



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

2022 REPORT (Issued May 2022)

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INTRODUCTION & STATUTORY DEVELOPMENTS

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 average annual salary increases in arbitration awards, as well as fast-tracking of the interest arbitration and appeals processes. These changes are outlined in more detail in the Commission’s 2014 Biennial Report, which can be found on the Commission’s website.^{1/}

P.L. 2014, c. 11, effective April 2, 2014, continued certain provisions of P.L. 2010, c. 105 and amended others. The 2014 amendments to the Reform Act extended the 2% Cap on average annual salary increases until December 31, 2017, but allowed the 2% to be compounded annually over the contract term. The 2% Cap applied to parties whose collective negotiations agreements expired prior to or on December 31, 2017 but for whom a final settlement had not yet been reached, but expired for those parties whose agreements expired January 1, 2018 or later. P.L. 2014, c. 11 also included the following

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

changes: the first meeting with the arbitrator is a mandatory mediation session; the time to issue an award was increased from 45 to 90 days; the time to file an appeal of an award to the Commission was increased from 7 to 14 days; the time for the Commission to decide an appeal was increased from 30 to 60 days; and the maximum arbitrator fee per case was increased from \$7,500 to \$10,000. These changes are outlined in more detail in the 2016 Biennial Report.^{2/}

The Reform Act was also amended by the “Municipal Stabilization and Recovery Act,” 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 allowed 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.^{3/} This section of the interest arbitration law has not been invoked since the 2018 Biennial Report.

Since the last biennial report, the “Municipal Stabilization and Recovery Act” was amended by P.L. 2021, c. 124. This law amended N.J.S.A. 34:13A-16(i) and N.J.S.A. 34:13A-16(j) to provide that they shall expire “after the first day of the sixth year next following the determination by the Commissioner of Community Affairs that the

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

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

municipality shall be deemed ‘a municipality in need of stabilization and recovery.’” The amendments also provide that actions taken pursuant to N.J.S.A. 34:13A-16(i) and N.J.S.A. 34:13A-16(j) prior to the June 24, 2021 effective date of P.L. 2021, c. 124 “shall not be subject to reconsideration.”

P.L. 2021, c. 369 included a minor amendment to the Reform Act’s section concerning periodic Commission review of the comparability guidelines that must be analyzed during interest arbitration. The general purpose of the law was to remove the requirement that the Governor promulgate the national census. Thus the law modified N.J.S.A. 34:13A-16.2(b) to reflect that the Commission shall review and modify the comparability guidelines not pursuant to R.S. 52:4-1 (after promulgation by the Governor), but simply “in each year in which a federal decennial census is received by the Governor.”

This report, the thirteenth submitted under the 1995 Reform Act, reviews Commission actions in implementing and administering the statute and provides information concerning interest arbitration petitions, settlements, awards, and appeals. It is submitted pursuant to Section 7 of the Reform Act, N.J.S.A. 34:13A-16.4, which directs the Commission to:

[S]ubmit biennial reports to the Governor and the Legislature on the effects of this amendatory and supplementary act on the negotiations and settlements between local governmental units and their public police departments and public fire departments and to include with that report any recommendations it may have for changes in the law. The 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 2022 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 (2020-2021) 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.^{4/} Since the 2020 Biennial Report, there have been no amendments to the interest arbitration regulations promulgated by the Commission to implement the law. The regulations were amended in 2018, as discussed in the 2018 Biennial Report, and were readopted without changes in 2019. See 51 N.J.R. 1429(a). The current regulations are effective until July 29, 2026, but may be amended by the Commission as necessary or if required by subsequent statutory changes to the Reform Act. 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

^{4/} <https://www.state.nj.us/perc/reports/biennial/>

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

Currently, the interest arbitration panel consists of eight members who meet the Commission's high standards. This marks an improvement since the 2020 Biennial Report, when there were only five members on the interest arbitration panel.

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. Another recertification audit of the program is scheduled to occur in 2022.

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 common issues and best practices in drafting interest arbitration awards, discussions of interest arbitration appeals decisions made by the Commission and courts, virtual arbitration hearing practices, and updates in municipal finance. (Appendix, Tab 4). The programs have been presented by Commission staff. 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.^{5/} 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.

The two most recent annual surveys reflect wage data for calendar years 2018-2019 (2020 survey) and 2019-2020 (2021 survey) and are included in the Appendix, Tab 5.^{6/} The 2020 survey shows that from 2018-2019, private sector wages increased 2.6%, total government wages increased 1.9%, state government wages increased 1.8%, and local government wages increased 2.2%. The 2021 survey shows that from 2019-2020, private sector wages increased 10.5%, total government wages increased 5.7%, state government wages increased 2.9%, and local government wages increased 7.2%.

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

^{6/} The 2020 survey was issued on July 7, 2020 and the 2021 survey was issued on July 9, 2021.

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.^{7/} On the Calendar Year 2020 Best Practices questionnaires, 81%, or 455, of municipalities answered “Yes” to the question of whether they had filed their most recent collective

^{7/} 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

negotiations agreements with the Commission. On the Calendar Year 2021 Best Practices questionnaires, 80%, or 450, 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^{8/} and Instructions^{9/} 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 2020, 47 public employers submitted police/fire summary forms to the Commission. In 2021, 53 public employers submitted police/fire summary forms to the Commission.

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 2018 amendments to the interest arbitration regulations changed and codified the Commission's expedited interest arbitration scope of negotiations pilot program. 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).^{10/} During the 2020-2021 period, the Commission did not consider any expedited scope of negotiations petitions.

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

^{10/} "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).

In the most recent biennial period (2020-2021), 26 impasse petitions were filed in police or fire units. That is similar to the 25 impasse petitions filed in 2018-2019. For comparison, there were 34 impasse petitions filed in 2014-2015, but only 16 filed in 2016-2017. Of the 26 impasse petitions filed from 2020-2021, 16 contracts were settled without proceeding to interest arbitration, 5 proceeded to interest arbitration (1 resulted in an award, 1 settled through arbitrator-led mediation, and 3 are not yet completed), and 5 have not yet resolved their contracts in mediation. In other words, less than 20% of impasse petitions (5 out of 26) led to interest arbitration during 2020-2021. Excluding the 5 impasse petitions that have not yet been resolved, the settlement rate in 2020-2021 prior to interest arbitration was 76% (16 out of 21), while the overall settlement rate including those impasses that settled during interest arbitration was 81% (17 out of 21).

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 2014 through 2021. Note that in some cases, petitions filed in one year might have had their arbitrators appointed or decisions issued in a later year. Furthermore, awards that were appealed and resulted in a remand award are reported as being issued in the year the remand award issued.

Calendar Year	2014	2015	2016	2017	2018	2019	2020	2021
IA Petitions Filed	88	20	9	29	12	17	17	19
Arbitrators Appointed	26	22	14	13	22	15	17	16
IA Voluntary Settlements	16	9	7	5	16	6	4	6
IA Awards Issued	12	6	8	4	2	6	4	7

As we noted in the previous three 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 9 to a high of 29, with the numbers of 2020 and 2021 filings falling in between those points (17 and 19, respectively).

The number of interest arbitration awards issued over the last two years remained low (4 in 2020; 7 in 2021) as in the prior few biennial periods. As noted in the previous three 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 2014-2021, the average annual number of awards decreased significantly to an average of approximately 6 per year.

The number of voluntary settlements made after filing for interest arbitration has remained significantly lower than prior to 2011, with 4 such settlements in 2020 and 6 in 2021. 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 less than 9 per year from 2014-2021.

For the years 2014-2021, the average annual salary increases in interest arbitration awards were:^{11/}

Year	IA Awards (non-2% Cap)	IA Awards (2% Cap)	IA Awards TOTAL*
2014	1.73%	1.69%	1.71%
2015	N/A	1.71%	1.71%
2016	3.83%	1.94%	2.65%
2017	1.64%	2.05%	1.74%
2018	N/A	2.01%	2.01%
2019	3.62%	2.06%	3.36%

^{11/} 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%.

2020	1.72%	N/A	1.72%
2021	2.59%	N/A	2.59%

* 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 2020 and 2021, the average annual salary increases in interest arbitration awards were 1.72% and 2.59%, respectively. There were no interest arbitration awards subject to the 2% Cap in those years, which reflects the expiration and continued phase out of the applicability of the 2% Cap.^{12/} The numbers of IA Awards in each year from 2012-2021 along with the average annual salary increases can be seen in the Appendix, Tab 7, while the numbers for 2003-2011 are in the Appendix, Tab 8.

As for voluntary settlements made after filing for interest arbitration, the average annual salary increases from 2014-2021 were:^{13/}

Year	IA Voluntary Settlements
2014	1.61%
2015	1.73%
2016	2.69%
2017	1.86%
2018	1.75%

^{12/} "[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.

^{13/} The average annual salary increases in IA Voluntary Settlements may or may not include increases due to increments/steps and longevity.

2019	1.64%
2020	2.05%
2021	1.61%

The average annual salary increases in IA Voluntary Settlements were 2.05% in 2020 and 1.61% in 2021. The numbers of IA Voluntary Settlements in each year from 2012-2021 along with the average annual salary increases can be seen in the Appendix, Tab 7, while the numbers for 2003-2011 are in the Appendix, Tab 8.

