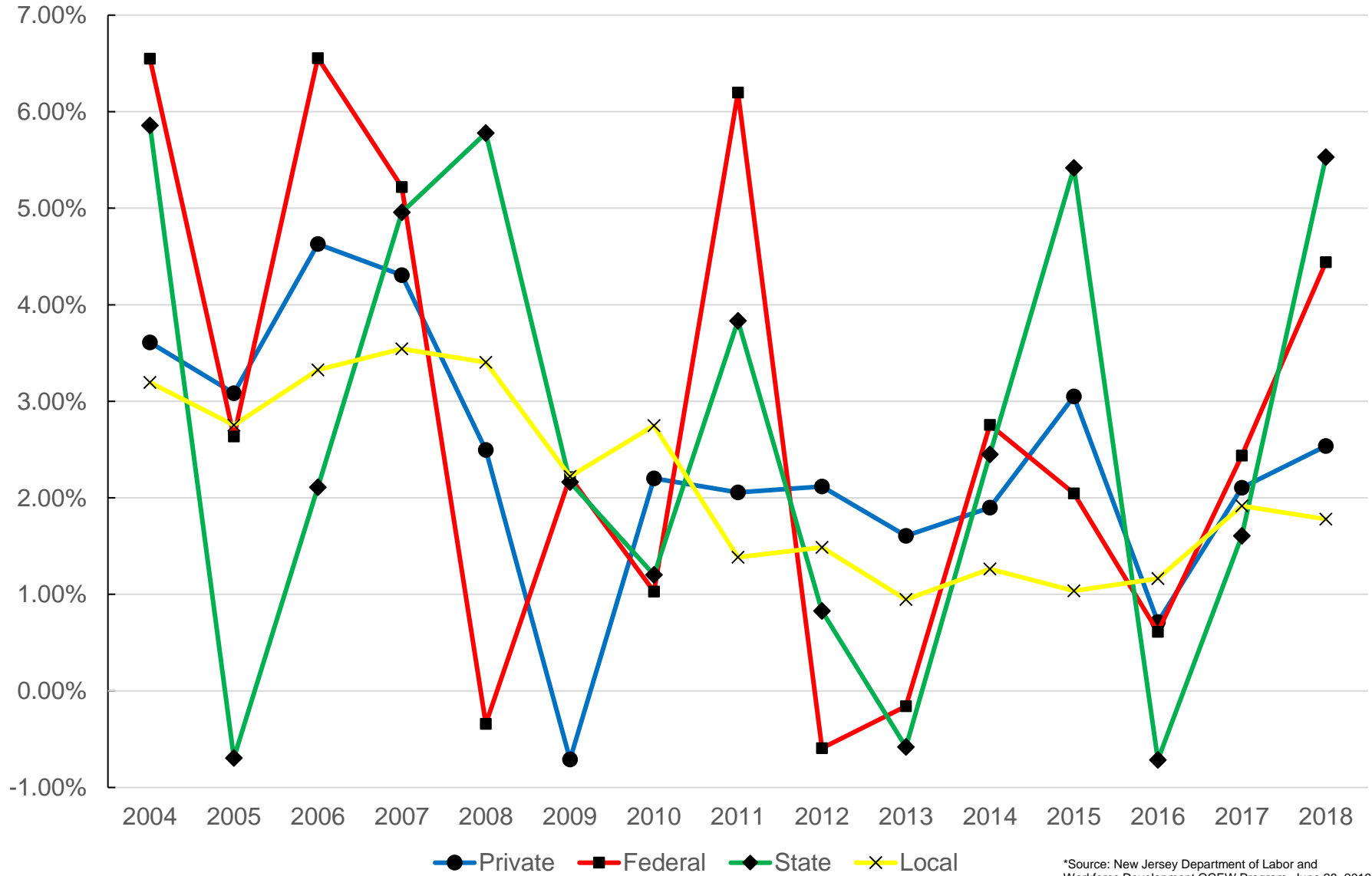
Source: QCEW Report, New Jersey Department of Labor and Workforce Development

## New Jersey Average Annual Wage 2003 - 2018\*



\*Source: New Jersey Department of Labor and Workforce Development QCEW Program, June 28, 2019

## New Jersey Percentage Change in Average Annual Wage 2004 - 2018\*



\*Source: New Jersey Department of Labor and Workforce Development QCEW Program, June 28, 2019

# **2020 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**

<b>1</b>	Public Employer: <input style="width: 95%;" type="text"/>	County: <input style="width: 95%;" type="text"/>
<b>2</b>	Employee Organization: <input style="width: 95%;" type="text"/>	Number of Employees in Unit: <input style="width: 95%;" type="text"/>
<b>3</b>	Base Year Contract Term: <input style="width: 95%;" type="text"/>	
<b>4</b>	New Contract Term: <input style="width: 95%;" type="text"/>	

---

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

<b>5</b>	<input type="checkbox"/>	Contract settled without neutral assistance	
<b>6</b>	<input type="checkbox"/>	Contract settled with assistance of mediator	
<b>7</b>	<input type="checkbox"/>	Contract settled with assistance of fact-finder	
<b>8</b>	<input type="checkbox"/>	Contract settled in Interest Arbitration	
<b>9</b>	If contract was settled in Interest Arbitration, did the Arbitrator issue an Award?		Yes <input type="checkbox"/> No <input type="checkbox"/>

---

**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' means 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."

<b>10</b>	Salary Costs in base year	\$ <input style="width: 95%;" type="text"/>
<b>11</b>	Longevity Costs in base year	\$ <input style="width: 95%;" type="text"/>
<b>12</b>	Other base year salary costs	
	<input style="width: 95%;" type="text"/>	\$ <input style="width: 95%;" type="text"/>
	<input style="width: 95%;" type="text"/>	\$ <input style="width: 95%;" type="text"/>
	<input style="width: 95%;" type="text"/>	\$ <input style="width: 95%;" type="text"/>
	<input style="width: 95%;" type="text"/>	\$ <input style="width: 95%;" type="text"/>
	Sum of "Other" Costs Listed in Line 12.	\$ <input style="width: 95%;" type="text"/>
<b>13</b>	Total Base Salary Cost: (sum of lines 10, 11, 12):	\$ <input style="width: 95%;" type="text"/>

Employer:

Employee Organization:

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

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)	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
16 Cost of Salary Increments (\$)	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
17 Salary Increase Above Increments (\$)	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
18 Longevity Increase (\$)	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
19 Total Increased Cost for "Other" Items (\$)	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
20 Total Increase (\$) (sum of lines 16-19)	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

**SECTION V: Average Increase Over Term of New CNA**

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]





Employer:

Employee Organization:

**SECTION VII: Medical Costs (continued)**

- 31 Employee Insurance Contributions      \$       \$   
32 Contributions as % of Total Insurance Cost       %       %

33 Identify any insurance changes that were included in this CNA.

**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](mailto:contracts@perc.state.nj.us)

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

Revised 8/2016

## **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.

Send the attached Summary Form along with a copy of the contract and certification form electronically to: [contracts@perc.state.nj.us](mailto: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 "Washington Township"). 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:** Enter the Base Year Contract Term, which is the term of the expiring or expired agreement (e.g., January 1, 2013 - December 31, 2015).

**Line 4:** Enter the New Contract Term, that 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 the 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 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: Increased Cost of 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 costs listed in the Base Year column. Then calculate the sum of the increased costs for each year of the contract.

#### **SECTION VII: Medical Costs**

For the Base Year and for Year 1 of the new agreement:

**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 changes that were negotiated or awarded: e.g., change in carrier, change in plans, change in benefits levels, co-pays, deductibles, employee contributions, etc.

### **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](mailto:contracts@perc.state.nj.us)

- The completed, signed Summary Form
- An electronic copy of the contract.

# **2020 BIENNIAL REPORT**

## **TAB 7**

P.E.R.C. NO. 2019-28

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF PEMBERTON

Petitioner,

-and-

Docket No. SN-2019-044

PBA LOCAL 260,

Respondent.

SYNOPSIS

The Commission Chair issues an expedited scope of negotiations ruling on a disputed proposal by the PBA in a pending interest arbitration proceeding between the Township and the PBA. The PBA's proposal sought to require the Township to staff school extra duty assignments as part of its voluntary "Jobs in Blue" program with a minimum of two officers. Finding that the Township has a significant managerial prerogative to determine minimum staffing levels, as well as to administer extra duty employment involving police-type services performed by uniformed officers, the Chair holds that the PBA's proposal is not mandatorily negotiable.

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. 2019-28

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF PEMBERTON

Petitioner,

-and-

Docket No. SN-2019-044

PBA LOCAL 260,

Respondent.

Appearances:

For the Petitioner, Archer & Greiner, attorneys (David A. Rapuano, on the brief)

For the Respondent, Sciarra & Catrambone, LLC, attorneys (Christopher A. Gray, on the brief)

DECISION

This decision is issued pursuant to N.J.A.C. 19:16-5.5(c), which authorizes the Commission Chair to issue an expedited scope of negotiations decision where a dispute exists among parties to a pending interest arbitration petition over whether an unresolved issue is within the scope of negotiations. On January 7, 2019, PBA Local 260 (PBA) submitted a petition to initiate compulsory interest arbitration to resolve a negotiations impasse with the Township of Pemberton (Township) over the terms of a successor collective negotiations agreement (CNA) between the parties.<sup>1/</sup> (Docket No. IA-2019-012). On January 22, the Township

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<sup>1/</sup> The PBA's interest arbitration petition was perfected with its January 9 submission of the filing fee, and the Director  
(continued...)

petitioned for a scope of negotiations determination and requested to have the disputed issue decided on an expedited basis. In support of its petition, the Township filed a brief, exhibits, and certification of its Business Administrator, Dennis Gonzalez. The PBA filed its opposition to the scope of negotiations petition on January 30, which consisted of a brief. On January 31, the Chair granted the Township's request for expedited processing.

The Township and PBA are parties to a CNA with an effective term of January 1, 2014 through December 31, 2017. Article XX of the CNA, entitled "Uniformed Jobs in Blue Program," provides that the Township may occasionally engage with public or private entities to provide security services using uniformed officers. Article XX states that "the Township shall have the authority to authorize, manage and control a program to allow members to perform such uniformed work, consistent with the Township's obligation to bargain with the PBA over equitable assignment of opportunities and hourly rates." Article XX further sets forth a seniority based preference system for uniformed work assignments,

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1/ (...continued)  
of Conciliation and Arbitration issued a letter on January 10 notifying the Township of the filing. The Township then had 10 days to file a request for an expedited scope of negotiations determination (N.J.A.C. 19:16-5.5(c)(1)) which fell on a holiday weekend and was therefore due on the next business day, January 22. N.J.A.C. 19:10-2.1(a).

as well as the hourly rates for officers assigned uniformed work under the Jobs in Blue program.

The Jobs in Blue program is also governed by Section 41-14 of the Township Code. Section 41-14 authorizes the Mayor to use uniformed officers to provide security, traffic control, and other police-related services to various public, private, or nonprofit entities during times when those officers are not scheduled for a tour of duty by the Police Department. The Township currently utilizes the Jobs in Blue program primarily for School District events and sometimes for nonprofit events within the Township. After the School District submits a request for uniformed officers to the Police Chief, the Chief posts the work opportunity(ies) for officers to volunteer for. The School District pays the Township for the services pursuant to Section 41-14 of the Township Code, and the Township then pays the officer(s) for their time worked in the extra duty assignment pursuant to the compensation agreed to in Article XX of the CNA.

During successor contract negotiations, the PBA has sought to negotiate over several aspects of the Jobs in Blue program. The parties agree that the PBA's request to increase the hourly pay rate for the program is mandatorily negotiable, while the PBA's request that the program be extended to private companies is not mandatorily negotiable. The issue in dispute is whether

the PBA's request to have a minimum of two officers assigned for each school extra duty assignment is mandatorily negotiable.

Paterson Police PBA No. 1 v. City of Paterson, 87 N.J. 78, 92-93 (1981), outlines the steps of a scope of negotiations analysis for firefighters and police:

First, it must be determined whether the particular item in dispute is controlled by a specific statute or regulation. If it is, the parties may not include any inconsistent term in their agreement. State v. State Supervisory Employees Ass'n, 78 N.J. 54, 81 (1978). If an item is not mandated by statute or regulation but is within the general discretionary powers of a public employer, the next step is to determine whether it is a term or condition of employment as we have defined that phrase. An item that intimately and directly affects the work and welfare of police and firefighters, like any other public employees, and on which negotiated agreement would not significantly interfere with the exercise of inherent or express management prerogatives is mandatorily negotiable. In a case involving police and firefighters, if an item is not mandatorily negotiable, one last determination must be made. If it places substantial limitations on government's policymaking powers, the item must always remain within managerial prerogatives and cannot be bargained away. However, if these governmental powers remain essentially unfettered by agreement on that item, then it is permissively negotiable.

In cases involving collective negotiations or interest arbitration, we do not decide whether contract language or proposals are permissively negotiable because an employer has no obligation to negotiate over such proposals or to consent to

their submission to interest arbitration. City of Atlantic City, P.E.R.C. No. 2015-63, 41 NJPER 439 (¶137 2015) (citing Town of West New York, P.E.R.C. 82-34, 7 NJPER 594 (¶12265 1981)). We consider only whether the proposals are mandatorily negotiable.

The Township asserts that it has a non-negotiable managerial prerogative to determine staffing levels for Jobs in Blue program assignments. It argues that the PBA's proposal for a minimum of two officers to be assigned to every school extra duty assignment infringes on its prerogative to administer the Jobs in Blue program and determine minimum staffing levels for assignments.

The PBA asserts that staffing levels for extra duty assignments are negotiable because Jobs in Blue program assignments are voluntary. It argues that the PBA's two officer minimum proposal must be negotiable to address the safety concerns of officers participating in the Jobs in Blue program.

The Commission has consistently barred negotiations over contract clauses binding employers to specific staffing levels for public safety officers, despite the impact manning levels may have on officer safety. Bergen Cty. and PBA Local No. 134, Bergen Cty. Sheriff's Officers, NJPER Supp.2d 143 (¶128 App. Div. 1984), aff'g, P.E.R.C. No. 83-110, 9 NJPER 150 (¶14071 1983) (proposal for two officers to transport and guard prisoner taken to hospital's secure ward was not negotiable); Franklin Bor., P.E.R.C. No. 98-138, 24 NJPER 273 (¶29130 1998) (proposal for two

uniformed officers on shift was not negotiable); City of Sea Isle, P.E.R.C. No. 96-83, 22 NJPER 240 (¶27125 1996) (proposal for two officers for motor vehicle stops and issuing warrants was not negotiable); Lopatcong Tp., P.E.R.C. No. 91-15, 16 NJPER 479 (¶21207 1990) (provision requiring two officers per patrol car after sunset was not negotiable); Bor. of Maywood, P.E.R.C. No. 87-133, 13 NJPER 354 (¶18144 1987) (proposal for two officers per shift was not negotiable); City of Orange Tp., P.E.R.C. No. 86-23, 11 NJPER 522 (¶16184 1985) (proposal for two officers per patrol car was not negotiable); and Readington Tp., P.E.R.C. No. 84-7, 9 NJPER 533 (¶14218 1983) (proposal for two officers per shift was not negotiable).