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 47 police/fire non-IA settlement summary forms in 2020 and 53 in 2021. The average annual salary increases in non-IA settlements were 4.19% in 2020 and 4.41% in 2021. Those figures, like 2% Cap awards, include increases due to increments/steps and longevity as accounted for on the summary forms. The 2020-2021 average annual salary increases in non-IA settlements were similar to the 3.89% and 4.26% averages for such settlements in 2018 and 2019, respectively.

INTEREST ARBITRATION APPEALS

The following chart reflects the numbers of interest arbitration appeals and their dispositions from 2014-2021. Some cases may have been appealed and disposed in different calendar years. Also, some cases were initially remanded by the Commission and subsequently had their remand awards affirmed after the Commission retained jurisdiction rather than require a party to file a new appeal of the remand award. Therefore, a single appeal may result in both a remand and an ultimate affirmance being reflected in the chart below.

Calendar Year	2014	2015	2016	2017	2018	2019	2020	2021
Appeals to Commission	5	3	6	2	0	2	1	3
Appeals Withdrawn	0	0	2	0	0	0	0	0
Appeals Dismissed	0	0	0	0	0	0	0	0
Awards Affirmed	2	2	0	2	0	2	0	3
Awards Modified	1	1	1	0	0	0	0	0
Awards Remanded	1	1	3	0	0	0	0	4
Appeals to Appellate Division	2	2	1	0	1	1	0	0
Petition for Certif. to Supreme Court	0	1	1	0	1	0	0	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 was 1 interest arbitration appeal to the Commission in 2020 and there were 3 in 2021. 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) expiration of the 2% Cap; 3) the overall number of interest arbitration filings has decreased; and 4) strong settlement rates during the interest arbitration mediation process have resulted in fewer interest arbitration filings proceeding to final interest arbitration awards. Those last two factors (decreased filings and increased voluntary settlements) may also be attributable to the expiration of the 2% Cap. The expiration of the 2% Cap has afforded both parties, as well as the mediators and arbitrators, greater flexibility to voluntarily settle contracts at every step of the impasse procedures.

The Commission's interest arbitration appeal decisions issued in 2020-2021 are summarized below and included in full in the Appendix, Tab 9.

In Mercer Cty. Prosc. Office, P.E.R.C. No. 2021-28, 47 NJPER 331 (¶79 2021), the employer (MCPO) appealed from the award arguing, among other things, that the arbitrator did not cost-out his award. Finding that the arbitrator did not cost-out his award to adequately express the projected net annual economic changes and annual costs of all base salary items as required by N.J.S.A. 34:13A-16(d) and N.J.A.C. 19:16-5.9(c), the Commission remanded the award for the arbitrator to provide a cost-out. The Commission declined to decide the MCPO's other objections to the award prior to reviewing the arbitrator's cost-out on remand. The Commission retained jurisdiction to review the remand award and allow supplementary briefs from the parties.

In Mercer Cty. Prosc. Office, P.E.R.C. No. 2021-42, 47 NJPER 465 (¶109 2021), the Commission affirmed the remand interest arbitration award from P.E.R.C. No. 2021-28 after the interest arbitrator provided a cost-out of his award and clarified the net annual economic changes and annual costs of all base salary items. The MCPO appealed from

the remand award, asserting that it did not comply with the County Entity Budget Cap (CEBC), that the record did not support the award of an 8-hour workday, and that the arbitrator failed to give due weight to certain statutory 16(g) factors. The Commission found that the record, including witness testimony, the county's fiscal condition and revenue capacity, and the county's history of making adjustments to comply with the CEBC after expenditures exceeded budgeted amounts, supported the arbitrator's determination that the award does not present a CEBC issue. The Commission found that the award of the 8-hour workday was supported by: internal and external comparability; projected salary cost-outs that accounted for overtime savings from the change; and the Prosecutor's previous advocacy for the 8-hour workday due to overtime savings and scheduling flexibility. The Commission found that the award considered the parties' interests and the public interest and gave due weight to the 16(g) statutory factors.

In Passaic Cty. Sheriff's Office, P.E.R.C. No. 2021-34, 47 NJPER 397 (¶94 2021), the PBA appealed the interest arbitration award arguing, among other things, that the arbitrator did not cost-out his award. Finding that the arbitrator did not cost-out his award to adequately express the projected net annual economic changes and annual costs of all base salary items as required by N.J.S.A. 34:13A-16(d) and N.J.A.C. 19:16-5.9(c), the Commission remanded the award for the arbitrator to provide a cost-out. The Commission declined to decide the PBA's other objections until receiving the remand award. The Commission retained jurisdiction to review the remand award and allow supplementary briefs from the parties.

In Passaic Cty. Sheriff's Office, P.E.R.C. No. 2021-54, 48 NJPER 36 (¶9 2021), the Commission affirmed the remand interest arbitration award from P.E.R.C. No. 2021-

34 after the interest arbitrator provided a cost-out of his award and clarified the net annual economic changes and annual costs of all base salary items. The Commission rejected the PBA's assertion that the arbitrator committed error by ordering the parties to submit additional cost-outs on remand and utilizing those cost-outs in his remand award. The Commission found that the facts the arbitrator found from those cost-outs were verifiable and comported with the relevant scattergram evidence in the record. The Commission further found that the arbitrator properly declined to consider an award covering the same employer but a different bargaining unit that was issued four months after the record closed, as its consideration was outside the limited scope of the remand Order.

In Old Tappan Bor., P.E.R.C. No. 2021-43, 47 NJPER 468 (¶110 2021), the Borough appealed the interest arbitration award arguing that it failed to address retirees' healthcare contributions as presented in the Borough's final offers, specifically that retirees must contribute towards their healthcare at the statutory levels set forth in P.L. 2011, c.78. Finding that the award addressed one aspect of the Borough's final offer on healthcare but did not address the part about contribution levels for retiree healthcare benefits, the Commission remanded the award for the arbitrator to clarify the retiree health benefits contribution levels. The Commission retained jurisdiction to review the remand award and allow supplementary briefs from the parties.

In Old Tappan Bor., P.E.R.C. No. 2022-4, 48 NJPER 107 (¶26 2021), the Commission affirmed the remand interest arbitration award from P.E.R.C. No. 2021-43 after the interest arbitrator clarified that retirees must contribute towards their healthcare at the statutory levels set forth in P.L. 2011, c. 78.

In Bergenfield Bor., P.E.R.C. No. 2022-23, 48 NJPER 260 (¶58 2021), the PBA appealed the interest arbitration award arguing, among other things, that the arbitrator improperly considered the issue of healthcare contributions that the PBA did not identify in its petition as an issue in dispute, but that the Borough submitted in its final offer. Finding that the issue of healthcare contributions (deducted from employee wages) is sufficiently connected to the issue of “wages” listed in the PBA’s petition, the Commission found that the arbitrator did not abuse his discretion by considering it. However, the Commission found that the arbitrator improperly waited until his award to decide on the PBA’s objection to the Borough’s healthcare contributions proposal. The Commission therefore vacated and remanded the award to the arbitrator to allow for the parties to submit additional evidence on the issue of healthcare contributions, as well as revised final offers. The Commission declined to decide on the PBA’s other objections prior to reviewing the arbitrator’s remand award. The Commission retained jurisdiction to review the remand award and allow supplementary briefs from the parties. Furthermore, as the parties’ prior contract remained unsettled due to ongoing litigation involving their prior interest arbitration award (discussed below), the Commission directed the arbitrator to issue his remand award within 90 days following the date of issuance of the remand award (or Commission appeal decision thereof) in their prior interest arbitration.

Finally, we discuss a 2020 decision of the Superior Court, Appellate Division, that was not an appeal of a Commission interest arbitration award, but was an appeal of a Commission decision in a related unfair practice case. In Bergenfield Bor., P.E.R.C. No. 2020-50, 46 NJPER 516 (¶114 2020), the Commission adopted a Hearing Examiner’s Recommended Decision and Order which found the Borough violated N.J.S.A. 34:13A-

5.4a(6) by refusing to sign a collective negotiations agreement (CNA) drafted by PBA Local 309 that memorialized an interest arbitration (IA) award (Docket No. IA-2019-007). The Commission rejected the Borough's exceptions, finding that the draft CNA accurately reflected the IA award's treatment of increment payments. The Commission found that the parties' ongoing dispute about the amounts required to be paid pursuant to the step increases dictated by the IA award is a matter of contract interpretation best dealt with through the CNA's grievance procedures. However, the Appellate Division reversed and remanded the Commission's decision, directing the parties to return to the interest arbitrator to clarify the interest arbitration award, specifically regarding whether the PBA's proposed draft of the salary term is an accurate reflection of the salary term the interest arbitrator wrote for the parties. Bergenfield Bor., 2021 N.J. Super. Unpub. LEXIS 2398 (App. Div. 2021). Following receipt of the interest arbitrator's remand award, the Commission issued a decision (P.E.R.C. No. 2022-35, 48 NJPER 370 (¶83 2022)) affirming the arbitrator's remand award, finding that it clarified that the PBA's inclusion of the past practice language in the salary term was not an accurate reflection of the Award, and that he specifically did not include that language in the salary provision of the award. Due to the resolution of the parties' interest arbitration award in Docket No. IA-2019-007, the remand award ordered in P.E.R.C. No. 2022-23 (discussed above) concerning the parties' next interest arbitration award (Docket No. IA-2021-016) will now be due by May 25, 2022 and will then be reviewed by the Commission.

CONCLUSION

At approximately twelve years since the initial fast track resolution and 2% Cap amendments to the Reform Act and eight 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 remained steady. The Commission has also continued to successfully achieve high contract settlement rates following impasse, primarily through mediation prior to interest arbitration, but also through arbitrator-led mediation efforts after filing for interest arbitration. 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 at this time, 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; and will ensure fast track resolution of interest arbitration cases and appeals.