I find no compelling reason to diminish a public employer's ability to establish staffing levels in the context of volunteer extra duty assignments such as the Jobs in Blue program at issue here. The Commission has held that when the type of extra duty employment at issue is police-type services performed by police officers in police uniforms, the public employer's policymaking interests in regulating that type of outside employment are more powerful than its interests in regulating other types of outside employment. City of Elizabeth, P.E.R.C. No. 2014-94, 41 NJPER 67 (¶21 2014), aff'd, 42 NJPER 454 (¶124 App. Div. 2016); City of Paterson, P.E.R.C. No. 2004-6, 29 NJPER 381 (¶120 2003). Thus, while issues such as compensation for such extra duty work and

the allocation of extra duty opportunities among qualified officers are generally mandatorily negotiable, the public employer has a significant non-negotiable managerial prerogative to administer an extra duty employment system. See, e.g., Elizabeth, supra, 41 NJPER at 69 (managerial prerogative to limit "pay job" opportunities to ranks below captain); Livingston Tp., P.E.R.C. No. 2014-66, 40 NJPER 448 (¶156 2014), aff'd, 41 NJPER 461 (¶142 App. Div. 2015) (managerial prerogative to prohibit officers out on terminal leave from performing extra duty assignments); Paterson, supra, 29 NJPER at 384 (managerial prerogative to take over administration of the extra duty uniformed officers program from PBA and approve of officer assignments to such jobs); and City of Orange Tp., P.E.R.C. No. 86-23, 11 NJPER 522 (¶16184 1985) (proposal for extra duty employment of police officers to be jointly administered by PBA and Chief of Police was not negotiable "since it involves an undue delegation of managerial authority"); Cf. Waldwick Bor., P.E.R.C. No. 86-53, 11 NJPER 705 (¶16243 1985) (employer had managerial prerogative to determine minimum manning of three officers for extra duty assignment to football game and, where a third officer did not volunteer, to assign on-duty officer).

Accordingly, I find that an agreement requiring the Township to staff each school extra duty "Jobs in Blue" assignment with a

minimum of two officers would significantly interfere with its exercise of management prerogatives.

ORDER

The PBA's proposal to have a minimum of two officers assigned to each school extra duty assignment is not mandatorily negotiable.

*Joel M. Weisblatt*  
Joel M. Weisblatt  
Chair

ISSUED: February 20, 2019

Trenton, New Jersey



# **2020 BIENNIAL REPORT**

## **TAB 8**

**NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION  
INTEREST ARBITRATION SALARY INCREASE ANALYSIS**

<b>Calendar Year</b>	<b>Total Number of Awards Issued</b>	<b>Number of Non-2% Cap Awards</b>	<b>Average Annual Salary Increase Non-2% Cap Awards</b>	<b>Number of 2% Cap Awards</b>	<b>Average Annual Salary Increase 2% Cap Awards</b>	<b>Average Annual Salary Increase All Awards</b>	<b>Total Number of IA Voluntary Settlements</b>	<b>Average Annual Salary Increase of IA Voluntary Settlements</b>
<b>2019</b>	<b>6</b>	5	3.62%	1	2.06%	<b>3.36%</b>	6	<b>1.64%</b>
<b>2018</b>	<b>2</b>	0	N/A	2	2.01%	<b>2.01%</b>	16	<b>1.75%</b>
<b>2017</b>	<b>4</b>	3	1.64%	1	2.05%	<b>1.74%</b>	5	<b>1.86%</b>
<b>2016</b>	<b>8</b>	3	3.83%	5	1.94%	<b>2.65%</b>	7	<b>2.69%</b>
<b>2015</b>	<b>6</b>	0	N/A	6	1.71%	<b>1.71%</b>	9	<b>1.73%</b>
<b>2014</b>	<b>12</b>	6	1.73%	6	1.69%	<b>1.71%</b>	16	<b>1.61%</b>
<b>2013</b>	<b>27</b>	16	1.83%	11	1.89%	<b>1.85%</b>	8	<b>1.96%</b>
<b>2012</b>	<b>37</b>	29	1.77%	8	1.99%	<b>1.82%</b>	29	<b>1.82%</b>

# **2020 BIENNIAL REPORT**

## **TAB 9**

PUBLIC EMPLOYMENT RELATIONS COMMISSION  
SALARY INCREASE ANALYSIS  
INTEREST ARBITRATION<sup>1</sup>

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%

<sup>1</sup> Salary Increase Percentages do not include increases due to increments/steps or longevity

# **2020 BIENNIAL REPORT**

## **TAB 10**

P.E.R.C. NO. 2020-10

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HOPEWELL TOWNSHIP,

Respondent,

-and-

Docket No. IA-2019-016

HOPEWELL PBA LOCAL 342,

Appellant.

SYNOPSIS

The Public Employment Relations Commission affirms a conventional interest arbitration award issued on June 5, 2019, covering the period January 1, 2019 through December 31, 2021, on the PBA's appeal from aspects of the award addressing salary only, based upon the interest arbitrator's comprehensive review of the evidence presented and application of the statutory criteria, which the Commission found was satisfactorily explained in her well-reasoned award. The Commission rejects the PBA's arguments that the interest arbitrator improperly relied on a 2% hard cap on base salary increases and that the arbitrator erred by failing to account for savings realized by the Township stemming from employees who had, in 2018, retired or been promoted out of the unit. The Commission finds the interest arbitrator did not limit salary increases to 2% per year, and that she properly took into account the Township's reduced costs stemming from retirements and promotions out of the unit when she considered the statutory factors of impact on the taxpayers and the Township's ability to pay.

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. 2020-10

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HOPEWELL TOWNSHIP,

Respondent,

-and-

Docket No. IA-2019-016

HOPEWELL PBA LOCAL 342,

Appellant.

Appearances:

For the Respondent, Ruderman and Roth, attorneys (Mark S. Ruderman, of counsel; Ellen M. Horn, on the brief)

For the Appellant, Crivelli and Barbati, attorneys (Frank M. Crivelli, of counsel and on the brief; Donald C. Barbati, on the brief)

DECISION

On June 20, 2019, the Hopewell PBA Local 342 (PBA) filed an appeal of an interest arbitration award involving a unit of approximately 23 police officers employed by Hopewell Township (Township).<sup>1/</sup> It is undisputed that included in the unit of 23 are four officers, who, by the end of calendar year 2018, had either retired or were promoted out of the unit. (April 27, 2019 report of Dr. Ralph J. Caprio, Table 20, showing each employee's name, salary step, base salary step and total 2018 compensation).

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<sup>1/</sup> The PBA's request for oral argument is denied given that the parties have fully briefed the issues raised.

On February 28, 2019, the PBA filed a petition to initiate compulsory interest arbitration seeking to resolve an impasse over the terms of a successor collective negotiations agreement (CNA).<sup>2/</sup> On March 7, an interest arbitrator was appointed by a random selection procedure pursuant to N.J.S.A. 34:13A-16(e)(1). That statute also requires that an interest arbitration award be issued within ninety days of appointment of the interest arbitrator.

The interest arbitrator conducted a mediation session on April 2, which narrowed the issues in dispute but did not result in a voluntary settlement of the successor CNA. The parties submitted their final offers on April 17. On May 2, the interest arbitrator conducted an evidentiary hearing in which the PBA provided testimony including an analysis of its salary proposal. Post-hearing summations were filed by May 17.

On June 5, 2019, the interest arbitrator issued a 117-page decision and award covering the period January 1, 2019 through December 31, 2021.<sup>3/</sup> The interest arbitrator issued a conventional award, as she was required to do pursuant to P.L.

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<sup>2/</sup> The prior agreement expired on December 31, 2018.

<sup>3/</sup> The award recited that the successor CNA would be for two years, a clerical error corrected by the interest arbitrator on June 24, 2019, as the parties had agreed to a three-year term. Other similar errors (the amount of the starting salary and the cost of 2019 increments) were corrected on July 2, 2019.



2010, c. 105, after considering the parties' final offers in light of the statutory factors. See N.J.S.A. 34:13A-16. The interest arbitrator awarded in 2019 across-the-board increases of 2.2%, in 2020 the top salary only was increased by 2.0%, and in 2021 across-the-board increases of 1.8%. The noted salary increases were augmented by step increment payments in each year to unit members eligible for those increases. The award also included the elimination of the obsolete six-step guide; elimination of longevity for unit members hired after July 1, 2019; acting squad sergeant compensation; an increase in the uniform allowance; changes to health and prescription plan costs; advance notice of changes to health and life insurance; annual leave changes; and language changes regarding employee rights and the conduct of PBA business.

The PBA appeals the aspects of the award addressing salary only. The PBA sought increases of 3.5% for each year of the agreement. The Township proposed increases of 1.5% per year. The PBA challenges the salary award, arguing:

1. The arbitrator improperly relied on a two percent hard cap on salary increases despite the fact that the legislation imposing that cap had a sunset provision that made it inapplicable to the time period covered by the successor CNA;
2. The arbitrator erred in calculating base salary by failing to take into account savings realized by the Township stemming from employees in the PBA unit, who, during 2018, had retired or had received promotions

to positions that were not represented by the PBA (i.e. promotions to superior officer positions represented by a different majority representative).

The PBA asserts that these errors warrant vacating the salary award and remanding the case to the arbitrator to make a new salary award with directions that she take into account the monetary savings stemming from 2018 retirements and promotions out of the PBA unit.

The Township asserts that the interest arbitrator's decision not to consider alleged savings from 2018 personnel movements was not arbitrary since retirements trigger employer payments for unused sick and/or vacation leave. It urges that we find that the award was a reasoned and sustainable application of all of the nine statutory criteria listed in N.J.S.A. 34:13A-16g.

We affirm the arbitrator's award as set forth below.

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 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 . . . .

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

(c) In public employment in the same or similar 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, the limitations imposed upon the local unit's property tax levy[,] and taxpayers . . . .

(7) The cost of living.

(8) The continuity and stability of employment . . . .

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

The standard for reviewing interest arbitration awards is well-established. The Commission 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.

See Teaneck Twp. v. Teaneck FMBA, 353 N.J. Super. 289 (App. Div. 2002), aff'd o.b. 177 N.J. 560 (2003); Cherry Hill Tp., P.E.R.C. No. 97-119, 23 NJPER 287 (¶28131 1997).

Hillsdale PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71 (1994) and Washington Tp. v. Washington Tp. PBA Local 206, 137 N.J. 88 (1994) prescribe the task of an arbitrator in applying the statutory criteria:

[A]n arbitrator need rely not on all factors, but only on those that the arbitrator deems relevant. An arbitrator should not deem a factor irrelevant, however, without first considering the relevant evidence.

[Hillsdale, 137 N.J. at 83-84]

An employer's ability to pay is not the decisive criterion that controls what should be awarded. See Hillside, 137 N.J. at 85-86.

Within the parameters of our review standard, the Commission will defer to the interest arbitrator's judgment, discretion, and labor relations expertise. See City of Newark, P.E.R.C. No. 99-97, 26 NJPER 242 (¶30103 1999). However, an interest 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. See N.J.S.A. 34:13A-16g; N.J.A.C. 19:16-5.9; Lodi Bor., P.E.R.C. No. 99-28, 24 NJPER 466 (¶29214 1998).

Our review of the award and the portions appealed by the PBA lead us to conclude that the interest arbitrator did an exhaustive review of the evidence presented and properly applied the statutory criteria. She identified and particularly emphasized the significant weight to be attributed to the public interest, comparability, financial impact and lawful authority criteria. Further, she provided a reasoned basis for the award with a proper exercise of discretion, demonstrating that she carefully considered the evidence and properly applied the statutory criteria.

The PBA is correct that the 2% cap per year on base salary increases is no longer statutorily required. Indeed, an examination of the award shows that the interest arbitrator did not limit the salary increases to 2% per year. Across the board increases of 2.2%, 2% (top step only), and 1.8%, for 2019, 2020 and 2021, respectively, were augmented by payment of step increments to unit members eligible for those increases. Thus, the total salary increases in each year of the CNA exceeds 2% and the salary increases over the three years of the CNA exceeds a cumulative total of 6%.

New Milford, P.E.R.C. No. 2012-53, 38 NJPER 340 (¶116 2012), determined that reductions or increases in employer costs stemming from retirements, promotions, hirings or other personnel

movements should not affect the costing out of the award. New Milford was issued during the period that the 2% cap per year on base salary increases was statutorily required. While consideration of employer cost reductions or increases in costing out an award is no longer prohibited, interest arbitrators may use their discretion in deciding whether it is appropriate to factor in such reductions or increases when rendering a salary award.

The interest arbitrator cited favorably to the costing out approach prescribed in New Milford when she formally costed out this award. However, she did take into account the Township's reduced costs stemming from the retirements and promotions out of the unit during the term of the CNA in connection with the application of the statutory criteria. She noted as follows:

I note that, contrary to the Township's assertion, the retirements and promotions at issue here are not speculative; they have all actually occurred already. However, I will consider the savings to the Township between 2018's salary costs for this unit and the same costs for subsequent years, as did the Township in its 2019 budget plan. This consideration will be with an eye towards the impact on the taxpayers and the Employer's ability to pay.

[Award at 63, emphasis supplied.]

The interest arbitrator found that the impact to the taxpayers is minimal in that the savings generated from retirements and promotions out of the unit render it unlikely

that the Township will have to raise taxes to fund the cost of the award. She also noted that the Township conceded that funding the award is within its lawful authority under the appropriations cap and the tax levy cap. Award at 111 - 112.

The interest arbitrator's comprehensive review of the evidence presented and application of the statutory criteria is satisfactorily explained in her well-reasoned award. Therefore, we affirm the award, deferring to her judgment, discretion and labor relations expertise.

ORDER

The interest arbitration award is affirmed.

BY ORDER OF THE COMMISSION

Chair Weisblatt, Commissioners Bonanni, Jones and Voos voted in favor of this decision. None opposed. Commissioner Papero recused himself.

ISSUED: August 15, 2019

Trenton, New Jersey

P.E.R.C. NO. 2020-11

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF BEDMINSTER,

Respondent,

-and-

Docket No. IA-2019-017

PBA LOCAL 366,

Appellant.

SYNOPSIS

The Public Employment Relations Commission affirms an interest arbitration award issued to settle successor contract negotiations between the Township and PBA. The PBA appealed arguing that the award failed to apply and give due weight to the statutory factors, was not supported by substantial credible evidence, and violated N.J.S.A. 2A:24-8. Particularly, the PBA contested the award's determinations on salary, health benefits contributions, sick leave, and uniform allowance as not being supported by the external comparables submitted by the PBA. The Commission finds that the arbitrator explained the weight he afforded to the statutory factors, demonstrated his consideration of the parties' evidence and arguments on each proposal, and explained his reasoning for each element of the award in light of the evidence and statutory factors.

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. 2020-11

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF BEDMINSTER,

Respondent,

-and-

Docket No. IA-2019-017

PBA LOCAL 366,

Appellant.

Appearances:

For the Appellant, Mets Schiro & McGovern, LLP  
attorneys (Leonard C. Schiro, of counsel and on the  
brief)

For the Respondent, Apruzzese McDermott Mastro &  
Murphy, P.C., attorneys (Arthur R. Thibault Jr., of  
counsel and on the brief; H. Thomas Clarke, on the  
brief)

DECISION

PBA Local 366 (PBA) appeals from an interest arbitration award involving a negotiations unit of approximately fifteen regular full-time officers in the ranks of police officer and sergeant employed by the Township of Bedminster (Township). The Township and PBA are parties to a collective negotiations agreement (CNA) effective from January 1, 2014 through December 31, 2018. On March 1, 2019, the PBA filed a Petition to Initiate Compulsory Interest Arbitration pursuant to N.J.S.A. 34:13A-16b(2) in order to resolve disputes during collective

negotiations for a successor agreement. On March 18, the interest arbitrator was appointed by random selection.

After the parties failed to resolve their impasse at arbitrator-led mediation sessions, arbitration hearings were held on May 21 and May 22, 2019. The parties agreed to review the evidence submitted on May 21 and amend their submissions by May 22. On May 22, the Township updated its exhibit costing out the PBA's Final Offer to reflect its new salary proposal, and added information to one of its exhibits concerning the Township's health insurance costs. Also on May 22, the PBA submitted its Amended Final Offer and 29 additional exhibits. On May 23, the Township objected to the PBA's submission of so many additional documents, and on May 24 the arbitrator accepted the PBA's documents subject to the Township's objection and arguments to be made in the parties' post-hearing briefs. On June 3, the parties submitted post-hearing briefs. On June 6, the Township objected to the PBA's submission of a financial report. The parties were given until June 10 to submit post-hearing reply briefs and until June 12 to address the PBA's financial report only.

On June 17, 2019, the statutory deadline for rendering the award (90th day from appointment per N.J.S.A. 34:13A-16f(5)), the arbitrator issued a conventional award as required pursuant to N.J.S.A. 34:13A-16d. A conventional award is crafted by an

arbitrator after considering the parties' final offers in light of the nine statutory factors. N.J.S.A. 34:13A-16g(1)-(9).

The PBA proposed a four-year agreement from January 1, 2019 through December 31, 2022 with the following changes:

- 2% across-the-board raises to be implemented January 1 and July 1 at each step of the salary guide, in each of the four years of the contract.
- A reduction in health benefit contributions from 35% to 30% in 2020 and 25% in 2021 and 2022.
- An increase in the \$450 annual clothing allowance by \$50 each year, starting at \$500 in 2019 and reaching \$650 in 2022.
- Unused vacation to be paid dollar for dollar, and payment for up to two weeks of vacation in lieu of taking vacation.
- Compensatory time increased to federal minimum of 480 hours.
- Sick time be increased to 165 hours per year, which may accumulate from year to year and be carried over; payment upon retirement of 50 cents per dollar for each unused sick time hour, with \$15,000 maximum payment.
- "Road Job" pay of \$80 per hour, emergency road job with three hours notice or less paid \$95 per hour; four hour minimum for each road job, all hours requested will be minimum hours paid and hours may exceed requested time.
- Officer engaged and/or trained as a Drug Recognition Expert (DRE) to be compensated additional \$1,000 to base salary.
- Training exceeding five hours shall count as one work day.

The Township proposed a six-year agreement from January 1, 2019 through December 31, 2024 with the following changes:

- Freeze 2018 salary guide for duration of contract; increase salaries at top step and sergeant position by 1.8% in 2019 and 2020, and by 1.6% each year in 2021, 2022, 2023, and 2024.

- Officers not at top step of 2018 guide shall advance on salary guide in Schedules A and B of the current CNA; once officer reaches top step of 2018 guide, officer shall remain at 2018 top step salary for one year, then go off guide and receive the top step base salary increases set forth above.
- Officers shall continue health insurance contributions at Chapter 78 Tier 4 levels.
- Officers hired on or after January 1, 2019 shall be limited to elect enrollment in either Aetna ACPOS II \$25 Plan or Aetna High-Deductible Health Care option.
- Eliminate clothing allowance; Township will provide newly hired officers with necessary clothes and equipment; Township will provide a drop-off cleaning service.
- Eliminate vacation provision that provides 8 additional hours per year for officers with 26 years or more service; cap vacation at 200 hours per year after 21 years of service, but officers already at 26 years will retain their currently earned vacation hours.
- Proof of illness shall be required for three or more days of consecutive sick leave; sick time shall not count towards the computation of overtime hours.
- Eliminate Article 28 "Pool Time" and replace with "Police Training" provision requiring 48 hours of mandatory training and an optional two days of specialty training.

The arbitrator awarded a four-year agreement with a term of January 1, 2019 through December 31, 2022. The salary award for 2019 includes a freeze of the 2018 salary guide, a 2% salary increase for officers at the top step and sergeants, and continued salary guide advancement on the 2018 guide for officers not at top step. The 2020 salary award provides a 2% across-the-board raise along with step advancement. The 2021 salary award freezes the 2020 salary guide, provides a 2% salary increase for officers at the top step and sergeants, and continues step

advancement for others. The 2022 salary award maintains the frozen 2020 salary guide, provides a 2% salary increase for officers at the top step and sergeants, and continues step advancement for others. The award provides that all officers covered by the Township's health insurance shall continue to make premium contributions consistent with Chapter 78 Tier 4 levels. The award eliminates Article 28 "Pool Time" and replaces it with the Township's proposed new "Police Training" language, but adds the PBA's proposed language that training in excess of 5 hours shall be counted as one day worked.<sup>1/</sup> All other proposals were denied.

The PBA appeals, asserting that the arbitrator failed to provide a reasoned analysis of its proposals and evidence in light of the N.J.S.A. 34:13A-16g factors (statutory factors). It argues that the arbitrator failed to address the PBA's external comparability evidence of salary increases from settlements in municipalities outside of Somerset County. It asserts that the arbitrator also failed to consider the PBA's evidence of settlements that provided police unions relief from continued Chapter 78 Tier 4 health benefit contributions after expiration of the Chapter 78 mandates. The PBA also contends that the

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<sup>1/</sup> The arbitrator noted that the PBA's post-hearing brief accepted this Township proposal and he found "Based on the PBA's acceptance of the Township's proposal, I award the Township's Final Offer regarding Article 28-Pool Time."

arbitrator ignored the PBA's sick leave proposal even though it demonstrated that its sick leave benefits are the lowest in the County. The PBA argues that the award must be vacated for violating N.J.S.A. 2A:24-8 because the arbitrator so imperfectly executed his powers that a mutual, final, and definite award upon the subject matter submitted to arbitration was not made, and because it was procured by "undue means" due to not adhering to the statutory factors. The PBA also claims that the arbitrator mistakenly granted the Township's Training proposal based on the assumption that the PBA had agreed to it, but it states that it never agreed to it.

Finally, the PBA asserts that the arbitrator failed to disclose a conflict of interest because he was previously the managing partner for the law firm that represented the Township in two civil litigation cases filed by individual PBA members against the Township. It argues that the arbitrator was required by the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes (Code of Professional Responsibility) to disclose that he was managing partner while his firm represented the Township, and that his failure to do so gives an appearance of impropriety. It contends that the award should be vacated because the PBA was not fully informed of that prior representational relationship and therefore not given the opportunity to object to the appointment.

The Township responds that the arbitrator's award adequately addressed all of the statutory factors and noted the relative weight given to the factors he found relevant. It asserts that the arbitrator addressed comparability by finding that PBA members are well compensated when compared to their fellow Township colleagues and to other police officers in Somerset County. The Township argues that the settlements submitted by the PBA from Middlesex County are not comparable to the Township because they are larger with greater populations and more service calls. It asserts that for health contributions, the arbitrator correctly relied on the internal comparable of other Township employees who contribute to health insurance at Chapter 78 Tier 4 levels, rather than voluntary settlements from outside of Somerset County. The Township also argues that the arbitrator's award of the "Police Training" language is supported by the PBA's post-hearing brief accepting that change.

We initially address the alleged violation of the Code of Professional Responsibility. Arbitrators serving on the Commission's interest arbitration panel must be guided by the objectives and principles set forth in the Code of Professional Responsibility. N.J.A.C. 19:16-5.10. Section 2B.1. of the Code of Professional Responsibility requires an arbitrator to disclose any current or past managerial, representational, or consultative relationship with any company or union involved in a proceeding

in which the arbitrator is being considered for appointment. The PBA has neither alleged nor shown that the arbitrator had any direct involvement in the two civil litigation cases brought by individual PBA members against the Township while he was managing partner of the firm representing the Township's insurance carrier. The Township states that he had no direct involvement and did not represent them. We find that under these circumstances the arbitrator had no duty to disclose before accepting this interest arbitration. Section 2B.2. of the Code of Professional Responsibility requires an arbitrator to disclose any service performed (concurrently or in recent years) as an advocate or representative for other companies or unions in labor relations matters. Disclosure of those activities to the administrative agency in charge of the arbitration roster satisfies the disclosure requirement for cases handled under that agency's referral. We find that the arbitrator satisfied 2B.2. of the Code of Professional Responsibility by disclosing to the Commission his role as a management representative in labor relations matters, and by including such experience on his resume, which is posted on the agency website.

We now address the substantive appeal of the award.

N.J.S.A. 34:13A-16g requires that an arbitrator shall indicate in the award "which of the [16g] 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 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 . . .
  - (b) In public employment in general . . .
  - (c) In public employment in the same or similar 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, 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. . . .

[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). 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, 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; Lodi.

The arbitrator's award included a section entitled "Application of the 16g Criteria" where he summarized the 16g factors and set forth some of the evidence submitted that might be relevant for certain 16g factors. (Award at 14-18). He first clarified that he was considering interest and welfare of public (16g(1)), lawful authority of employer (g(5)), financial impact

on governing unit and residents (g(6)), and statutory restrictions imposed on employer (g(9)) as a combined multi-factor "Public Interest Criteria." He determined:

The Public Interest Criteria are the most important and I give them great weight in rendering this Award. The criterion has always been recognized to be given great weight because it recognizes the interrelationship of all the statutory criteria and the impact on bargaining unit.

[Award at 15.]

The arbitrator then discussed Comparability (16g(2)). As to internal comparability, he stated that an internal pattern of settlement "is a significant factor in the determination of an award because it usually corresponds to a public employer's budgetary capabilities and connotes uniform treatment." (Award at 15). Regarding external comparability, the arbitrator summarized the five general categories of considerations set forth in the Commission's comparability guidelines.<sup>2/</sup> He determined: "Now that the 2% cap has sunset, comparability will once again be a significant criterion to address." (Award at 16). The arbitrator then listed the municipalities whose police collective negotiations agreements each party submitted as external comparables for consideration. The Township's list of

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<sup>2/</sup> Those five categories are: geographic, socioeconomic, financial, compensation and other terms and conditions of employment, and any other comparability considerations deemed relevant by the arbitrator. N.J.A.C. 19:16-5.14(d).

14 municipalities were all from Somerset County. The PBA's list included 8 Somerset County municipalities, 9 Middlesex County municipalities, and 1 Union County municipality.

At the outset of the award's next section, entitled "Analysis and Award," the arbitrator provided the following paragraph generally explaining the relative weight he afforded to the 16g factors in crafting the overall award:

After review of the Final Offers, evidence and arguments, the Award in this proceeding is analyzed and discussed below. The Public Interest Criterion has been given the most weight with great scrutiny given to the existing salary and benefits of PBA members, a comparison of police salary and benefits to other Township employees, comparable municipal police officers in the geographic area, and the continuity and stability of employment. I have also given weight to the CPI, COLA, private sector wage increases and PERC settlement statistics.

[Award at 19.]

In considering the evidence and arguments of the parties for his salary award, the arbitrator summarized the PBA's external comparability position as follows:

The PBA submits that other municipalities have recently settled contracts that have provided salary increases clearly exceeding the Township's Final Offer. While they admit there are a dearth of settlements in Somerset County, the PBA argues that neighboring Middlesex County offers a paradigm of economically sound settlements addressing the fiscally employer sided settlements imposed with the economic constraints of legislation. The settlements they submit have salary increases in excess of the Township's Final

Offer and Chapter 78 reductions or eliminated health care contributions.

[Award at 22.]

The arbitrator then considered the Township's external comparability position, as well as its rebuttal to the PBA's proposed comparisons:

The Township also argues that Bedminster police officers enjoy a generous package of benefits when compared to their Somerset County counterparts. In 2018, a Bedminster police officer at Step 1 of the salary guide earned a base salary of \$53,475 fourth among County comparables with top step base salary of \$114,002 third highest. The Township's five sergeants earn a base salary \$125,309 which they argue is competitive with what other sergeants in Somerset County are earning.

The Township submits that the PBA "cherry picked" municipalities in Middlesex and Union Counties that do not compare to Bedminster. They argue that many of the contracts and/or memorandum of agreements submitted by the PBA are newly proposed and are not comparable to Bedminster as required by N.J.A.C. 19:16-5.14(d). The jurisdictions selected by the PBA are considerably larger and, in many instances, much more urban or more densely populated than Bedminster. They also note that the salary levels in many of these municipalities are much less than Bedminster. They submit that these are unfair and unreasonable comparisons and should not be considered.

[Award at 23-24.]

In addition to finding that the record shows that PBA members are well compensated compared to their fellow Township employees, the arbitrator's salary award utilized other Somerset

County police departments as external comparators and found that PBA members' compensation compares well to them too:

PBA members are also competitively compensated when compared to other police departments in Somerset County. In 2018, among Somerset County police departments Township officers ranked fourth in Step 1 compensation of \$53,474.79 and third in Top Step Pay of \$114,002.38. The Step 1 average pay of the Somerset County police departments in 2018 was \$49,463 or 7.5% less than starting pay in Bedminster. In 2018, the average Top Pay of the Somerset County police departments was \$102,866 or 9.8% less than Top Pay for a Township police officer. The Township's Sergeants ranked sixth in starting pay and eighth in Top Pay at \$125,309.99. The 2018 average of Somerset County police departments Sergeants starting pay was \$121,003 and Top Pay of \$122,928, 3.5% less and [sic] in starting pay and 2% less in Top Pay than a Bedminster Sergeant. The Award recognizes the relative standing of the PBA members amongst comparable police departments and maintains that standing. A guide freeze for the duration of the contract as the Township proposed with increases to stop step and sergeants pay would create a disparity in the guide, potential schism between the members, and further erode members standing as other Somerset County municipalities settle post 2% cap contracts. An adjustment to the guide in 2020 will address any guide disparity issues, allow the Township the ability to budget for the guide movement, and allow its PBA members to retain their relative standing amongst their police department peers and keep up with COLA. The Township's proposal for an Officer reaching top step to stay at stop step for a year and go off guide is not granted as it would create a schism among senior officers and the evidence is insufficient to meet the burden to justify awarding same.