APPENDIX

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BIENNIAL REPORT

TAB 1

L. 1941, c. 100, p. 231, 9; Amended by L. 1945, c. 32, p. 89, 2; L. 1967, c. 110, 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, 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, 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, 11; Amended by L. 1968, c. 303, 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, 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, 13.

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

The Legislature finds and declares:

- a. Recognizing the unique and essential duties which law enforcement officers and firefighters perform for the benefit and protection of the people of this State, cognizant of the life threatening dangers these public servants regularly confront in the daily pursuit of their public mission, and fully conscious of the fact that these public employees, by legal and moral precept, do not enjoy the right to strike, it is the public policy of this State that it is requisite to the high morale of such employees, the efficient operation of such departments, and to the general well-being and benefit of the citizens of this State to afford an alternate, expeditious, effective and binding procedure for the resolution of disputes; and
 - b. It also is the public policy of this State to ensure that the procedure so established fairly and adequately recognizes and gives all due consideration to the interests and welfare of the taxpaying public; and
 - c. Further, it is the public policy of this State to prescribe the scope of the authority delegated for the purposes of this reform act; to provide that the authority so delegated be statutorily limited, reasonable, and infused with stringent safeguards, while at the same time affording arbitrators the decision making authority necessary to protect the public good; and to mandate that in exercising the authority delegated under this reform act, arbitrators fully recognize and consider the public interest and the impact that their decisions have on the public welfare, and fairly and reasonably perform their statutory responsibilities to the end that labor peace between the public employer and its employees will be stabilized and promoted, and that the general public interest and welfare shall be preserved; and, therefore,
 - d. To that end the provisions of this reform act, providing for compulsory arbitration, shall be liberally construed.
- L. 1977, c. 85, § 1; amended 1995, c. 425, § 2.

§ 34:13A-14a. Short title [Police and Fire Public Interest Arbitration Reform Act]

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

L. 1995, c. 425, § 1.

§ 34:13A-15. Definitions

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

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

L. 1977, c. 85, 2, eff. May 10, 1977; amended by 2019, c. 407, § 16, effective April 1, 2020.

§ 34:13A-16. Negotiations between public fire, police department and exclusive representative; unfair practice charge; negotiation; fact-finding; 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. Factfinding shall be limited to those issues that are within the required scope of negotiations unless the parties to the factfinding agree to factfinding on permissive subjects of negotiation.

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

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

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

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

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

e.

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

(2) Applicants for initial appointment to the commission's special panel of arbitrators shall be chosen based on their professional qualifications, knowledge, and experience, in accordance with the criteria and rules adopted by the commission. Such rules shall include relevant knowledge of local government operations and budgeting. Appointment to the commission's special panel of arbitrators shall be for a three-year term, with reappointment contingent upon a screening process similar to that used for determining initial appointments. Arbitrators currently serving on the panel shall demonstrate to the commission their professional qualification, knowledge and experience, in accordance with the criteria and rules adopted by the commission, within one year of the effective date [January 1, 2011] of this act [P.L.2010, c. 105]. 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 Disputes" of the National Academy of Arbitrators, the American Arbitration Association, and the Federal Mediation and Conciliation Service.

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

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

f.

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

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

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

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

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

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

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

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

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

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

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

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

(6) The parties shall share equally the costs of arbitration subject to a fee schedule approved by the commission. The fee schedule shall provide that the cost of services provided by the arbitrator shall not exceed \$1,000 per day. The total cost of services of an arbitrator shall not exceed \$10,000. If the parties cancel an arbitration proceeding without good cause, the arbitrator may impose a fee of not more than \$ 500. The parties shall share equally in paying that

fee if the request to cancel or adjourn is a joint request. Otherwise, the party causing such cancellation shall be responsible for payment of the entire fee.

g. The arbitrator shall decide the dispute based on a reasonable determination of the issues, giving due weight to those factors listed below that are judged relevant for the resolution of the specific dispute. In the award, the arbitrator or panel of arbitrators shall indicate which of the factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor; provided, however, that in every interest arbitration proceeding, the parties shall introduce evidence regarding the factor set forth in paragraph (6) of this subsection and the arbitrator shall analyze and consider the factor set forth in paragraph (6) of this subsection in any award:

- (1) The interests and welfare of the public. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by P.L.1976, c.68 (C.40A:4-45.1 et seq.).
- (2) Comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally:
 - (a) In private employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.
 - (b) In public employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.
 - (c) In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L.1995, c.425 (C.34:13A-16.2); provided, however, that each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.
- (3) The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received.
- (4) Stipulations of the parties.
- (5) The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by P.L.1976, c.68 (C.40A:4-45.1 et seq.).
- (6) The financial impact on the governing unit, its residents, the limitations imposed upon the local unit's property tax levy pursuant to section 10 of P.L.2007, c.62 (C.40A:4-45.45), and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take into account, to the extent that evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the

percentage of the municipal purposes element or, in the case of a county, the county purposes element, required to fund the employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers of the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in a proposed local budget.

(7) The cost of living.

(8) The continuity and stability of employment including seniority rights and such other factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours, and conditions of employment through collective negotiations and collective bargaining between the parties in the public service and in private employment.

(9) Statutory restrictions imposed on the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by section 10 of P.L.2007, c.62 (C.40A:4-45.45).

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

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.).

The provisions of this subsection shall no longer be applicable on and after the first day of the sixth year next following the determination by the Commissioner of Community Affairs that the municipality shall be deemed "a municipality in need of stabilization and recovery" pursuant to section 4 of P.L.2016, c.4 (C.52:27BBBB-4); however, actions taken pursuant to this subsection prior to the effective date [June 24, 2021] of P.L.2021, c.124 shall be final and shall not be subject to reconsideration.

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.52:27BBB-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.52:27BBB-4).

The provisions of this subsection shall no longer be applicable on and after the first day of the sixth year next following the determination by the Commissioner of Community Affairs that the municipality shall be deemed “a municipality in need of stabilization and recovery” pursuant to section 4 of P.L.2016, c.4 (C.52:27BBB-4); however, actions taken pursuant to this subsection prior to the effective date [June 24, 2021] of P.L.2021, c.124 shall be final and shall not be subject to reconsideration.

L. 1977, c. 85, § 3; amended 1995, c. 425, § 3; 1997, c. 183, § 1; 2007, c. 62, § 14, eff. Apr. 3, 2007; 2010, c. 105, § 1, eff. Jan. 1, 2011; 2014, c. 11, § 1, eff. June 24, 2014, retroactive to April 2, 2014; 2016, c. 4, § 6, effective May 27, 2016; 2021, c. 124, § 5, effective June 24, 2021.

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

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

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

L. 1995, c. 425, § 4.

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

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

b. The commission shall review the guidelines promulgated under this section at least once every four years and may modify or amend them as is deemed necessary; provided, however, that the commission shall review and modify those guidelines in each year in which a federal decennial census is received by the Governor.

L. 1995, c. 425, § 5; 2021, c. 369, § 2, eff. January 12, 2022, retroactive to July 1, 2021.

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

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

L. 1995, c. 425, § 6.

§ 34:13A-16.4. Biennial reports

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

L. 1995, c. 425, § 7.

§ 34:13A-16.5. Rules, regulations

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

L. 1995, c. 425, § 8.

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

Beginning on the July 1 next following the enactment of P.L.1995, c.425 (C.34:13A-14a et al.) and each July 1 thereafter, the New Jersey Public Employment Relations Commission shall perform, or cause to be performed, a survey of private sector wage increases for use by all interested parties in public sector wage negotiations. The survey shall include information on a Statewide and countywide

basis. The survey shall be completed by September 1 next following enactment and by September 1 of each year thereafter. The survey shall be a public document and the commission shall make it available to all interested parties at a cost not exceeding the actual cost of producing the survey.

L. 1995, c. 425, § 9.

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

a. As used in this section:

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

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

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

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

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

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

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

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

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

c. All appointments shall be made within 30 days of the effective date [Jan. 1, 2011] 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 [Jan. 1, 2011] of P.L.2010, c.105 (C.34:13A-16.7 et al.) and shall meet thereafter at the call of its chair. In furtherance of its evaluation, the task force may hold public meetings or hearings within the State on any matter or matters related to the provisions of this act, and call to its assistance and avail itself of the services of the Public Employment Relations Commission and the employees of any State department, board, task force or agency which the task force determines possesses relevant data, analytical and professional expertise or other resources which may assist the task force in discharging its duties under this act. Each department, board, commission or agency of this State is hereby directed, to the extent not inconsistent with law, to cooperate fully with the task force and to furnish such information and assistance as is necessary to accomplish the purposes of this act. In addition, in order to facilitate the work of the task force, the Public Employment Relations Commission shall post on its website all collective negotiations agreements and interest arbitration awards entered or awarded after the date of enactment, including a summary of contract or arbitration award terms in a standard format developed by the Public Employment Relations Commission to facilitate comparisons. All collective negotiations agreements shall be submitted to the Public Employment Relations Commission within 15 days of contract execution.

e.

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

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

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

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

§ 34:13A-16.9. Effective date

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

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

§ 34:13A-17. Powers of arbitrator

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

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

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

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

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

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

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

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

§ 34:13A-20. [Repealed]

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

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

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

BIENNIAL REPORT

TAB 2

CHAPTER 16

NEGOTIATIONS, IMPASSE PROCEDURES, AND COMPULSORY INTEREST ARBITRATION OF LABOR DISPUTES IN PUBLIC FIRE AND POLICE DEPARTMENTSⁱ

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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_Commerce_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 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 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.

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

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.

19:16-5.14 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.

ⁱ 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:

Effective: July 29, 2019

See: 51 N.J.R. 1429(a).

EXPIRATION DATE:

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 16, Negotiations, Impasse Procedures, and Compulsory Interest Arbitration of Labor Disputes in Public Fire and Police Departments, expires on July 29, 2026.

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 3rd 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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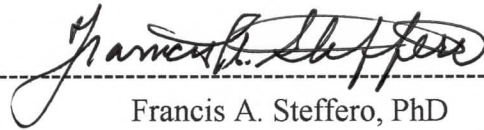
Signature Page

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



Francis A. Steffero, PhD

10/8/18

Date

BIENNIAL REPORT

TAB 4

PUBLIC EMPLOYMENT RELATIONS COMMISSION
Annual Continuing Education for Interest Arbitrators
December 7, 2020

Virtual Agenda

Welcome	Joel Weisblatt, PERC Chair
Annual Ethics Training	Christine Lucarelli-Carneiro, General Counsel
Commission Case & IA Appeals Update	Christine Lucarelli-Carneiro, General Counsel
Updates in Municipal Finance	Mary Beth Hennessy-Shotter, Director of Conciliation & Arbitration
Virtual Hearing Practices	Mary Beth Hennessy-Shotter,, Director of Conciliation & Arbitration
Open Forum	

PUBLIC EMPLOYMENT RELATIONS COMMISSION
Annual Continuing Education for Interest Arbitrators
December 20, 2021

Agenda

Welcome	Joel Weisblatt, PERC Chair
Annual Ethics Training	Ramiro Perez, Deputy General Counsel
Commission Case & IA Appeals Update	John Boppert, Deputy General Counsel Frank Kanther, Deputy General Counsel Ramiro Perez, Deputy General Counsel
Drafting the IA Award	Christine Lucarelli-Carneiro, General Counsel
Updates in Municipal Finance	Mary Beth Hennessy-Shotter, Director of Conciliation & Arbitration
Hot Topics & Open Forum	

BIENNIAL REPORT

TAB 5



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

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July 7, 2020

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.

The first table shows changes in average wages in employment for major industry groups in New Jersey between 2018 and 2019. 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 2018 and 2019. 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
2018 and 2019**

NAICS Industry Sector	2018	2019	Net Change	% Change
Total Private Sector *	\$65,355	\$67,040	\$1,685	2.6%
Utilities	\$123,352	\$122,184	-\$1,168	-0.9%
Construction	\$72,658	\$74,644	\$1,986	2.7%
Manufacturing	\$80,089	\$81,649	\$1,560	1.9%
Wholesale Trade	\$88,781	\$90,548	\$1,767	2.0%
Retail Trade	\$34,618	\$36,279	\$1,661	4.8%
Transportation/Warehousing	\$54,246	\$54,937	\$691	1.3%
Information	\$114,630	\$117,433	\$2,803	2.4%
Finance/Insurance	\$130,607	\$133,931	\$3,324	2.5%
Real Estate/Rental/Leasing	\$67,104	\$67,485	\$381	0.6%
Professional/Technical Services	\$112,051	\$115,914	\$3,863	3.4%
Management of				
Companies/Enterprises	\$170,665	\$174,842	\$4,177	2.4%
Administrative/Waste Services	\$45,080	\$46,690	\$1,610	3.6%
Educational Services	\$51,587	\$52,769	\$1,182	2.3%
Health Care/Social Assistance	\$53,649	\$55,456	\$1,807	3.4%
Arts/Entertainment/Recreation	\$37,382	\$37,988	\$606	1.6%
Accommodation/Food Service	\$23,948	\$23,839	-\$109	-0.5%
Other Services **	\$36,518	\$37,373	\$855	2.3%
Total Government	\$68,003	\$69,273	\$1,270	1.9%
Federal Government	\$83,702	\$83,925	\$223	0.3%
State Government	\$75,706	\$77,081	\$1,375	1.8%
Local Government	\$63,526	\$64,896	\$1,370	2.2%
TOTAL	\$65,729	\$67,353	\$1,624	2.5%

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

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

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

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

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

**PRIVATE SECTOR
AVERAGE ANNUAL WAGES
FOR JOBS COVERED BY UNEMPLOYMENT INSURANCE
BY COUNTY
2018 and 2019**

County	2018	2019	% Change
Atlantic	\$ 42,850	\$ 43,772	2.2%
Bergen	\$ 65,378	\$ 66,972	2.4%
Burlington	\$ 56,829	\$ 58,262	2.5%
Camden	\$ 52,445	\$ 54,335	3.6%
Cape May	\$ 34,088	\$ 35,378	3.8%
Cumberland	\$ 42,780	\$ 43,714	2.2%
Essex	\$ 68,966	\$ 71,042	3.0%
Gloucester	\$ 44,692	\$ 45,364	1.5%
Hudson	\$ 79,307	\$ 79,639	0.4%
Hunterdon	\$ 66,403	\$ 66,196	-0.3%
Mercer	\$ 71,432	\$ 75,664	5.9%
Middlesex	\$ 64,725	\$ 65,456	1.1%
Monmouth	\$ 54,742	\$ 55,651	1.7%
Morris	\$ 84,371	\$ 88,117	4.4%
Ocean	\$ 41,141	\$ 42,548	3.4%
Passaic	\$ 50,955	\$ 51,227	0.5%
Salem	\$ 57,876	\$ 59,607	3.0%
Somerset	\$ 89,517	\$ 91,866	2.6%
Sussex	\$ 44,491	\$ 45,898	3.2%
Union	\$ 68,975	\$ 71,237	3.3%
Warren	\$ 48,314	\$ 50,630	4.8%
Total			
Private Sector*	\$65,355	\$67,040	2.6%

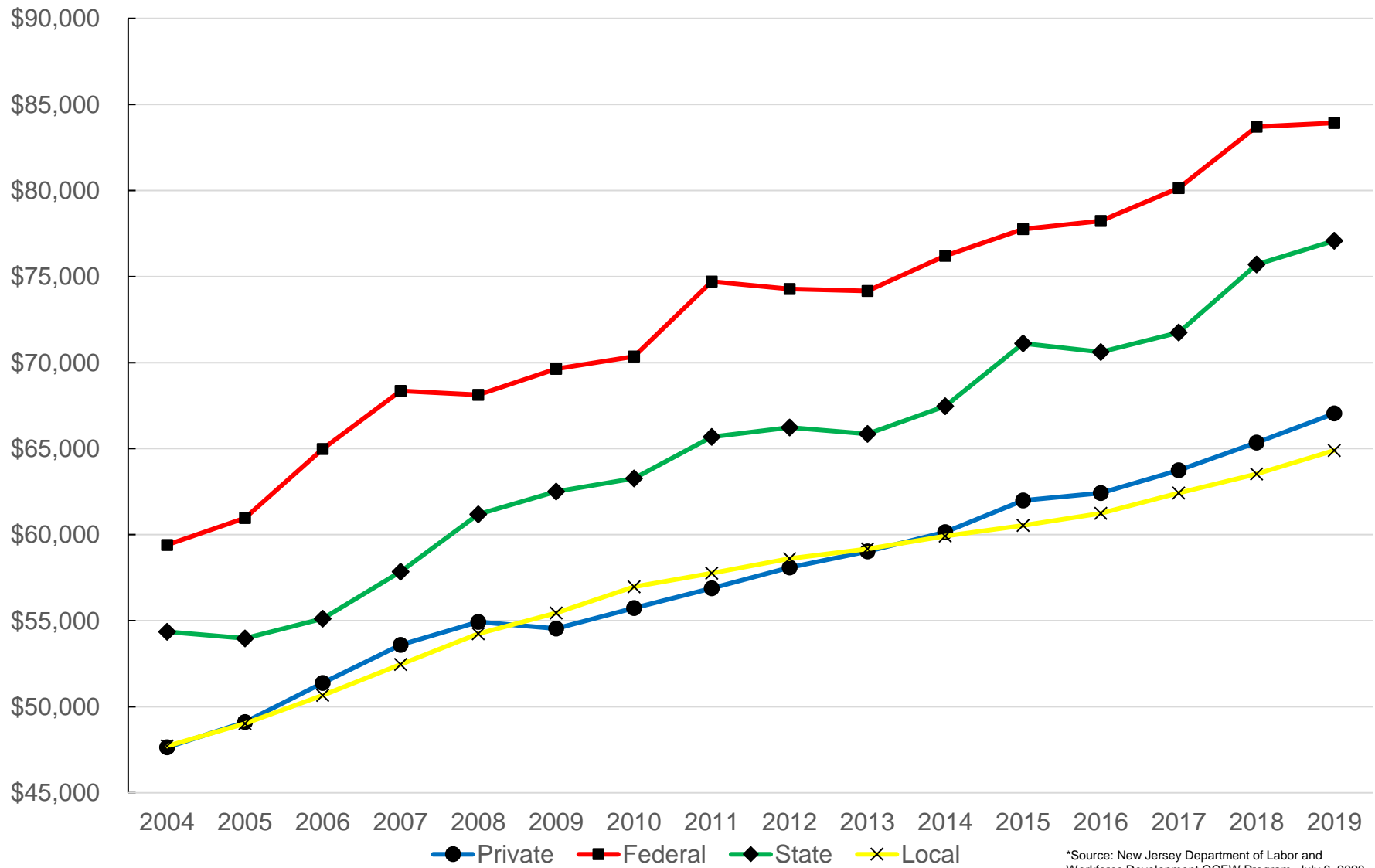
* Includes firms which have failed to provide sufficient geographical information as to the location of the business.