[Award at 27.]

Turning to the "Article 7 Health Program" section of the award, the arbitrator noted that although the PBA's members have already satisfied their required Chapter 78 Tier 4 level health benefits contributions, N.J.S.A. 40A:10-21.2 made those levels the status quo for future negotiations. Therefore, he found that as the party seeking a change in the status quo, the PBA bore a heavy burden to support a reduction from Chapter 78 Tier 4 contribution levels. In rejecting the PBA's proposal to reduce health benefits contributions, the arbitrator analyzed and discounted the PBA's proffered external comparables, stating:

As to the PBA's Chapter 78 Tier IV reduction proposal, while the PBA cite to a number of municipalities that have recent contracts with varying forms of Chapter 78 relief, each settlement was mutually embraced by the parties during negotiations and involved varying forms of concessions. I am not aware of any Interest Arbitrator that has awarded Tier IV Chapter 78 relief when the employer has been resistant to change. I am also reluctant to make such an award here. It is important to note that the evidence does not include any Somerset County municipalities which would indicate relief being implemented in the geographic area.

[Award at 30-31.]

Next, we address the "Article 10 Clothing Allowance" section of the award. For this proposal the PBA submitted nine external comparables from Somerset County with higher clothing allowances than the \$450 annual clothing allowance enjoyed by the PBA.

(Award at 31). In rejecting the parties' proposals, the arbitrator considered the significance of the fact that the PBA's



uniform allowance was rolled into base pay in 2010, as well as the overall compensation and benefits of PBA members relative to other Township employees and Somerset County municipalities:

After review of the parties Final Offers and submissions, I find there is insufficient evidence to award either the Township's or PBA's proposals and alter the status quo. The current amount of cleaning allowance is not unreasonable given that a uniform allowance was included in base pay in 2010. Moreover, the Bedminster Officers overall compensation and benefits package compared to Township employees and other Somerset County municipalities warrants maintaining the present level of clothing allowance.

[Award at 32.]

Turning to the "Article 23 Sick/Injury Leave" section of the award, the PBA submitted 14 external comparables from Somerset County with more sick time than PBA members (PBA Post-hearing Brief at 36). The arbitrator cited 12 of the comparables submitted by the PBA, but did not award the PBA's proposed increase in sick hours (Award at 33). He stated:

After review of the parties Final Offers and submissions, I find there is insufficient evidence to award either the Township's or PBA's proposals. The amount of sick leave is not beyond the norm and there is no evidence of sick leave being an on-going issue to warrant awarding the PBA proposal and a need for more sick leave or the accumulation of sick leave. Likewise, there is no evidence of misuse of sick leave to support awarding the Township proposal and insufficient evidence of sick time's impact on overtime to overcome the burden to justify the change.

[Award at 34.]

Finally, we reject the PBA's appeal of the award of the "Police Training" language in replacement of the "Article 28 Pool Time" language. In its post-hearing brief, the PBA stated:

The PBA has proposed that training in excess of five (5) hours shall be counted as one (1) day worked. The PBA is accepting of the Township's proposal concerning eliminating "Pool Time" and replacing with Article 28 - Police Training. (T-1).

[PBA Post-hearing Brief at 38.]

Accordingly, the record supports the Township's assertion and the arbitrator's explanation that the PBA accepted the Township's proposed language (with the PBA's modification that five hours of training would count as a work day).

Applying the interest arbitration review standards to the disputed sections of the award discussed above, we find that the arbitrator gave due weight to the 16g factors, explaining the relative significance he gave to each factor in crafting his award. Teaneck. The arbitrator demonstrated his consideration of the parties' evidence and arguments on each proposal, and explained his reasoning for accepting, rejecting, or modifying their proposals in the context of the statutory factors he found most relevant. Lodi. Accordingly, we reject the PBA's assertions that the award failed to adequately apply the 16g factors, was not supported by substantial credible evidence in the record, and should be vacated pursuant to N.J.S.A. 2A:24-8. The award is affirmed.

ORDER

The interest arbitration award is affirmed.

BY ORDER OF THE COMMISSION

Chair Weisblatt, Commissioners Bonanni, Jones and Voos voted in favor of this decision. None opposed. Commissioner Papero recused himself.

ISSUED: August 15, 2019

Trenton, New Jersey

P.E.R.C. NO. 2020-16

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF FRANKLIN LAKES,

Petitioner,

-and-

Docket No. IA-2020-002

PBA LOCAL 150,

Respondent.

SYNOPSIS

The Commission grants the motion of PBA Local 150 to dismiss the petition to initiate compulsory interest arbitration filed by the Borough of Franklin Lakes. The Commission finds that the parties signed and ratified a Memorandum of Agreement, and accordingly, there is not an expired agreement between the parties, which a prerequisite to filing the petition.

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. 2020-16

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF FRANKLIN LAKES,

Petitioner,

-and-

Docket No. IA-2020-002

PBA LOCAL 150,

Respondent.

Appearances:

For the Petitioner, Ruderman & Roth, LLC, attorneys  
(Mark S. Ruderman, of counsel; Ellen M. Horn, on the  
brief)

For the Respondent, Limsky & Mitolo, attorneys (Merick  
H. Limsky, of counsel and on the brief)

DECISION

On August 7, 2019, the Borough of Franklin Lakes (Borough) filed a Petition to Initiate Compulsory Arbitration (Petition). The Petition asserts that the previous collective negotiations agreement (CNA) between the Borough and PBA Local 150 (PBA) expired on December 31, 2018, and lists "Retiree Health Benefits Chapter 78 contributions" as the only disputed issue.

On September 12, 2019, the PBA filed a motion to dismiss the Petition, with a supporting brief, exhibits and the certification of its attorney. On September 24, the Borough filed a responsive brief, exhibits and the certification of its Administrator.

The following facts appear from the record. The parties

engaged in numerous negotiations sessions for a CNA to succeed the CNA that expired on December 31, 2018. The expired contract contained Article VIII, Medical, Dental and Life Insurance, Paragraph D which addresses retiree health coverage and states:

For employees who retire after seventeen (17) years of service to the Borough and twenty-five (25) years in the pension system, the Borough will provide full (100%) medical insurance, dental, prescription, and family or spousal coverage, at the same level of such benefits received at the time of retirement. Insurance coverage for fully retired (25 years of service) employees, as authorized herein, is secondary to any coverage or benefits available or which may become available from Medicare or any other sources of insurance, governmental or otherwise. Additionally, such coverage as may be provided by the Borough, will be discontinued for any period when insurance coverage is obtained as a result of other employment, but will be reinstated upon the termination of such employment. For employees hired after January 1, 2016, the benefits in this paragraph shall cease upon the employee turning 65 years old.

The Borough Administrator certifies as follows:

- Early in the negotiations process the Borough advised the PBA that it wanted to revise, update and simplify the language in the PBA contract, and the PBA was amenable to this goal.
- On December 20, 2018, he forwarded to the PBA a redlined version of the CNA containing "Clean-Up Language", including changes to Article VIII, Paragraph D as follows:

~~For employees who~~ Except as provided hereinbelow, for Members that retire after seventeen (17) years of service to the Borough and twenty-five (25) years in

the pension system, the Borough shall ~~will~~ provide full (100%) medical, prescription and dental, insurance coverage for the Member, his or her family and spouse dental, prescription, and family or spousal coverage at the same or substantially comparable level of such benefits received at the time of retirement, provided such coverage is available in the market received at the time of retirement. Insurance coverage for such fully retired (25 years of ~~service~~) Members employees, as authorized ~~herein,~~ shall be is secondary to any insurance coverage or benefits available or which may become available from Medicare or any other sources of insurance, governmental or otherwise. The Member shall be responsible for payment of Medicare premiums. The Borough shall provide supplemental Medicare coverage only. Additionally, such coverage as may be provided by the Borough, shall ~~will~~ be discontinued for any period when insurance coverage is obtained as a result of other employment, but will be reinstated upon the termination of such employment. For Members employees hired after January 1, 2016, the retiree benefits in this paragraph shall cease upon the Member employee turning 65 years old.

- The December 20, 2018 redlined version of the CNA also contained many revisions to other paragraphs of Article VIII.

A PBA and a Borough representative, on April 13 and April 26, 2019, respectively, signed a Memorandum of Agreement (MOA). The MOA states that the term of the Agreement is five years, from January 1, 2019 through December 31, 2023. The MOA addresses several issues, including a change to Article VIII, paragraph D, as follows:

For those employees who retire after the effective date of this contract, Article VIII. D. shall be changed to include the language "at the same level of benefits received at the time of retirement, provided such coverage is available in the market."

The MOA's last sentence sets out that its terms shall not be binding until they are ratified by the PBA and approved by the Mayor and Council. On April 17, 2019, the Mayor and Council approved the MOA via Resolution 125-10 which, in pertinent part, contains the following language:

WHEREAS, the [Borough] and the [PBA] have reached an agreement on a new Collective Bargaining Agreement for the period January 1, 2019 through December 31, 2023; and

NOW THEREFORE, BE IT RESOLVED by the Mayor and Council of the Borough of Franklin Lakes, County of Bergen, and State of New Jersey that the Memorandum of Agreement is hereby approved.

. . .

[Ibid.; emphasis added.]

The PBA ratified the MOA prior to April 17, 2019. The Borough's Administrator certifies that the parties met for a negotiations session on July 30, when it became clear that the PBA would not agree to the Clean-Up Language pertaining to retiree health benefits (Article VIII, paragraph D) that was sent by the Borough on December 20, 2018. The Borough filed the Petition shortly thereafter. The parties have not signed the 2019-2023 CNA.

The PBA asserts that the Petition should be dismissed because there is a signed and ratified MOA in effect.



The Borough asserts that the PBA delayed its consideration of the Clean-Up Language until after the parties signed the MOA, and therefore, despite there being a signed and ratified MOA, there remains an open issue about retiree health benefits. Under the circumstances presented, we dismiss the Petition.

An MOA represents negotiated changes on the disputed issues between parties and, once signed and ratified, its terms equate to an agreement/contract. In City of Newark, P.E.R.C. No. 2006-84, 32 NJPER 159 (¶71 2006), the Commission dismissed an interest arbitration petition filed by the union one and one half years after the parties signed and ratified an MOA, finding that the MOA covered the issues raised in the petition and could not be set aside. See also Township of Irvington, P.E.R.C. No. 2010-44, 35 NJPER 458 (¶151 2009) (finding that the employer violated N.J.S.A. 34:13A-5.4a(1), (5) and (6) by refusing to sign the draft agreement that tracked the terms of the MOA entered into between the parties); City of Newark, P.E.R.C. No. 2016-56, 42 NJPER 441 (¶119 2016) (finding that the employer violated N.J.S.A. 34:13A-5.4a(1), (5) and (6) when after an agreement was reached, a City representative attempted to alter its terms and the City refused to execute the agreement that did not contain the contested provision).

The Borough argues that this matter is distinguishable from City of Newark, P.E.R.C. No. 2006-84, because here the parties

engaged in a negotiations session after the MOA had been signed and ratified, and because it quickly filed the Petition. Despite that the Borough's actions were not delayed, we find the key facts in dismissing the Petition to be as follows.

It is undisputed that the MOA was signed and ratified by both parties. Paragraph 1 of the MOA states that the term of the CNA is five years, covering January 1, 2019 through December 31, 2023. Thus, there is not an expired agreement between the Borough and the PBA, a prerequisite for filing the Petition. N.J.S.A. 34:13A-16b(2); N.J.A.C. 19:16-5.2(a)2.

Moreover, included among the negotiated changes reflected in the MOA is a modification to the language addressing retiree health benefits. While the Petition seeks arbitration of retiree health benefits, that issue is already addressed in the MOA, and that modification is the product of the parties' negotiations. If the MOA's terms were contingent upon the parties' agreement on modifications to retiree health benefits beyond what is contained in the MOA, it would have or should have explicitly stated so. The MOA contains no such provision.

Finally, the one contingent term of the MOA, that both parties ratify it before its terms become binding, was met. We are comfortable assuming that if from the Borough's perspective there were substantive open issues between the parties, the Mayor and Council would not have adopted the MOA via Resolution 125-10,

which states that the Borough and the PBA have reached agreement on the terms of a new CNA.

ORDER

The Petition to Initiate Interest Arbitration filed by Franklin Lakes is dismissed.

BY ORDER OF THE COMMISSION

Chair Weisblatt, Commissioners Bonanni, Jones and Voos voted in favor of this decision. None opposed. Commissioner Papero was not present.

ISSUED: October 10, 2019

Trenton, New Jersey

# **2020 BIENNIAL REPORT**

## **TAB 11**

## In re Twp. of Bedminster

Superior Court of New Jersey, Appellate Division

June 1, 2020, Submitted; July 27, 2020, Decided

DOCKET NO. A-0176-19T2

### Reporter

2020 N.J. Super. Unpub. LEXIS 1503 \*; 2020 WL 4279775

IN THE MATTER OF TOWNSHIP OF BEDMINSTER,  
Respondent-Respondent, and PBA LOCAL 366,  
Petitioner-Appellant.

**Notice:** NOT FOR PUBLICATION WITHOUT THE  
APPROVAL OF THE APPELLATE DIVISION.

PLEASE CONSULT NEW JERSEY RULE 1:36-3 FOR  
CITATION OF UNPUBLISHED OPINIONS.

**Prior History:** [\*1] On appeal from the New Jersey  
Public Employment Relations Commission, P.E.R.C.  
No. 2020-11.

**Counsel:** Mets Schiro & McGovern, LLP, attorneys for  
appellant PBA Local 366 (Leonard C. Schiro, of counsel  
and on the briefs; Suzanne M. Brennan, on the briefs).

Apruzzese, McDermott, Mastro & Murphy, PC, attorneys  
for respondent Township of Bedminster (Arthur Richard  
Thibault, of counsel and on the brief; H. Thomas Clarke,  
on the brief).

Christine Lucarelli, General Counsel, attorney for  
respondent New Jersey Public Employment Relations  
Commission (Frank C. Kanther, Deputy General  
Counsel, on the statement in lieu of brief).