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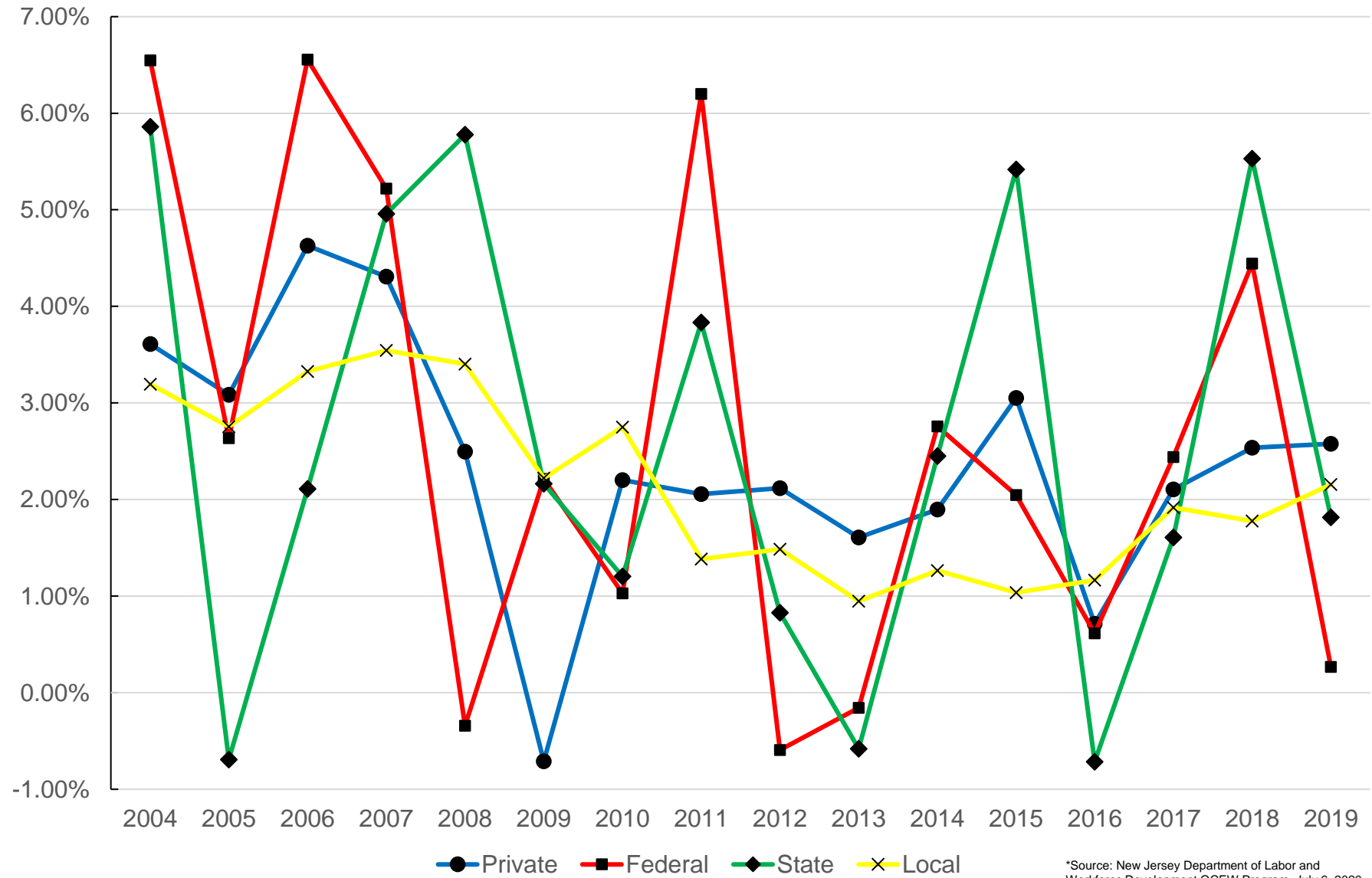
Source: QCEW Program, New Jersey Department of Labor and Workforce Development

New Jersey Average Annual Wage 2004 - 2019*



*Source: New Jersey Department of Labor and Workforce Development QCEW Program, July 6, 2020

New Jersey Percentage Change in Average Annual Wage 2004 - 2019*





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July 9, 2021

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The charts depict the average annual wage and percentage change in average annual wage for private, federal, state and local employees in New Jersey.

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2019 and 2020

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Manufacturing	\$81,649	\$86,269	\$4,620	5.7%
Wholesale Trade	\$90,548	\$94,675	\$4,127	4.6%
Retail Trade	\$36,279	\$39,829	\$3,550	9.8%
Transportation/Warehousing	\$54,937	\$55,777	\$840	1.5%
Information	\$117,433	\$130,561	\$13,128	11.2%
Finance/Insurance	\$133,931	\$144,517	\$10,586	7.9%
Real Estate/Rental/Leasing	\$67,485	\$74,033	\$6,548	9.7%
Professional/Technical Services	\$115,914	\$125,130	\$9,216	8.0%
Management of Companies/Enterprises	\$174,842	\$183,308	\$8,466	4.8%
Administrative/Waste Services	\$46,690	\$51,245	\$4,555	9.8%
Educational Services	\$52,769	\$57,183	\$4,414	8.4%
Health Care/Social Assistance	\$55,456	\$60,419	\$4,963	8.9%
Arts/Entertainment/Recreation	\$37,988	\$48,606	\$10,618	28.0%
Accommodation/Food Service	\$23,839	\$24,852	\$1,013	4.2%
Other Services **	\$37,373	\$41,153	\$3,780	10.1%
Total Government	\$69,273	\$73,202	\$3,929	5.7%
Federal Government	\$83,925	\$84,327	\$402	0.5%
State Government	\$77,081	\$79,344	\$2,263	2.9%
Local Government	\$64,896	\$69,546	\$4,650	7.2%
TOTAL	\$67,353	\$73,957	\$6,604	9.8%

* 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.

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

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FOR JOBS COVERED BY UNEMPLOYMENT INSURANCE
BY COUNTY
2019 and 2020**

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Bergen	\$66,972	\$ 73,426	9.6%
Burlington	\$58,262	\$ 64,983	11.5%
Camden	\$54,335	\$ 59,994	10.4%
Cape May	\$35,378	\$ 39,104	10.5%
Cumberland	\$43,714	\$ 47,563	8.8%
Essex	\$71,042	\$ 77,955	9.7%
Gloucester	\$45,364	\$ 49,010	8.0%
Hudson	\$79,639	\$ 87,551	9.9%
Hunterdon	\$66,196	\$ 70,503	6.5%
Mercer	\$75,664	\$ 83,115	9.8%
Middlesex	\$65,456	\$ 71,389	9.1%
Monmouth	\$55,651	\$ 62,553	12.4%
Morris	\$88,117	\$ 98,801	12.1%
Ocean	\$42,548	\$ 46,821	10.0%
Passaic	\$51,227	\$ 56,463	10.2%
Salem	\$59,607	\$ 63,611	6.7%
Somerset	\$91,866	\$100,212	9.1%
Sussex	\$45,898	\$ 49,761	8.4%
Union	\$71,237	\$ 78,881	10.7%
Warren	\$50,630	\$ 52,648	4.0%
Total Private Sector*	\$67,040	\$74,085	10.5%