**Judges:** Before Judges Messano, Ostrer and  
Susswein.

## Opinion

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### PER CURIAM

The Policemen's Benevolent Association, Local 366 (the PBA) is the exclusive representative of police officers and sergeants employed by the Township of Bedminster (the Township). The existing collective negotiations agreement (CNA) was to expire on December 31, 2018, and the parties were unable to reach agreement on a successor CNA. The PBA filed a petition to initiate compulsory interest arbitration, see N.J.S.A. 34:13A-16(b)(2), and the Public Employment Relations Commission (PERC) appointed an arbitrator through the random selection procedure outlined [\*2] in N.J.S.A. 34:13A-16(e)(1). After mediation failed to produce an agreement, the dispute proceeded to arbitration.

Neither the PBA nor the Township called any witnesses, and both agreed to review the submitted documentary evidence and amend or supplement as necessary on the next scheduled hearing day. Both sides submitted additional documents, which, in the PBA's case, the arbitrator accepted subject to the Township's objection. Thereafter, both sides filed post-hearing written statements.

The arbitrator's award set salary levels for four years commencing in 2019. The award froze the salaries at the step levels in the 2018 salary guide in the existing CNA and added a two percent salary increase for officers "at the top step and [s]ergeant position." Officers not already at the top step of the 2018 guide would advance on the steps set forth in the current CNA. The award provided for a 2% salary increase at every step level in 2020, along with step movement for all officers not at the top step. For 2021, the award froze the 2020 salary guide and awarded a 2% salary increase for officers at the top step and sergeant level, and continued the step advancement for officers not at the

top step. The 2022 salary award [\*3] maintained the frozen 2020 salary guide, provided a 2% increase for officers at the top step and sergeant level, and continued the salary guide advancement for officers not at the top step.

The award also provided that PBA members would continue to contribute toward the cost of health insurance consistent with Chapter 78, Tier 4 levels.<sup>1</sup> Additionally, effective January 1, 2020, the award eliminated Article 28, "Pool Time," in the existing CNA. The arbitrator replaced it with a new article, "Police Training[.]" which combined some language proposed by both sides.

The PBA appealed to PERC, which rendered its final decision on August 15, 2019. After discussing and rejecting the issues raised by the PBA, PERC affirmed the award, and this appeal followed.

The PBA contends we should reverse PERC's decision and remand the matter to a different arbitrator because: the arbitrator failed to sufficiently analyze the factors enumerated in N.J.S.A. 34:13A-16(g) (the statutory factors); the award violated the New Jersey Arbitration Act, specifically, N.J.S.A. 2A:24-8; the arbitrator failed to provide any analysis concerning the health benefit contributions' impact on the salary and other provisions of the award; the arbitrator mistakenly [\*4] assumed the PBA had agreed to the Township's proposal regarding training; and, the arbitrator failed to disclose a disqualifying conflict of interest. We have considered these arguments in light of the record and applicable legal principles and affirm.

I.

"Judicial scrutiny in public interest arbitration is more stringent than in general arbitration[] . . . [because] such arbitration is statutorily-mandated and public funds are at stake." *Hillsdale PBA Local 207 v. Borough of Hillsdale*, 137 N.J. 71, 82, 644 A.2d 564 (1994) (citing *Amalgamated Transit Union v. Mercer City Improv. Auth.*, 76 N.J. 245, 253, 386 A.2d 1290 (1978)). We have described "the 'scope of our review of PERC's decisions reviewing arbitration [as] 'sensitive, circumspect, and circumscribed.'"<sup>1</sup> *In re State*, 443 N.J. Super. 380, 385, 128 A.3d 1152 (App. Div. 2016)

<sup>1</sup> This is commonly used shorthand for the Pension and Health Care Benefits Act, L. 2011, c. 78 (Chapter 78). See *Matter of Ridgefield Park Bd. of Educ. & Ridgefield Park Educ. Ass'n*, 459 N.J. Super. 57, 207 A.3d 787 (App. Div. 2019) (explaining Chapter 78 and tier contribution implementation).

(quoting *In re City of Camden & the Int'l Ass'n of Firefighters*, Local 788, 429 N.J. Super. 309, 327 (App. Div. 2013)).

We will generally defer to PERC's interpretation of its enabling statute, the New Jersey Public Employer-Employee Relations Act, N.J.S.A. 34:13A-1 to - 21, unless "its interpretation is 'plainly unreasonable, contrary to the language of the Act, or subversive of the Legislature's intent[.]'" *City of Camden*, 429 N.J. Super. at 328 (alteration in original) (quoting *In re N.J. Tpk. Auth. v. AFSCME, Council 73*, 150 N.J. 331, 352 (1997)), 696 A.2d 585. Additionally, "because of [PERC's] expertise," our review is deferential, and we "will only reverse if the decision is clearly demonstrated to be arbitrary, capricious, or unreasonable." *In re State*, 443 N.J. Super. at 386 (citing *In re Hunterdon Cty. Bd. of Chosen Freeholders*, 116 N.J. 322, 328, 561 A.2d 597 (1989)).

In perfecting his or her award, the [\*5] arbitrator must consider the statutory factors.<sup>2</sup> "In general, the relevance of a factor depends on the disputed issues and the evidence presented. The arbitrator should determine which factors are relevant, weigh them, and explain the award in writing. In brief, the arbitrator's opinion should be a reasoned explanation for the decision." *Hillsdale*, 137 N.J. at 82 (internal citations omitted). "No one factor is dispositive. Yet, the factors themselves reflect the significance of fiscal considerations." *City of Camden*, 429 N.J. Super. at 326-27 (citing *Hillsdale*, 137 N.J. at 83-84). "An arbitrator need not rely on all factors in fashioning the award, but must consider the evidence on each." *In re State*, 443 N.J. Super. at 384 (citing *Hillsdale*, 137 N.J. at 83-84).

In turn, PERC's role is to

determine whether: (1) the arbitrator failed to give due weight to the [statutory] 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.

[*Id.* at 385 (citing *Hillsdale*, 137 N.J. at 82).]

We consider the PBA's specific arguments within this framework.

<sup>2</sup> We have included the statutory factors as an Appendix to this opinion.

II.

A.

The PBA contends the arbitrator "failed to provide an independent analysis of the statutory factors and relevant evidence[.]" and "provided mere recitations of the arguments, with [\*6] only a glancing mention of the statutory factors." The only provision of the award cited by the PBA in its brief as reflecting these inadequacies is the salary award. In large part, the PBA's challenge focuses on the disparity after year four between the salary of an officer on the penultimate step on the pay scale and an officer on the final step. In 2018, the last year of the existing CNA, that difference was approximately \$7400 for officers hired before January 1, 2014, and \$6400 for officers hired after that date. These differences were generally consistent with differences between each of the eight steps on the pre-2014 scale, and twelve steps on the post-2014 scale. Under the award, in year four, 2022, the difference was more than \$14,700 on the pre-2014 scale, and \$13,600 on the post-2014 scale. The PBA argues there is no rational justification for this "balloon step[.]" It also argues, as it did before PERC, that the arbitrator failed to consider settlements surrounding municipalities reached with their police unions. We are unpersuaded.

The arbitrator devoted significant and specific discussion to the statutory factors and each party's offer and evidence. Contrary to the PBA's [\*7] assertion, the arbitrator considered the salary of the union's members in comparison to other police departments and other Township employees. In affirming the award, PERC found that

the arbitrator gave due weight to the [statutory] factors, explaining the relative significance he gave to each factor in crafting his award. . . . The arbitrator demonstrated his consideration of the parties' evidence and arguments on each proposal, and explained his reasoning for accepting, rejecting, or modifying their proposals in the context of the statutory factors he found most relevant. . . . Accordingly, we reject the PBA's assertions that the award failed to adequately apply the [statutory] factors . . . .

PERC's findings and conclusions are amply supported by the analysis in the award. The PBA may object to the effect the award has on the step scale, but it has failed to demonstrate PERC's decision was arbitrary, capricious, or unreasonable. *Id.* at 386.

B.

The PBA argues the award failed to comply with the New Jersey Arbitration Act. N.J.S.A. 2A:24-8(a) defines one of those narrow circumstances in which an award may be vacated, specifically, "[w]here [it] was procured by corruption, fraud[,] or undue means[.]" The PBA reprises [\*8] its contention that the arbitrator failed to appropriately consider the statutory factors and asserts that means the award was "procured by undue means[.]" The argument does not require extensive discussion in a written opinion. *R.* 2:11-3(e)(1)(E).

We have said that "an arbitrator's failure to follow the substantive law may also constitute 'undue means' which would require the award to be vacated." *City of Camden*, 429 N.J. Super. at 332 (quoting *Jersey City Educ. Ass'n, v. Bd. of Educ. of Jersey City*, 218 N.J. Super. 177, 188, 527 A.2d 84 (App. Div. 1987)). We have already rejected the PBA's claim that the arbitrator failed to give adequate consideration to the statutory factors or inadequately analyzed them.

In little more than a single sentence, the PBA also asserts the award must be set aside under N.J.S.A. 2A:24-8(d), because the arbitrator "so imperfectly executed [his] powers that a mutual, final[,] and definite award upon the subject matter submitted was not made." *Id.* at 325. The PBA contends the award was "so unclear and imprecise that the parties cannot decipher it[.]"

"An argument based on conclusory statements is insufficient to warrant appellate review." *Bldg. Materials Corp. of Am. v. Allstate Ins. Co.*, 424 N.J. Super. 448, 482 n.12, 38 A.3d 644 (App. Div. 2012) (citing *Nextel of N.Y. v. Borough of Englewood Cliffs Bd. of Adjustment*, 361 N.J. Super. 22, 45, 824 A.2d 198 (App. Div. 2003)). Moreover, there is nothing confusing about the award.

C.

The PBA contends that the award failed to consider the effect of Chapter 78 health benefit contributions on actual salaries, and the evidence [\*9] it submitted that other police unions have effectuated settlements that provide relief through either higher wages or employer contributions to health care costs. However, PERC found the arbitrator specifically addressed the increased health care contributions mandated by Chapter 78 in rejecting the PBA's proposal. PERC cited the arbitrator's conclusion that the evidence submitted by the PBA did "not include any Somerset County municipalities" or any concessions via employer contributions to health care

costs except in the context of "settlement . . . mutually embraced by the parties during negotiations[.]" Moreover, although not cited by PERC, we note that the arbitrator refused to award the Township's proposal on health care that sought to limit new officers to membership in only certain health plans. We reject the PBA's argument in this regard.

Additionally, the PBA argues that the arbitrator mistakenly thought it had accepted the Township's proposal to eliminate Article 28 of the previous CNA, "Pool Time[.]" and replaced it with the PBA's proposal of a new Article 28, "Police Training[.]" We need not get into the particulars of the two provisions, because the argument lacks any [\*10] merit and is belied by the record.

PERC concluded the arbitrator was not mistaken about the PBA's acceptance of the Township's proposal to eliminate the "Pool Time" provision. It cited to the PBA's post-hearing brief, which contained an explicit acceptance of the Township's proposal to eliminate "Pool Time" and in return, replace it with a new Article 28 concerning "Police Training" that the PBA had proposed. A copy of the post-hearing brief is in the appellate record, and that is indeed what counsel for the PBA represented.

III.

The PBA contends the arbitrator failed to disclose a disqualifying conflict of interest that requires us to vacate the award. It alleges that the arbitrator was "the former managing partner" of a law firm that represented the Township in civil lawsuits brought by two of its members. The PBA argues the arbitrator was duty bound to "disclose a clear conflict of interest" under the "Code of Professional Responsibility for Arbitrators of Labor-Management Disputes" (the Code), which PERC incorporates by regulation and to which its eligible pool of arbitrators must adhere. See N.J.A.C. 19:16-5.10. The PBA also notes that N.J.S.A. 2A:24-8(b) permits the vacation of an award "[w]here there was either evident [\*11] partiality or corruption in the arbitrator[.]"

PERC squarely addressed the issue in its decision. It noted that under the Code, an arbitrator must "disclose any current or past managerial, representational, or consultative relationship with any company or union involved in a proceeding in which the arbitrator is being considered for appointment." PERC correctly found that the PBA "neither alleged nor show[ed] that the arbitrator had any direct involvement" in the two civil suits, in which his firm was "representing the Township's

insurance carrier." It noted that the Township asserted the arbitrator "had no direct involvement and did not represent them." Additionally, PERC concluded that the arbitrator had fully disclosed "his role as a management representative in labor relations matters," which was publicly available on PERC's website.

Our review of this issue is somewhat hampered by the lack of any record. For example, the appellate record does not include the PBA's submission to PERC or the Township's response. In its brief, the Township makes several factual assertions that lack any citation to the record. For example, it asserts that one of the plaintiffs in the civil litigation [\*12] was part of the PBA's negotiating committee, and the PBA's counsel represented the officer in contemporaneous disciplinary proceedings and was intimately familiar with the civil litigation and the involvement of the arbitrator's former law firm.

However, we are persuaded by what is undisputed in the record that reversal is unwarranted. First, the PBA does not dispute PERC's factual findings regarding the arbitrator's lack of involvement with the two civil lawsuits, or that his former firm represented the Township through assignment by its insurance carrier. The PBA simply asserts those facts do not matter.

In addition, the PBA does not dispute the contents of the arbitrator's resume, which was on PERC's website and is in the record. The resume fully disclosed the arbitrator's former affiliation with the law firm as an attorney representing management in labor disputes. The record further discloses that the PBA received notice of the arbitrator's appointment months in advance of the actual hearing. It is also undisputed that the PBA never raised any issue of a potential conflict during the mediation or proceedings before the arbitrator, and only did so after it received the award and [\*13] filed an appeal with PERC. See *Bonnet v. Stewart*, 155 N.J. Super. 326, 330, 382 A.2d 930 (App. Div. 1978) (holding that judge's alleged conflict of interest was "inappropriately raised on . . . appeal because the plaintiff never moved to challenge the judge himself, as would have been the proper practice").

Our conclusion is also supported by what the PBA has left unexplained in the record. The PBA provides no information whatsoever as to when, and under what circumstances, it first discovered the arbitrator's former employment with the law firm, or, first discovered the law firm's representation of the Township in these two civil lawsuits. A party must raise the disqualification



issue "at the earliest possible moment after obtaining knowledge of facts demonstrating the basis for such a claim." *Apple v. Jewish Hosp. & Med. Ctr.*, 829 F.2d 326, 333 (2d Cir. 1987). "[A] movant may not hold back and wait, hedging its bets against the eventual outcome." *Id.* at 334. The same principles apply to disqualification of an arbitrator.

The Township argues the PBA is barred from raising this issue by the doctrine of invited error. "Under that settled principle of law, trial errors that 'were induced, encouraged or *acquiesced in*[,] or consented to by defense counsel ordinarily are not a basis for reversal on appeal.'" *State v. Bailey*, 231 N.J. 474, 490, 176 A.3d 800 (2018) (emphasis added) (quoting *State v. A.R.*, 213 N.J. 542, 561, 65 A.3d 818 (2013)) [\*14]. "The doctrine prevents litigants from 'playing fast and loose' with, or otherwise manipulating, the judicial process." *Ibid.* (quoting *State v. Jenkins*, 178 N.J. 347, 359, 840 A.2d 242 (2004)). The undisputed and unexplained facts permit us to conclude that the PBA acquiesced in the arbitrator's appointment, despite having adequate knowledge of his former position, and never raised the issue until after the award was made. We refuse to vacate the award on these grounds.

Affirmed.

## APPENDIX

### STATUTORY FACTORS CONTAINED IN N.J.S.A. 34:13A-16(g)

(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 [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 [\*15] additional evidence for the arbitrator's

consideration.

(c) In public employment in the same or similar comparable jurisdictions, as determined in accordance with . . . [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 [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 . . . [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, [\*16] 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 [\*17]

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 . . . [N.J.S.A.]40A:4-45.45[.]

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## State (Div. of State Police) v. State Troopers Fraternal Ass'n

Superior Court of New Jersey, Appellate Division

April 18, 2018, Argued; July 9, 2018, Decided

DOCKET NO. A-0526-16T4

### Reporter

2018 N.J. Super. Unpub. LEXIS 1613 \*; 2018 L.R.R.M. 241518; 2018 WL 3339624

IN THE MATTER OF STATE OF NEW JERSEY  
(DIVISION OF STATE POLICE), Respondent, v. STATE  
TROOPERS FRATERNAL ASSOCIATION OF NEW  
JERSEY, Appellant.

**Judges:** Before Judges Alvarez, Nugent and Geiger.

### Opinion

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**Notice:** NOT FOR PUBLICATION WITHOUT THE  
APPROVAL OF THE APPELLATE DIVISION.

PLEASE CONSULT NEW JERSEY RULE 1:36-3 FOR  
CITATION OF UNPUBLISHED OPINIONS.

**Prior History:** [\*1] On appeal from the Public  
Employment Relations Commission, Docket No. IA-  
2016-003.

Matter of County of Atlantic, 230 N.J. 237, 166 A.3d  
1112, 2017 N.J. LEXIS 821 (Aug. 2, 2017)

**Counsel:** Michael A. Bukosky argued the cause for  
appellant (Loccke, Correia & Bukosky, attorneys;  
Richard D. Loccke and Michael A. Bukosky, of counsel  
and on the brief).

Steven W. Sufilas argued the cause for respondent  
State of New Jersey, Division of State Police (Ballard  
Spahr, LLP, attorneys; Steven W. Sufilas and Emily J.  
Daher, on the brief).

Frank C. Kanther, Deputy General Counsel, argued the  
cause for respondent New Jersey Public Employment  
Relations Commission (Christine Lucarelli, Acting  
General Counsel, attorney; David N. Gambert, Deputy  
General Counsel, on the statement in lieu of brief).

PER CURIAM

Appellant State Troopers Fraternal Association of New  
Jersey (STFA) appeals from a September 22, 2016 final  
agency decision of the Public Employment Relations  
Commission (PERC) modifying a remanded interest  
arbitration award. The STFA argues PERC erred by  
modifying the award to eliminate "step increments"  
(salary increases regularly paid to Troopers pursuant to  
a salary guide), which were to be paid on the final day of  
the new collective negotiations agreement (CNA).

The [\*2] State of New Jersey, Division of State Police  
(Division) and PERC claim the modification was  
appropriate because the effect of the arbitrator's award  
was to circumvent the statutory two percent cap on  
interest arbitration awards, *N.J.S.A.* 34:13A-16.7, by  
granting a salary increase that was not fully accounted  
for during the term of the CNA but, nonetheless,  
established a new "base salary" for the next CNA that  
exceeded the two percent cap. We remand for PERC to  
reconsider its decision in light of the Supreme Court's  
subsequent ruling in *Matter of County of Atlantic*, 230  
N.J. 237, 166 A.3d 1112 (2017).

The STFA represents 1633 rank and file State Troopers,  
holding the ranks of Trooper, Trooper 1, and Trooper 2.  
The STFA and the Division were parties to a four-year  
CNA that extended between July 1, 2008 and June 30,  
2012, which the parties finalized in September 2011  
through interest arbitration.

Pursuant to Article XXIX of the 2008-2012 CNA, the  
terms of the agreement continued in effect during

negotiations for a successor CNA, as follows:

A. This Agreement shall continue in full force and effect until June 30, 2012, and shall be automatically renewed from year to year thereafter unless either party shall notify the other in writing by certified mail prior to October 1 in the year preceding the contract [\*3] expiration that it desires to amend the terms of this Agreement. Either party may submit to the other a written list of changes desired in the terms of a successor Agreement.

B. Should either party notify the other of its desire to amend this Agreement through the procedure in A. above, the terms of this Agreement shall remain in force until the effective date of a successor Agreement, unless one party notifies the other party of its discontinuation within ninety (90) days.

The 2008-2012 CNA also contains a salary advancement schedule, pursuant to which Troopers received step increments until they reached the top step of the top salary range. The salary guide contained nine steps in each of three salary ranges, with salary range seventeen applicable to Troopers, salary range eighteen applicable to Trooper 2s, and salary range nineteen applicable to Trooper 1s, the highest of the three ranks. The salary guide provided for a twelve-year salary progression, over which time Troopers' salaries would increase by approximately sixty percent.

Upon achieving the top of the salary guide, Troopers would no longer be eligible to receive step increments. However, all Troopers, including those no longer [\*4] eligible for step increments, were eligible to receive across-the-board (ATB) increases. Under the 2008-2012 CNA, ATB increases were paid, effective July 1 of each contract year, in the following amounts: 2.75% in 2008; 2.5% in 2009; 2.25% in 2010; and 0% in 2011.

Finally, under the 2008-2012 CNA, all members of the State Police, from Troopers up to the Superintendent, also received a unique form of compensation known as "maintenance." No other State government employees receive a maintenance payment. Maintenance payments are phased in over the first three years of a Trooper's employment, with full payment in their third year and each year thereafter. Maintenance payments were increased over the course of the 2008-2012 CNA, congruent with the ATB increases, such that, effective July 1, 2011, the maintenance payment was \$13,649.03.

On several occasions in 2013 and 2014, the parties negotiated in an attempt to reach a successor

agreement to the 2008-2012 CNA, after which they agreed to engage in factfinding pursuant to *N.J.S.A. 34:13A-16(b)(1)*. On September 23, 2015, after a factfinder had been appointed but before he had issued a factfinding report, the Division filed a petition to initiate compulsory interest [\*5] arbitration.

PERC appointed Ira Cure as arbitrator, who held hearings between November 30, 2015 and January 4, 2016, hearing testimony from: Sergeant James Kiernan; accountant Michelle LaBruno; Michael Dee, Director of the Governor's Office of Employee Relations; Major Mark A. Wondrack; David Ridolfino, Acting Director of the State Office of Management and Budget; Detective Sergeant Stephen Urbanski; Trooper Michael Zanyor; Trooper Christopher J. Burgos; and Sergeant Frank Serratore. The parties also provided written submissions.<sup>1</sup>

As it relates to this appeal, the hearing record included the previously discussed information regarding Trooper compensation. The record also reflected the Division made a unilateral decision to stop paying step increments to Troopers, which became effective in pay period 20 in 2015. At the remand hearing, Dee testified the Division stopped the increments "based on the decision out of PERC [that] dealt with increments."<sup>2</sup> This decision was a break with past practice and contrary to the terms of Article XXIX of the 2008-2012 CNA. According to counsel, this issue was also the subject of litigation in the Superior Court and before PERC.

In addition, Kiernan and Burgos testified Troopers had experienced a reduction in their take-home pay due to implementation of the "Chapter 78" contributions to healthcare and pension costs, with Kiernan testifying to a personal loss of more than \$9000 per year.<sup>3</sup> Kiernan stated he was retiring early due to his static wages and the increases in benefit costs, and he knew many others who had made the same decision. On behalf of the Division, Dee conceded the number of Troopers had decreased from 2010, but he also stated that number

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<sup>1</sup> Much of the hearing evidence is not relevant to the limited issue presented on appeal, that is, the payment of step increments to Troopers not at the maximum of the pay scale.

<sup>2</sup> See *In re Cty. of Atl.*, PERC No. 2014-40, 40, 40 NJPER P109; 2013 NJ PERC LEXIS 101, *N.J.P.E.R.* 285 (¶ 109 2013), *rev'd*, 445 N.J. Super. 1, 135 A.3d 968 (App. Div. 2016), *aff'd on other grounds* [\*6], 230 N.J. 237, 166 A.3d 1112 (2017).

<sup>3</sup> *L.* 2011, c. 78.

has increased in recent years.

At the same time, the two percent hard cap, applicable to interest arbitrations, limited the increases that could be awarded to unit members.<sup>4</sup> Specifically, under *N.J.S.A. 34:13A-16.7*, increases could not exceed two percent per year compounded over the term of the contract. By way of example, when compounded, an annual two percent increase yields an aggregate 10.4% increase for a five-year CNA. However, payment of step increments to Troopers through pay period 20 of 2015 already consumed a large percentage of the funds available under the two percent cap.

The Division proposed halting step increments for Troopers, notwithstanding that step [\*7] increments would continue for Sergeants<sup>5</sup> and "even though there is more room under the cap" because of the "pretty significant compression issue" within the State Police. Salary compression means there is little difference in the salaries paid between ranks. It results, in part, because the salary of the highest ranking officer is limited to \$141,000.

Finally, Ridolfino testified regarding general economic conditions, the State budget, and the State's unemployment rate, which was slightly higher than the national average. He also stated the State's recovery from the economic slump was "sluggish" and trailing behind other states in the region.

Ridolfino further testified the State's liquidity ratio was low, its credit rating had been downgraded numerous times, and expenditures on employee pension and health benefits were an increasingly large portion of the State budget, as well as the budget for the Department of Law and Public Safety, of which the State Police were a part.

Ridolfino stated the State Police budget for fiscal year 2016 showed a 2.24% increase from the prior year. He conceded, however, the State budget was not subject to a two percent tax levy cap. He also conceded State [\*8] Police salaries were a "negligible" component of the State budget, constituting less than one percent.

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<sup>4</sup> *L. 2010, c. 105*, codified at *N.J.S.A. 34:13A-16.7*, which was extended to 2017 by *L. 2014, c. 11*.

<sup>5</sup> On January 31, 2016, the same arbitrator who heard the interest arbitration for the STFA issued an interest arbitration award for the State Troopers NCO Association of New Jersey, Inc. (NCOA), pursuant to which step increments were restored and paid.

Moreover, he indicated the State's general fund financed only sixty-five percent of the State Police budget with other sources funding the remaining thirty-five percent.

On January 31, 2016, the arbitrator issued an interest arbitration decision and award (Initial Award). As it relates to this appeal, the initial award provided for a five-year CNA, between July 1, 2012 and June 30, 2017. In terms of compensation, the arbitrator accepted the Division's data and provided for a 1.25% across-the-board increase for all ranks and steps, effective the first full pay period after July 1, 2016. The arbitrator also allowed for step increments already paid and continued the freeze on further step increments that the Division had imposed as of pay period 20 in 2015. The arbitrator also froze the maintenance allowance at \$13,819.64.

Regarding the freeze on step increments, the arbitrator acknowledged he departed "from the historical pattern where the NCOA unit and the STFA unit have traditionally received the same wage increases." He also acknowledged the effect of the increased pension and healthcare [\*9] contributions under Chapter 78, which had caused declines in take-home pay, and found the award did "little to compensate members of the STFA unit for their reduction in earnings." However, he found, "[b]ecause of the statutory limitations under the 2% Hard Cap, members of the STFA are precluded from receiving a general wage increase."

The arbitrator also expressed concern the freeze on step increments could affect employee morale and stability of the workforce, particularly for more junior Troopers, stating: "While members at the top steps of the salary scale are well compensated, under the terms of the award, more junior Troopers will have to wait quite some time for a salary increase, and this may encourage some Troopers to seek employment elsewhere." He further stated:

I am concerned that this award will have a deleterious impact upon the continuity and stability of the STFA bargaining unit. The record evidence shows that since 2010, there has been a decline in the total number of Troopers on the Division's payroll, and an increase in retirements. However, as noted throughout this document the 2% Hard Cap has left me no choice but to limit the amount of any salary increase.

The STFA [\*10] appealed to PERC, claiming the Initial Award failed to properly consider and analyze the *N.J.S.A. 34:13A-16(g)* statutory factors. The Division

cross-appealed, claiming the five-year term resulted in an award that exceeded the two percent cap on interest arbitration awards.

On April 14, 2016, PERC issued its decision. As it relates to this appeal, PERC found the arbitrator had not properly "costed out" the award to show compliance with the two percent statutory cap, because he did not include: the total base salary for the last year of the expired contract and how it was calculated; a calculation of the costs of the award, looking at the salary guide level or "scattergram"<sup>6</sup> placement of unit members on the last day before the end of new award; and a final calculation to ensure that the total economic award did not increase the employer's base salary costs in excess of the compounded value of a two percent increase per year over the length of the contract. Instead, the arbitrator simply relied upon the Division's calculations. However, the Division based its calculations upon a proposed six-year contract term, whereas the arbitrator awarded a five-year contract. Accordingly, PERC remanded the matter to the [\*11] arbitrator to undertake the necessary calculations. PERC. No. 2016-69, 42 NJPER 505 (¶ 141 2016). PERC also ordered the arbitrator to supplement his analysis of the statutory factors set forth in *N.J.S.A. 34:13A-16(g)*, particularly factor nine (statutory restrictions on the employer), *N.J.S.A. 34:13A-16(g)(9)*. *Ibid*.

The arbitrator conducted a remand hearing on June 14, 2016, hearing testimony from Dee, Zanyor, and LaBruno. The parties submitted new proposals along with new calculations.

On July 11, 2016, the arbitrator issued his revised award (Remand Award). As it relates to this appeal, the arbitrator accepted the Division's proposal and provided for a five-year CNA extending between July 1, 2012 and June 30, 2017, because it was "consistent with the historic pattern in which all three units — the STFA, NCOA and the STSOA<sup>7</sup> - negotiated their contracts at the same time." The STFA had proposed a five-and-one-half-year contract.

With respect to maintenance compensation, the arbitrator also accepted the Division's proposal and provided for a 1.25% increase in maintenance payments, effective the first full pay period after July 1,

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<sup>6</sup> PERC defines "scattergram" as "a chart showing where employees are currently situated on the salary guide, thus providing a snapshot of the current total cost of the unit."

<sup>7</sup> The State Troopers Superior Officers Association.

2016, in order to be consistent with the NCOA and STSOA units. Addressing statutory factor nine, the arbitrator found the Division used [\*12] the correct data in making its calculations and the award complied with the two percent hard cap (increasing base salary by 10.24%), whereas the STFA's proposal did not. The arbitrator further stated: "This limited change in the maintenance calculation is all that is available as a wage increase because the CNA's provision for incremental increases subsumed any possible salary increase as of the 20th pay period in September 2015."