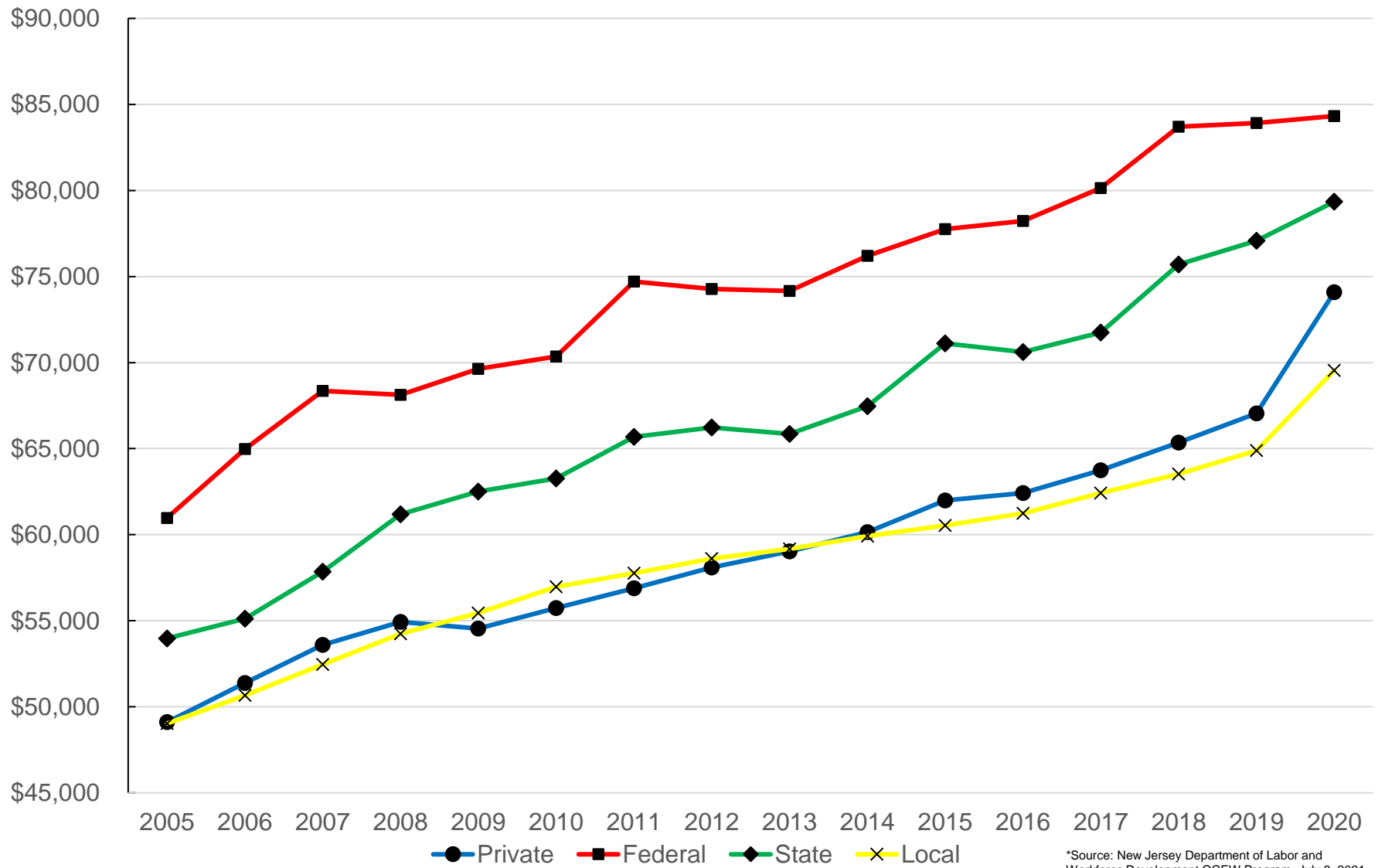
* Includes firms which have failed to provide sufficient geographical information as to the location of the business.

*** 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

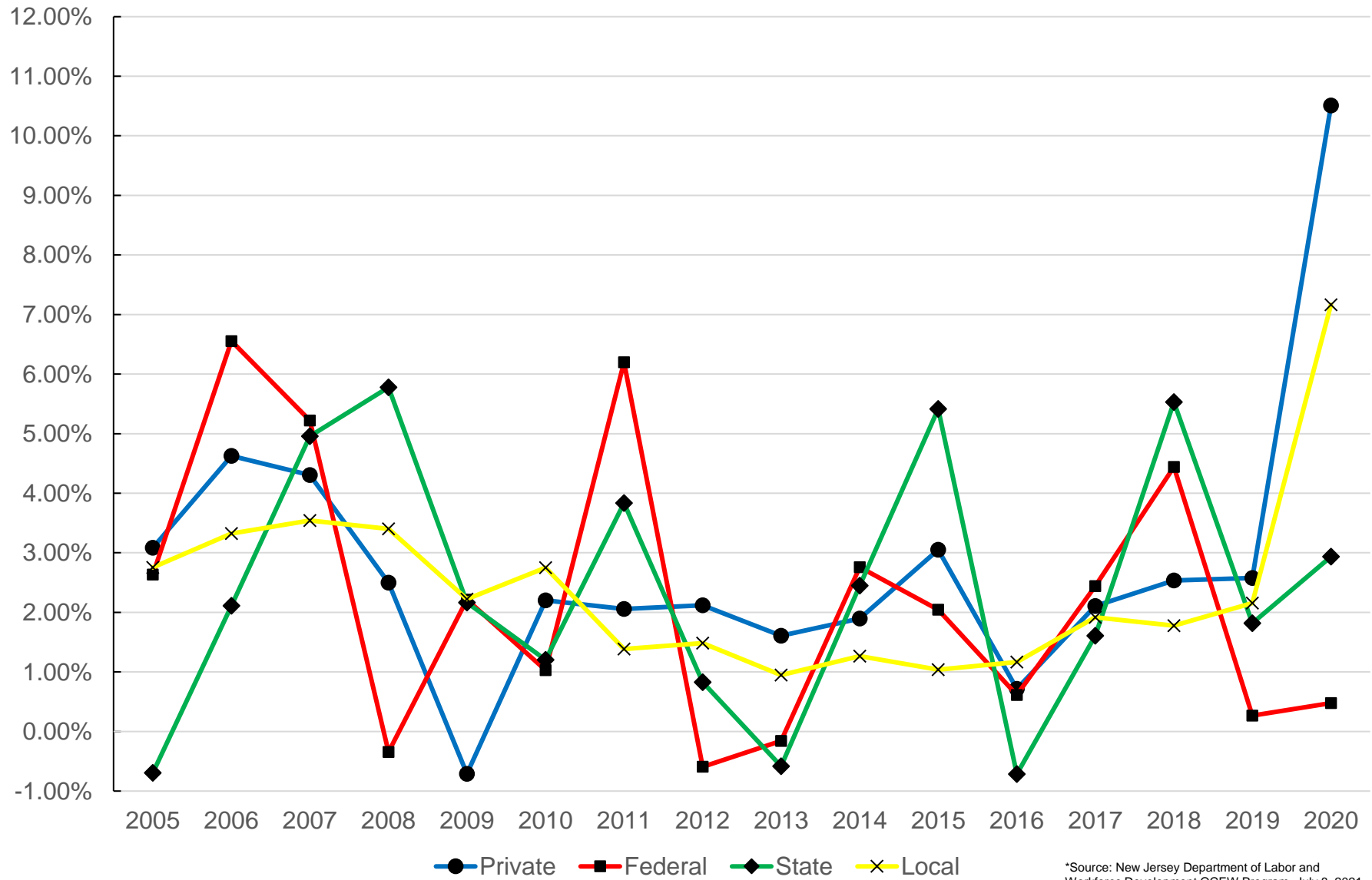
Source: QCEW Program, New Jersey Department of Labor and Workforce Development

New Jersey Average Annual Wage 2005 - 2020*



*Source: New Jersey Department of Labor and Workforce Development QCEW Program, July 8, 2021

New Jersey Percentage Change in Average Annual Wage 2005 - 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

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

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

5	<input type="checkbox"/>	Contract settled without neutral assistance
6	<input type="checkbox"/>	Contract settled with assistance of mediator
7	<input type="checkbox"/>	Contract settled with assistance of fact-finder
8	<input type="checkbox"/>	Contract settled in Interest Arbitration
9	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."

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

Employer:

Employee Organization:

Page 2

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:

Page 3

SECTION VI: Other Economic Items Outside Base Salary and Increases

←Increases→

24	Item Description	Base Year Cost (\$)	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
25	Totals (\$):	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

SECTION VII: Medical Costs**Insurance Costs**

		Base Year	Year 1
26	Health Plan Cost	\$ <input type="text"/>	\$ <input type="text"/>
27	Prescription Plan Cost	\$ <input type="text"/>	\$ <input type="text"/>
28	Dental Plan Cost	\$ <input type="text"/>	\$ <input type="text"/>
29	Vision Plan Cost	\$ <input type="text"/>	\$ <input type="text"/>
30	Total Cost of Insurance	\$ <input type="text"/>	\$ <input type="text"/>

Employer:

Employee Organization:

Page 4

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

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.

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

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

BIENNIAL REPORT

TAB 7

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

Calendar Year	Total Number of Awards Issued	Number of Non-2% Cap Awards	Average Annual Salary Increase Non-2% Cap Awards	Number of 2% Cap Awards	Average Annual Salary Increase 2% Cap Awards	Average Annual Salary Increase All Awards	Total Number of IA Voluntary Settlements	Average Annual Salary Increase of IA Voluntary Settlements
2021	7	7	2.59%	0	N/A	2.59%	6	1.61%
2020	4	4	1.72%	0	N/A	1.72%	4	2.05%
2019	6	5	3.62%	1	2.06%	3.36%	6	1.64%
2018	2	0	N/A	2	2.01%	2.01%	16	1.75%
2017	4	3	1.64%	1	2.05%	1.74%	5	1.86%
2016	8	3	3.83%	5	1.94%	2.65%	7	2.69%
2015	6	0	N/A	6	1.71%	1.71%	9	1.73%
2014	12	6	1.73%	6	1.69%	1.71%	16	1.61%
2013	27	16	1.83%	11	1.89%	1.85%	8	1.96%
2012	37	29	1.77%	8	1.99%	1.82%	29	1.82%

BIENNIAL REPORT

TAB 8

PUBLIC EMPLOYMENT RELATIONS COMMISSION
SALARY INCREASE ANALYSIS
INTEREST ARBITRATION¹

1/1/1993 -12/31/2011

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

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

BIENNIAL REPORT

TAB 9

P.E.R.C. NO. 2021-28

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MERCER COUNTY PROSECUTOR'S OFFICE,

Appellant,

-and-

Docket No. IA-2020-008

PBA LOCAL 339,

Respondent.

SYNOPSIS

The Public Employment Relations Commission remands an interest arbitration award to the arbitrator for a cost-out of his award that clarifies the net annual economic changes and annual costs of all base salary items. The MCPO appealed from the award setting the terms of a successor agreement with a non-supervisory detective unit (PBA) arguing, among other things, that the arbitrator did not cost-out his award. The Commission declines to decide the MCPO's other cost-related objections to the award prior to reviewing the arbitrator's cost-out on remand. The Commission retains jurisdiction and orders the parties to file supplementary briefs with it following receipt of the arbitrator's cost-out and clarification.

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.

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MERCER COUNTY PROSECUTOR'S OFFICE,

Appellant,

-and-

Docket No. IA-2020-008

PBA LOCAL 339,

Respondent.

Appearances:

For the Petitioner, Genova Burns, LLC, attorneys
(Joseph M. Hannon, of counsel and on the brief;
Mohammad Barry, on the brief)

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

DECISION

On December 2, 2020, the Mercer County Prosecutor's Office (MCPO) appealed an interest arbitration award covering the PBA Local 339 (PBA) negotiations unit.^{1/} The PBA consists of approximately 49 non-supervisory detectives employed by the MCPO. The MCPO and PBA are parties to a collective negotiations agreement (CNA) effective from January 1, 2018 through December 31, 2019. On January 17, 2020, the PBA filed a Petition to Initiate Compulsory Interest Arbitration pursuant to N.J.S.A.

^{1/} The PBA's December 16 response opposing the appeal included a request for oral argument. The PBA's request for oral argument is denied given that the parties have fully briefed the issues raised.

34:13A-16(b)(2) to resolve an impasse over the terms of a successor CNA. On July 27, the interest arbitrator was appointed. After the parties failed to resolve their impasse at arbitrator-led mediation sessions, arbitration hearings were held on September 21 and 30, 2020. After the parties submitted post-hearing briefs by October 30, the record was closed.

On November 17, 2020, the arbitrator issued a 54-page conventional award setting the terms of a successor CNA for a term of three years from January 1, 2020 through December 31, 2022. The 2020 salary award provides for continued salary step advancement on the existing salary guide for all detectives, as well as a 1% salary increase at the top step only. The 2021 salary award also provides for salary step advancement and a 1% salary increase at top step only. The 2022 salary award does not provide for any salary step movement or across the board salary increases to any step on the salary guide. However, the 2022 salary award changes all detectives from an 8-hour workday consisting of a 1-hour unpaid lunch break and a 7-hour paid workday (35-hour paid work week; 1,820 paid work hours per year) to an 8-hour paid workday including a one-half hour paid lunch period in which detectives are subject to recall (40-hour paid work week; 2,080 paid work hours per year). The awarded schedule change for 2022 results in the following 2022 salary increase:

"The employees' annual salary shall be based on their January 1,

2021 hourly wage [which was based on 1820 annual hours] multiplied by 2,080 hours." The 2022 salary award also includes the addition of two steps to the salary guide between the 9th step and the 10th (top) step, thereby creating new steps 10 and 11 and making the top step the new step 12. The arbitrator also awarded language stating that the CNA will remain in effect "until a new agreement is reached" to ensure continued salary step movement when the CNA expires.

The award included the following non-salary items:

- A change in the Union Security provision to comply with the Workplace Democracy Enhancement Act (WDEA), by providing that revocation of dues deductions shall take place on the 30th day after the employee's anniversary date;
- A change in the Agency Shop provision to comply with Janus v. AFSCME, Council 31, et al., 138 S. Ct. 2448 (2018), by specifying that a unit employee who is not a union member may only pay a representation fee to the union by automatic payroll deduction by providing written, voluntary consent;
- Deletion of a provision that had permitted employees to take a non-paid leave of absence for up to four months while working for another governmental agency.

The award also included the following changes to the CNA that the parties stipulated to:

- Minor changes to the CNA's Longevity clause clarifying the years of service required and timing of longevity payments;
- A new clause specifying that all departmental investigations shall be conducted in accordance with the rules and regulations set forth in the

New Jersey Attorney General's "Internal Affairs
Policy and Procedures."

The MCPO asserts that the interest arbitration award did not provide a cost-out to show the financial impact of the award on the governing unit and its taxpayers as required by N.J.S.A. 34:13A-16(g)(6), or to show the total net economic changes for each year of the award as required by N.J.S.A. 34:13A-16(d) and N.J.A.C. 19:16-5.9(c). The MCPO argues that by stating the terms of the award without calculating a cost-out, the arbitrator did not show the cost for awarded items such as the change to the 8-hour workday in 2022. The MCPO contends that the award should be vacated and remanded and that the parties may request the arbitrator's permission to supplement the record with additional information for costing out the award.

The MCPO also asserted the following bases for appeal:

- The arbitrator improperly awarded the paid 8-hour workday by relying on mistakes of fact instead of substantial, credible evidence in the record as a whole;
- The arbitrator did not properly consider the "County Entity Budget Cap," P.L. 2015, c. 249, (CEBC) which caps county entity budget requests to be raised by property taxation to 2% of the previous year's budget;
- The arbitrator failed to give due weight to the interests and welfare of the public (N.J.S.A. 34:13A-16(g)(1));
- The arbitrator improperly awarded higher salary increases to defray Chapter 78 health benefit contributions.

The PBA responds that the arbitrator adequately set forth the parameters of his salary award by stating that salary step progression and 1% top step salary increases would occur in 2020 and 2021 and that the 8-hour workday and addition of two salary guide steps would be implemented in 2022. The PBA asserts that the arbitrator determined the cost of the award by stating that it would be less than the \$1.62 per year per County residential taxpayer calculated by the PBA's financial expert, Dr. Caprio, for the PBA's proposal. The PBA argues that even if the arbitrator's award cost-out was insufficient, the award can be remanded for the limited purpose of conducting the required cost-out without any need to submit additional evidence.

The PBA also responds that:

- The arbitrator's award of the paid 8-hour workday and the salary increases associated therewith was thoroughly explained and well-supported by the record evidence;
- The arbitrator evaluated the evidence presented on the impact of the award on the CEBC and determined that the County has previously had enough flexibility in its overall budget to make adjustments to comply with the CEBC;
- The arbitrator properly considered the N.J.S.A. 34:13A-16(g) statutory criteria, including financial impact on the governing body and its taxpayers, and the interests and welfare of the public;
- The arbitrator did not offset increased Chapter 78 health insurance premium contributions with salary increases, but merely recognized their impact on total compensation.

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 16(g) 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.

We first address the MCPO's assertion that the arbitrator failed to provide the requisite cost-out of the award to show the net annual economic changes and enable evaluation of the financial impact of the award under the subsection 16(g) (6) factor. N.J.S.A. 34:13A-16(d) provides, in pertinent part:

The arbitrator shall determine whether the total net annual economic changes for each year of the agreement are reasonable under the nine statutory criteria set forth in subsection g. of this section and shall adhere to the limitations set forth in section 2 of P.L.2010, c.105 (C.34:13A-16.7).

We note that the limitations set forth in N.J.S.A. 34:13A-16.7, i.e., the 2% cap on average annual salary increases (P.L. 2010, c. 105; P.L. 2014, c. 11), have expired for this unit and are not applicable to this award. N.J.S.A. 34:13A-16.9. However, the determination of the "total net annual economic changes for each year of the agreement" in light of the 16(g) statutory factors remains a requirement for non-2% cap interest arbitration awards.

N.J.A.C. 19:16-5.9(c), as adopted in 2018, further specifies the necessary elements required for a cost-out to comply with N.J.S.A. 34:13A-16(d):

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.

[N.J.A.C. 19:16-5.9(c); emphasis added.]

In City of Orange Township, P.E.R.C. No. 2017-13, 43 NJPER 101 (¶31 2016), the Commission remanded an interest arbitration award in a non-2% cap case because it expressed the financial costs of the award as less than half of what the union's financial expert said the employer could afford, rather than specifically showing the net annual economic changes and costs of increases to base salary items. The Commission held:

Here, because the arbitrator did not present calculations showing the total net economic change for each year of the award and did not set out the total dollar costs of the step movement and the 1.5% annual raises over the term of the award, we remand the award to provide for such clarification.

[City of Orange Tp., 43 NJPER 101.]

Similarly, in Cumberland County Prosecutor, P.E.R.C. No. 2012-66, 39 NJPER 32 (¶10 2012), the Commission remanded a non-2% cap interest arbitration award for failing to set forth the total dollar cost of the salary step progression for each year of the award. The Commission reasoned:

Because the terms and spirit of the 2010 amendments to the interest arbitration law are aimed at transparency and consistency, we think it is appropriate for all interest arbitration awards to cost both step movement and percentage increases for each year of the contract. This explanation should be reflected in the interest arbitration award. It is not appropriate for us to perform those calculations for the first time in considering an appeal of an award. Therefore, we remand the award to provide such clarification. We expect that in future cases, interest arbitration awards will

detail the dollar cost of awards, where the same or similar issues are present.

[Cumberland Cty. Pros., 39 NJPER 32, 35.]