The arbitrator rejected the STFA's demand for a 1.25% increase to Troopers at step nine of range nineteen, for the last six months of the CNA. However, the arbitrator partially granted STFA's proposal to reinstate step increases, which the Division opposed.

More specifically, the arbitrator reinstated step increases beginning on June 29, 2017, the day before the new CNA expired. At that time, Troopers would be placed at the step and range they would have been eligible for, as if there had been no suspension of step increments after pay period 20 in 2015, and they would resume their normal progression on the step and range chart pending negotiation of a successor CNA. However, the Troopers would not receive any back pay for the period during which step increases [\*13] were suspended. Regarding this provision, the arbitrator stated:

The STFA has argued that the effect of my Initial Award, were it to be implemented, would be to permanently freeze all step movement indefinitely. While the STFA notes that it could possibly negotiate the resumption of step movement going forward, at the present time there is no clear "career path for compensation." This would be an unjust result. In addition, especially as a result of the Appellate Division's decision in *In re Cty. of Atl.*, 445 N.J. Super. 1 (App. Div. 2016), *pet. for certif. pending*, which restored the concept of the dynamic status quo to collective negotiations, the freeze in step movement may persist well after this five year CNA expires.<sup>8</sup> Accordingly, it would be unjust to permit such an indefinite freeze. In addition, because the suspension will end the day before the last day of the contract's expiration the cost to the Division if any will be *de minimis*. Any additional costs will not occur during the term of this CNA.

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<sup>8</sup> The Court subsequently granted certification and affirmed the panel's decision on other grounds. *Cty. of Atl.*, 230 N.J. 237.

The parties will be free to negotiate changes to the compensation package especially step movement at the conclusion of this agreement.

[(citation to the record omitted).]

The Division appealed from the remand award, arguing the arbitrator's [\*14] award of step movements on June 30, 2017, the last day of the successor contract, did not comply with the two percent cap, was not calculated to comply with the two percent cap, and attempted to avoid the statutory limitations of the compulsory interest arbitration law. The STFA responded the resumption of step movement did not violate the statute. The STFA also cross-appealed, arguing the arbitrator did not consider all of the *N.J.S.A.* 34:13A-16(g) statutory factors when analyzing the transportation allowance and education incentive proposals.

On September 22, 2016, PERC issued its final agency decision, affirming the remand award except as modified to exclude the step increments awarded on the last day of the CNA. Explaining this modification, PERC stated:

Here, . . . the State is charged with a sizable double increment for a contract term that was not part of the interest arbitration, was not negotiated, and is not charged to either contract term.

The last day of this contract will be critical for determining how the Troopers advance through the salary guide in their next contract. Essentially, due to the award's double increment bump on the last day, the next contract's raises would be applied using that [\*15] higher salary guide level as a starting point but the significant cost of that double increment would not be accounted for. For those 84 Troopers highlighted in the State's brief who were at Range T-17, Step 4 in 2015, their double increment up to Step 6 on the last day of the contract would result in a salary increase of \$5,792.04 as they jump from \$66,438.00 to \$72,334.02. That \$5,792.04 represents a salary increase of 8.72%. However, only 1 day of that increase is charged to this contract because the double increment was awarded for the last day. Thus, only \$15.87 of the significant 8.75% increase was charged to this contract, while the remaining \$5,776.17, or a rise of 8.69%, carries over into the next contract term that was not part of this interest arbitration and the opportunity to negotiate the salary for the next contract has been extinguished. Because those Troopers would already be at the higher salary guide level when negotiations and/or

interest arbitration are being conducted for the next contract, that 8.69% of the double increment bump will not be accounted for as a new salary increase in the next contract. Thus, the bulk of the significant salary increment is not charged [\*16] to either this contract or the next, effectively escaping the 2% Hard Cap. While the parties may mutually agree to salary increases in excess of the 2% Hard Cap if their negotiations are successful and interest arbitration is avoided for the next contract, the arbitrator's award of the double bump on the last day of this contract hamstring the employer and union by baking in a carried over 8.69% raise, effectively taking those salary negotiations out of the parties' hands. Such an accounting maneuver in the interest arbitration process circumvents the legislative purpose of the 2% Hard Cap by permitting extreme, unaccountable raises in the transition between contracts. Accordingly, we find that the arbitrator's grant of double increments on the last day of the award handicaps the next round of negotiations, undermines the legislative intent to control costs, and disregards the financial impact of the step movement on the taxpayer. See *N.J.S.A.* 34:13A-16(g)(1) and — (6) and *N.J.S.A.* 34:13A-16. We therefore modify the arbitrator's remand award to remove the granting of increments on the last day of the CNA.

[(footnotes omitted).]

PERC rejected the STFA's argument that the award of increments on the last day of the CNA must be [\*17] upheld pursuant to statutory provisions that mandate the payment of salary increments to State Troopers, stating: "The Legislature was well aware of these statutes when *L. 2014, c. 11* was enacted. The Legislature could have chosen to exempt STFA members and other State Police personnel, but it did not."

PERC also rejected the STFA's argument that PERC precedent, specifically, *In re Borough of Bogota*, PERC No. 99-20, 24 *N.J.P.E.R.* 453 (¶ 29210 1998), prohibited modification of the award as to salary increases but, instead, required a remand for reconsideration. As to this issue, PERC stated: "*Bogota* involved the potential modification of a remand award regarding across the board salary increases. The instant matter only concerns the arbitrator's award of automatic increments on the last day of the CNA and our rationale for modifying the remand award is set forth above."

Finally, aside from the step increment issue, PERC found the arbitrator otherwise complied with its

directions. He adequately showed the methodology he employed to calculate base salary and also costed out the award, which, aside from the step increments, amounted to an increase of 10.24% over five years, in compliance with the two percent statutory cap.

The STFA appealed from [\*18] the final agency decision. It raises the following points on appeal:

POINT I

THE COMMISSION IMPROPERLY EXCEEDED THE SCOPE OF ITS REVIEW WHEN IT DETERMINED IT WOULD ALTER THE ARBITRATOR'S DECISION.

POINT II

THE COMMISSION IS NOT FREE TO CONDUCT A DE NOVO REVIEW AND THEREAFTER FASHION ITS OWN AWARD.

POINT III

THE ARBITRATOR AND THE COMMISSION ARE STATUTORILY REQUIRED TO PROVIDE STEP MOVEMENT TO STATE TROOPERS PURSUANT TO TITLE 53.

POINT IV

THE COMMISSION DEPARTED FROM JUDICIAL AND AGENCY PRECEDENT WHICH FORBADE IT FROM MODIFYING AN AWARD BASED UPON FUTURE BUDGETARY RESTRICTIONS.

POINT V

THE STFA WAS DEPRIVED OF FUNDAMENTAL FAIRNESS AND DUE PROCESS WHEN IT WAS SURPRISED WITH A NEW REGULATORY RULE.

POINT VI

PERC'S NEW RULE IS PLAINLY UNREASONABLE, CONTRARY TO THE ACT AND UNDERMINES THE LEGISLATURE'S INTENT.

A. APPLICATION OF THE CAP IS OUTSIDE OF PERC'S MANDATE

B. PERC'S DECISION WAS ARBITRARY AND CAPRICIOUS

1. VAGUENESS

2. VOID IN APPLICATION IN THE

ABSENCE OF GUIDING STANDARDS

C. THE NEW "RULE" IS BASED UPON AN ERRONEOUS CALUCATION

D. VIOLATION OF THE LEGISLATIVE INTENT

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 [\*19] and police officer representatives who reach an impasse in collective negotiations. N.J.S.A. 34:13A-16(b)(2). Either party may petition to initiate this process with PERC. *Ibid.* The parties may appeal the arbitrator's award to PERC and may, in turn, appeal PERC's final decisions to this court. N.J.S.A. 34:13A-16(f)(5)(a).

Our review of "PERC decisions reviewing arbitration is sensitive, circumspect and circumscribed." *Twp. of Teaneck v. Teaneck Firemen's Mut. Benevolent Ass'n Local No. 42*, 353 N.J. Super. 289, 300, 802 A.2d 569 (App. Div. 2002) (citing *In re Hunterdon*, 116 N.J. 322, 328, 561 A.2d 597 (1989)), *aff'd o.b.*, 177 N.J. 560, 832 A.2d 315 (2003). We will uphold these decisions unless they are "clearly arbitrary or capricious." *Ibid.* (citation omitted). However, we provide heightened scrutiny of statutorily mandated public interest arbitration where public funds are at stake. *Hillsdale PBA Local 207 v. Borough of Hillsdale*, 137 N.J. 71, 82, 644 A.2d 564 (1994).

PERC's role is to consider whether the arbitrator properly applied the factors articulated in N.J.S.A. 34:13A-16(g) and issued a reasonable determination. *Teaneck*, 353 N.J. Super. at 306. PERC is statutorily authorized to "affirm, modify, correct or vacate" an interest arbitration award or it "may, at its discretion, remand the award to the same arbitrator or to another arbitrator . . . for reconsideration." N.J.S.A. 34:13A-16(f)(5)(a).

The arbitrator's role, in turn, is to choose between the parties' final offers after considering these factors. *Hillsdale*, 137 N.J. at 82. PERC will not vacate an award unless: (1) the arbitrator failed to give due weight to the N.J.S.A. 34:13A-16(g) factors [\*20] he or she determined were relevant, "(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." *In re State*, 443 N.J. Super. 380, 385, 128 A.3d 1152, (App. Div.) (citing *Hillsdale*, 137 N.J. at 82), *certif. denied*, 225 N.J. 221, 137 A.3d 533 (2016). We will similarly uphold an award if it is



supported by "substantial credible evidence in the record." *Hillsdale*, 137 N.J. at 82 (citation omitted).

Primarily, the STFA argues PERC erred in modifying the arbitrator's remand decision to eliminate the ordered step increments. We remand this matter to PERC for reconsideration of its final decision in light of the Supreme Court's subsequent decision in *Cty. of Atl.*

In *Cty. of Atl.*, we reversed PERC's final agency decisions "because PERC's abandonment of the dynamic status quo doctrine was action outside the scope of its legislative mandate, which is the implementation of the [Act]." 445 N.J. Super. 1, 6, 135 A.3d 968 (App. Div. 2016). We concluded "PERC wrongly assumed that government employers cannot negotiate to avoid paying increments after the lapse of CNAs" and also determined the employer "has the option, when engaged in new negotiations, to recoup salary increments in a new contract." *Id.* at 18.

In *Cty. of Atl.*, the Court concluded it "need not determine whether, as a general rule, an employer must maintain [\*21] the status quo while negotiating a successor agreement." 230 N.J. at 243. Instead, the Court held "the governing contract language requires that the terms and conditions of the respective agreements, including the salary step increases, remain in place until a new CNA is reached." *Ibid.*

The Court found "salary step increments is a mandatorily negotiable term and condition of employment because it is part and parcel to an employee's compensation for any particular year." *Id.* at 253. Accordingly, the Court faced the issue "whether the salary increment systems provided for in the expired CNAs still governed working conditions during the hiatus period between agreements." *Id.* at 253-54 (citing *N.J.S.A. 34:13A-5.3, - 5.4(a)(1), and -5.4(a)(5)*).

In *Cty. of Atl.*, the Atlantic County-PBA Local 77 CNA stated "[a]ll provisions of this Agreement will continue in effect until a successor Agreement is negotiated." *Id.* at 244. Similarly, the Atlantic County-PBA Local 34 CNA provided "[a]ll terms and conditions of employment, including any past or present benefits, practices or privileges which are enjoyed by the employees covered by this Agreement that have not been included in this Agreement shall not be reduced or eliminated and shall be continued in full force [\*22] and effect." *Id.* at 244-45. The Bridgewater-PBA Local 174 CNA stated "[t]his agreement shall remain in full force and effect during collective negotiations between the parties beyond the date of expiration set forth herein until the parties have

mutually agreed on a new agreement." *Id.* at 248-49.

The Court found the three expired CNAs "contain clear and explicit language that the respective salary guides — and all other terms and conditions set forth in those agreements — will continue until a successor agreement is reached." *Id.* at 255. Accordingly, the Court found the salary increment systems in question "remained in effect after the agreements' expiration dates under basic principles of contract law." *Ibid.* The Court noted the public entities "could have simply negotiated different contract terms." *Id.* at 256. The Court held:

[T]he unilateral modification at issue here directly contradicted the parties' binding written agreement. Because the salary increment system was a term and condition of employment that governed beyond the CNAs' expiration date, [the public entity employers] committed an unfair labor practice when they altered that condition without first attempting to negotiate in good faith, in violation of *N.J.S.A. 34:13A-5.3, -5.4(a)(1), [\*23] and -5.4(a)(5)*.

[*Id.* at 256.]

Here, the parties' 2008-2012 CNA explicitly stated "the terms of this Agreement shall remain in force until the effective date of a successor Agreement," similar to the three CNAs at issue in *Cty. of Atl.* See *id.* at 244-45, 248-49. However, based upon PERC's *Cty. of Atl.* decision (which the Appellate Division and Supreme Court reversed), the Division unilaterally ceased paying step increments as of pay period 20 in 2015, pending negotiation of a successor agreement. At the arbitration hearings, counsel stated the cessation of step increments was the subject of litigation both in the Superior Court and before PERC.

The Division maintains *Cty. of Atl.* is distinguishable because it was premised upon PERC's consideration of the two percent property tax levy cap imposed by the Local Budget Law, *N.J.S.A. 40A:4-45.44 to -45.47*, whereas this matter involves the two percent cap imposed on interest arbitration awards under the Act, *N.J.S.A. 34:13A-16.7(b)*. We are unpersuaded by this argument.

Ultimately, the Court's holding in *Cty. of Atl.* was premised upon the terms of the CNAs. 230 N.J. at 254-57. The Court held "the governing contract language requires that the terms and conditions of the respective agreements, including the salary step increases, remain in place [\*24] until a new CNA is reached." *Cty. of Atl.*,

230 N.J. at 243. Just as in *Cty. of Atl.*, "we need not look beyond the [contract itself] to conclude that the step increases continued beyond the expiration of the contracts." *Id.* at 254. Here, like the contracts reviewed in *Cty. of Atl.*, the 2008-2012 CNA between the Division and the SFTA stated the terms of the CNA, including step increments, "shall remain in force until the effective date of a successor Agreement." Accordingly, "the salary increment system[] remained in effect after the agreement[']s expiration date[] under basic principles of contract law." *Id.* at 255. Notwithstanding that contract language, effective in pay period 20 in 2015, the Division unilaterally stopped paying salary increments. Around the same time, the Division petitioned for compulsory interest arbitration.

The State's failure to comply with the terms of the CNA was not addressed by the arbitrator or by PERC.<sup>9</sup> Thus, in light of the Supreme Court's decision in *Cty. of Atl.*, we vacate the September 22, 2016 final agency decision and remand for PERC to reconsider the terms of the CNA and the Division's non-compliance with those terms in the context of the parties' arbitration and the statutory cap on interest arbitration [\*25] awards. In light of our ruling, we do not reach the other issues raised by the SFTA.

Vacated and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

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<sup>9</sup>We recognize PERC rendered its final decision before the Supreme Court issued its opinion in *Cty. of Atl.*

## City v. City of Orange Twp.

Superior Court of New Jersey, Appellate Division

February 26, 2019, Submitted; April 25, 2019, Decided

DOCKET NO. A-0091-18T2

### Reporter

2019 N.J. Super. Unpub. LEXIS 959 \*; 2019 L.R.R.M. 147363; 2019 WL 1848752

CITY OF ORANGE FIRE OFFICERS ASSOCIATION  
FMBA LOCAL 210, Plaintiff-Respondent, v. CITY OF  
ORANGE TOWNSHIP, Defendant-Appellant.

**Notice:** NOT FOR PUBLICATION WITHOUT THE  
APPROVAL OF THE APPELLATE DIVISION.

PLEASE CONSULT NEW JERSEY RULE 1:36-3 FOR  
CITATION OF UNPUBLISHED OPINIONS.

**Prior History:** [\*1] On appeal from Superior Court of  
New Jersey, Chancery Division, Essex County, Docket  
No. C-000018-17.

**Counsel:** Scarinci & Hollenbeck, LLC, attorneys for  
appellant (Ramon E. Rivera, of counsel; Krystle Nova,  
John J.D. Burke, and Ramon E. Rivera, on the briefs).

Feeley & LaRocca, LLC, and The Blanco Law Firm,  
LLC, attorneys for respondent (Pablo N. Blanco, of  
counsel and on the brief; John D. Feeley, on the brief).

**Judges:** Before Judges Gilson and Natali.

## Opinion

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PER CURIAM

This appeal arises out of an action to enforce an

arbitration award concerning the terms of successor collective negotiation agreements between the City of Orange Township (City) and the City of Orange Fire Officers Association FMBA Local 210 (FOA). The City appeals from a July 25, 2018 order issued by the Chancery Division, which confirmed the arbitration award and directed the City to comply with the award. In making that ruling, the Chancery court refused to address the City's counterclaims that the award was defective and should be vacated. Instead, the court ruled that because the City had failed to appeal the award to the Public Employment Relations Commission (Commission) as required by the governing statute, N.J.S.A. 34:13A-16(f)(5)(a), the court did not have the [\*2] authority to address the City's counterclaim. We agree and affirm.

I.

The arbitration award at issue in this case is the product of compulsory interest arbitration pursuant to the Police and Fire Public Interest Arbitration Reform Act (the Arbitration Reform Act), N.J.S.A. 34:13A-14a to -21. Interest arbitration "involves the submission of a dispute concerning the terms of a new contract to an arbitrator, who selects those terms and thus in effect writes the parties' collective agreement[.]" *New Jersey State Policemen's Benevolent Ass'n v. Irvington*, 80 N.J. 271, 284 (1979), 403 A.2d 473. "[C]ompulsory interest arbitration is a statutory method of resolving collective-negotiation disputes between police and fire departments and their employers." *Hillsdale PBA Local 207 v. Borough of Hillsdale*, 137 N.J. 71, 80, 644 A.2d 564 (1994).

The underlying disputes have existed for a number of years and have engendered an initial arbitration award issued in July 2016, an appeal to the Commission, a decision by the Commission issued in September 2016, a remand to the arbitrator, and the arbitrator's decision following the remand issued in January 2017. The core disputes concern the terms and conditions of employment, particularly salaries, for certain public-

safety employees of the City.

The initial request for arbitration was filed by the PBA Local 89 (PBA), representing the City's police officers. [\*3] Two other employee units thereafter joined that arbitration. Those units are FMBA Local 10 (FMBA), representing the rank and file firefighters of the City, and the FOA, representing the City's fire officers.

On July 7, 2016, the arbitrator issued a written award setting terms of successor collective negotiation agreements for all three units of employees. On July 20, 2016, the City appealed that arbitration award to the Commission. In its appeal to the Commission, the City argued that the arbitrator failed to properly address the financial impact of the award, including failing to properly consider a two percent statutory cap established in N.J.S.A. 34:13A-16.7(b). The City also argued that the arbitrator failed to properly address other statutory factors under N.J.S.A. 34:13A-16(g).

On September 8, 2016, the Commission issued its decision on the City's appeal. The Commission rejected the City's arguments regarding the two percent cap. The Commission did, however, remand the matter to the arbitrator and directed the arbitrator to explain and clarify the award as it related to certain factors identified in N.J.S.A. 34:13A-16(g).

Thereafter, the City resolved its disputes with the PBA and FMBA. Accordingly, on remand, the arbitrator only had to clarify [\*4] his award with regard to the members of the FOA.

On January 3, 2017, the arbitrator issued his decision following the remand. That decision was mailed to the City and FOA by overnight delivery on January 4, 2017. Thus, the arbitration decision was received by the parties on January 5, 2017. Together with the arbitration decision on remand, the parties were given written notice reminding them that if they wanted to appeal the arbitration award, any appeal had to be filed within fourteen days. The fourteen days to appeal expired on January 19, 2017.

The City did not file an appeal with the Commission. Instead, on January 26, 2017, the FOA filed a verified complaint and order to show cause in the Chancery Division seeking to enforce the arbitration award. In its complaint, the FOA verified that it had been informed by the City that the City would not be filing an appeal of the arbitration award. Consequently, the FOA sought to have the Chancery Division confirm and enforce the arbitration award.

Approximately eleven months later, on December 28, 2017, the City filed an answer, affirmative defenses, and counterclaims. In its counterclaims, the City sought to vacate both the initial arbitration [\*5] award, issued on July 7, 2016, and the award following the remand, issued on January 3, 2017. The City contended that the arbitrator failed to adequately consider all of the factors under N.J.S.A. 34:13A-16(g), and improperly expanded the scope of the remand.

After reviewing briefs filed by the parties, the Chancery court held telephone conferences with counsel on July 16 and July 25, 2018, and heard oral argument on the enforcement of the arbitration award. The court ruled that the City had waived its right to appeal the arbitration award by not filing an appeal with the Commission. Thus, the court ruled that it could only enforce the arbitration award in accordance with N.J.S.A. 34:13A-19, and it could not consider the City's substantive arguments alleging that the award was defective and should be vacated. On July 25, 2018, the court entered an order (1) confirming the arbitration award, (2) directing the City to comply with the arbitration award, and (3) ordering the City to make retroactive payments to all FOA members within sixty days.

II.

The City now appeals from the July 25, 2018 order. It argues that the Chancery court obtained jurisdiction over the matter when the FOA filed its verified complaint seeking to enforce [\*6] the arbitration award. The City then argues that the arbitrator failed to adequately consider all of the statutory factors under N.J.S.A. 34:13A-16(g) and, therefore, the awards were procured by undue means and the arbitrator exceeded or imperfectly executed his powers. The City also argues that the arbitrator improperly expanded the scope of the remand order from the Commission and, as a consequence, the arbitrator imperfectly executed his powers and the remand award should be vacated.

We will only address the issue of the authority of the court to enforce the arbitration award because a plain reading of the governing statute establishes that the City waived its right to appeal the substance of the arbitration award. The issue concerning the scope of the enforcement action involves the interpretation of a statute. Accordingly, our review of that issue is de novo. *State in Interest of K.O.*, 217 N.J. 83, 91, 85 A.3d 938 (2014) (citing *McGovern v. Rutgers*, 211 N.J. 94, 107-08, 47 A.3d 724 (2012)).

The procedures for resolving disputes concerning the

terms and conditions of employment between a public fire or police department and the union representing the fire or police officers are governed by statute. N.J.S.A. 34:13A-16. See also *Hillsdale PBA Local 207*, 137 N.J. at 80. The New Jersey Employer-Employee Relations Act (the Relations Act), N.J.S.A. 34:13A-1 to -43, includes a compulsory [\*7] interest arbitration procedure for fire departments and representatives of fire officers that reach an impasse in collective negotiations. N.J.S.A. 34:13A-16(b)(2). The procedures for such interest arbitration, including any appeal of an arbitration award, are set forth in the Arbitration Reform Act, N.J.S.A. 34:13A-14a to -21, which is part of the Relations Act.

To initiate interest arbitration, the public entity or employee representative can petition the Commission. N.J.S.A. 34:13A-16(b)(2). An arbitrator is then selected and the disputes are submitted to "binding arbitration." N.J.S.A. 34:13A-16(d). The arbitrator must issue a decision within a prescribed time. N.J.S.A. 34:13A-16(f)(5). The arbitrator's decision, moreover, must include an award and "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." *Ibid*.

Any party to the arbitration can appeal the interest arbitration award to the Commission. A final decision by the Commission, in turn, can be appealed to this court. N.J.S.A. 34:13A-16(f)(5)(a). In that regard, the Arbitration Reform Act states:

The [arbitration] decision shall be [\*8] final and binding upon the parties and shall be irreversible, except: (a) [w]ithin 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.[A.] 2A:24-8 or N.J.S.[A.] 2A:24-9. . . .

. . . .  
An aggrieved party may appeal a decision of the commission to the Appellate Division of the Superior Court.  
[N.J.S.A. 34:13A-16(f)(5).]

The Arbitration Reform Act also states that "an arbitrator's award shall be implemented immediately." N.J.S.A. 34:13A-16(f)(5)(b). To ensure compliance, the

Arbitration Reform Act includes an enforcement provision, which states: "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." N.J.S.A. 34:13A-19.

In summary, the plain language of the Arbitration Reform Act states that an appeal of an interest arbitration award must be taken to the Commission and that the decision by the Commission, in turn, can be appealed to us. See N.J.S.A. 34:13A-16(f)(5)(a). There is no right to appeal to the Law or Chancery Division. Instead, the only right in the Law or [\*9] Chancery Division is to "enforce[]" the arbitration award. N.J.S.A. 34:13A-19. Cf. *In re City of Camden*, 429 N.J. Super. 309, 327, 58 A.3d 1186 (App. Div. 2013) (explaining that appeals are taken to the Commission). In enforcing the arbitration award, courts may clarify a term of the award. See *Paterson Police PBA Local 1 v. City of Paterson*, 433 N.J. Super. 416, 425, 80 A.3d 1152 (App. Div. 2013). In contrast, the power to "affirm, modify, correct or vacate the award" or to "remand the award" is vested with the Commission. N.J.S.A. 34:13A-16(f)(5)(a).

Here, the Chancery court correctly applied the plain language of the Arbitration Reform Act. The City had not appealed the January 3, 2017 arbitration award to the Commission. After the fourteen-day time for such an appeal expired, the FOA filed an action in the Chancery Division to enforce the award. Accordingly, the Chancery court had no authority to modify or vacate the arbitration award; rather, it correctly ruled it was limited to enforcing the award.

The City argues that when the FOA filed its action in the Superior Court, the court obtained jurisdiction and the court could then consider the City's counterclaims challenging the arbitration award. There are two flaws with that argument.

First, the time to appeal had expired and, thus, the City's counterclaims were already time-barred when the FOA filed the action in the Superior Court. The January 3, 2017 [\*10] arbitration award was received by the City on January 5, 2017. The City had fourteen days to appeal. Those fourteen days expired on January 19, 2017. Consequently, the City had no right to appeal when the FOA filed its enforcement action on January 26, 2017.

Second, as already detailed, an appeal of the interest arbitration award had to be first taken to the Commission. Because the City never filed any appeal with the Commission, it had no rights to seek to modify

or vacate the arbitration award.

In contending that the Chancery Division obtained jurisdiction to hear its appeal, the City cites two cases: *Harris v. Security Insurance Group*, 140 N.J. Super. 10, 354 A.2d 704 (App. Div. 1976) and *Township of Aberdeen v. Patrolmen's Benevolent Association, Local 163*, 286 N.J. Super. 372, 669 A.2d 291 (App. Div. 1996). Neither of those cases applies to the arbitration at issue in this case.

*Harris* discussed N.J.S.A. 2A:24-7, a statutory provision that, since 2003, applies "only . . . to an arbitration or dispute arising from a collective bargaining agreement or a collectively negotiated agreement." N.J.S.A. 2A:24-1.1. Thus, if parties to a collective bargaining agreement provide for arbitration of disputes arising from the agreement itself, N.J.S.A. 2A:24-7 governs the procedure by which an arbitration award can be confirmed, vacated, or modified.

Here, the parties were involved in statutorily-mandated interest arbitration, which is a process [\*11] by which an arbitrator "effect[ively] writes the parties' collective agreement." *Hillsdale PBA Local 207 v. Borough of Hillsdale*, 263 N.J. Super. 163, 179, 622 A.2d 872 (App. Div. 1993) (quoting *N.J. State Policemen's Benevolent Ass'n, Local 29*, 80 N.J. at 284), *aff'd in part, rev'd in part*, 137 N.J. 71, 644 A.2d 564 (1994). Unlike other forms of arbitration involving voluntary resolution of disputes under an existing contract, "compulsory interest arbitration does not depend on either the existence of a contract or on the agreement of the parties to proceed to arbitration. It is a statutorily-mandated procedure for resolving the terms of a new contract." *Hillsdale PBA Local 207*, 137 N.J. at 80 (citation omitted) (citing *N.J. State Policemen's Benevolent Ass'n, Local 29*, 80 N.J. at 284). Accordingly, N.J.S.A. 2A:24-7 does not apply to public fire and police department interest arbitration under the Arbitration Reform Act. *Cf.* N.J.S.A. 34:13A-16.

The *Aberdeen* court did not rule on a procedural issue, but noted that upon receiving the interest arbitration award, the township in that case "filed a complaint in the Chancery Division seeking an order vacating the award, and the union counterclaimed." 286 N.J. Super. at 376. That complaint was filed in accordance with the procedure in place at that time, prior to the effective date of the Arbitration Reform Act. *See L. 1977, c. 85, § 3(f)(5)* (stating that an arbitration award is final, binding, and irreversible [\*12] "except where there is submitted to the court extrinsic evidence upon which the court may

vacate, modify or correct such award pursuant to N.J.S. 2A:24-7 et seq. or for failure to apply the factors specified in subsection g. below"). The Arbitration Reform Act was an amendment to the Relations Act that became effective on January 10, 1996. *See L. 1995, c. 425*. That amendment established the relevant provision at issue in this case: that appeals of interest arbitration awards must be taken to the Commission, and appeals from the Commission will be heard in the Appellate Division. *See id.* at § 3(f)(5)(a); N.J.S.A. 34:13A-16(f)(5)(a).

Affirmed.

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