Even prior to the enactment of P.L. 2010, c. 105 and the 2% cap, the Commission remanded interest arbitration awards that did not provide the requisite data to exhibit compliance with the statutory requirement to determine whether the total net annual economic changes for each year of the award are reasonable under the 16(g) statutory factors. See, e.g., County of Passaic, P.E.R.C. No. 2010-42, 35 NJPER 451 (¶149 2009); Borough of Paramus, P.E.R.C. No. 2010-35, 35 NJPER 431 (¶141 2009). In County of Union, P.E.R.C. No. 2004-58, 30 NJPER 97, 102 (¶38 2004), the Commission explained: "An arbitrator satisfies N.J.S.A. 34:13A-16d(2) if he or she identifies what new costs will be generated in each year of the agreement; figures the change in costs from the prior year; and determines that the costs are reasonable."^{2/}

The arbitrator's award indicates that he considered the record evidence submitted by both the MCPO and the PBA concerning the projected costs of their respective salary offers, including step movement, longevity, and the change to an 8-hour workday. (Award at 16-22, 31-35, 38-45). The arbitrator explained the

^{2/} The statute cited in Union Cty., Paramus Bor., and Passaic Cty. containing the "total annual net economic changes" language, N.J.S.A. 34:13A-16(d)(2), was the predecessor to the current N.J.S.A. 34:13A-16(d).

terms of his salary award in terms of step movement, salary increases, and the adjustment to an 8-hour workday, and set forth the modified 2022 salary guide including two new steps and the salary increase due to the 8-hour workday. (Award at 40-42, 50-52). In considering the financial impact on the governing unit, 16(g)(6), the arbitrator provided the following analysis comparing the terms of his salary award to the projections from the PBA's financial expert:

Dr. Caprio testified that under the Union's proposal the increase in wages to the bargaining unit, and that the effect on the average Mercer County residential property owner would be \$1.62 per annum. Since the proposed award is less than that sought by the Union, I conclude that the County will be able to afford the increased costs emanating from this award.

[Award at 44.]

Although the arbitrator explained that the overall cost of his award in the context of the average cost per residential taxpayer is less than Dr. Caprio's estimation of the cost of the PBA's proposal, the award did not specifically show the annual costs of his awarded step progression, top step raises, and conversion to the paid 8-hour workday. The award provides a scattergram indicating the numbers of unit members at each step of the salary guide as of the last day of the most recently expired CNA (Award at 15), but does not provide a cost-out of his awarded salary items as applied to the unit members. "Even if

the Commission could marshal all the pertinent financial exhibits and perform its own cost-out calculations from the base salaries and scattergrams provided, Cumberland Cty. Pros., supra, specified that the arbitrator should express these figures in the award and that it is not appropriate for the Commission to attempt to make these calculations for the first time on appeal.” City of Orange Tp., 43 NJPER 101. We find that the arbitrator did not adequately present the total net economic change for each year of the award, including the costs of base salary, increments, and longevity as required by N.J.S.A. 34:13A-16(d) and N.J.A.C. 19:16-5.9(c). Accordingly, we remand the award for the arbitrator to provide a cost-out of his award that clarifies the net annual economic changes including the annual costs of all base salary items.

We note that there is no single correct methodology for costing out once the arbitrator has satisfied the requirements of N.J.S.A. 34:13A-16(d) and N.J.A.C. 19:16-5.9(c) discussed above. For instance, unlike in 2% cap cases, arbitrators may use their discretion in deciding whether the record supports the consideration of savings from retirements or costs from new hires that occurred since the previous CNA expired. Hopewell Tp., P.E.R.C. No. 2020-10, 46 NJPER 117 (¶26 2019); see also In re State, 443 N.J. Super. 380, 390 (App. Div. 2016), certif. den., 225 N.J. 221 (2016) (“except for failure to comply with the 2%

salary cap provision, we will not set aside an interest arbitration award for failure to apply a specific methodology.”)

At this time, we decline to decide the MCPO’s objection to the award of the 8-hour paid workday proposal for the year 2022 and other cost-related issues prior to seeing the full financial impact expressed as part of the arbitrator’s cost-out on remand. We leave to the arbitrator’s discretion any determination of whether to request additional evidence from the parties as he may deem necessary and material to a just determination of the issues in dispute. See N.J.A.C. 19:16-5.7(e).

ORDER

A. The interest arbitration award is remanded for the arbitrator to provide a cost-out of his award that clarifies the net annual economic changes including the annual costs of all base salary items in compliance with N.J.S.A. 34:13A-16(d) and N.J.A.C. 19:16-5.9(c).

B. The interest arbitrator shall provide the cost-out and clarification described in Section A. of this Order within 60 days of receipt of this decision.

C. We retain jurisdiction. Following receipt of the arbitrator’s remand award, the MCPO shall have seven days to file a supplementary brief with the Commission limited to five pages and limited to responding to the cost-out and clarification provided by the arbitrator on remand. The PBA shall then have

seven days from receipt of the MCPO's supplementary brief to file a supplementary response brief limited to five pages and limited to responding to the cost-out and clarification provided by the arbitrator on remand.

BY ORDER OF THE COMMISSION

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

ISSUED: January 28, 2021

Trenton, New Jersey

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MERCER COUNTY PROSECUTOR'S OFFICE,

Appellant,

-and-

Docket No. IA-2020-008

PBA LOCAL 339,

Respondent.

Appearances:

For the Petitioner, Genova Burns, LLC, attorneys
(Joseph M. Hannon, of counsel and on the brief;
Mohammad Barry, on the brief)

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

SYNOPSIS

The Public Employment Relations Commission affirms an interest arbitration remand award after the interest arbitrator on remand provided a cost-out of his award and clarified the net annual economic changes and annual costs of all base salary items. The MCPO appealed from the remand award, asserting that the award does not comply with the County Entity Budget Cap (CEBC), that the record did not support the award of an 8-hour workday, and that the arbitrator failed to give due weight to certain statutory 16(g) factors such as the interests and welfare of the public. The Commission finds that the arbitrator considered the MCPO's and PBA's arguments regarding the impact of the CEBC and supported his determination that the award does not present a CEBC issue by citing to the record including witness testimony, the county's current fiscal condition and revenue capacity, and the fact that the county had previously adjusted to comply with the CEBC despite overtime costs exceeding the budgeted amount. The Commission also finds that the arbitrator supported the award of the 8-hour workday by noting internal and external comparability, costing out the projected salary increases while accounting for reduced costs from overtime savings, and recognizing that despite the Prosecutor's testimony

against the 8-hour workday, the Prosecutor previously but recently advocated for the 8-hour workday due to overtime savings and scheduling flexibility. The Commission finds that the arbitrator's decision to award some elements of each party's proposal, such as the 3-year term proposed by the MCPO, and awarding a delay in the implementation of the PBA's proposed 8-hour workday, was supported by his consideration of the parties' interests and the public interest. Finally, the Commission finds that the arbitrator gave due weight to the 16(g) statutory factors and that he did not improperly offset the PBA's Chapter 78 health insurance premium contributions with salary increases.

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. 2021-42

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MERCER COUNTY PROSECUTOR'S OFFICE,

Appellant,

-and-

Docket No. IA-2020-008

PBA LOCAL 339,

Respondent.

Appearances:

For the Petitioner, Genova Burns, LLC, attorneys
(Joseph M. Hannon, of counsel and on the brief;
Mohammad Barry, on the brief)

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

DECISION

On January 28, 2021, we remanded an interest arbitration award between the Mercer County Prosecutor's Office (MCPO) and PBA Local 339 (PBA). P.E.R.C. No. 2021-28, 47 NJPER 331 (¶79 2021). On remand, we asked the arbitrator to provide a cost-out of his award that clarifies the net annual economic changes including the annual costs of all base salary items. The Commission decision also declined to decide on the MCPO's objections to the award prior to seeing the arbitrator's cost-out on remand. On March 9, 2021, the arbitrator issued a 31-page remand award.

Following the Commission's initial decision, the arbitrator conducted a February 1, 2021 conference call with the parties setting forth a schedule allowing both parties to submit proposed cost-outs of the award and to respond to the other party's cost-out. (Remand Award at 4). After summarizing his initial award, the arbitrator clarified the economic aspects of the award. (Remand Award at 11-25). Specifically, the arbitrator presented, compared, and analyzed the cost-outs provided by the parties. (Remand Award at 23-25). The arbitrator found that the cost-out that includes "breakage" savings accounting for the loss of some employees and replacement of some employees gives a more precise calculation of wage costs. (Remand Award at 24). He also determined that the cost-out that includes the minimum level of expected overtime savings from the change to an 8-hour workday in the third year of the award provides the "real increase in wages." (Remand Award at 24-25). Using that cost-out, the arbitrator provided the annual net economic changes of the award in both dollars and as a percentage. (Remand Award at 24). He calculated the total cost of the award as \$455,079.11 or 11.02% over three years, which is 3.67% annually. (Remand Award at 24). The arbitrator concluded that the awarded wage increase is reasonable and in the public interest. (Remand Award at 25).

Pursuant to the Commission Order in P.E.R.C. No. 2021-28, the MCPO and PBA submitted supplemental briefs responding to the

remand award's cost-out and clarification of the economic award. The MCPO asserts that although the remand award provides cost-outs, it is non-compliant with the "New County Entity Budget Cap," P.L. 2015, c. 249, (CEBC) which caps county entity budget requests to be raised by property taxation to 2.0% of the previous year's budget. It argues that the arbitrator did not calculate if the award complies with the CEBC, but suggested that the County could make appropriate budgetary adjustments because it had previously. The MCPO contends that the award in 2022 will create substantial CEBC issues and therefore violate the provisions of N.J.S.A. 34:13A-16(g)(5), (6), and (9) of the Act concerning the lawful authority of the employer, the financial impact on the governing unit, its residents, and taxpayers, and the statutory restrictions placed on the employer, including property tax levy caps.

The MCPO also asserts that the arbitrator improperly awarded the 8-hour workday by relying too heavily on two letters from Prosecutor Onofri in favor of the 8-hour work day and disregarding his testimony opposing it. It argues that due to the 8-hour workday change, the arbitrator's award of the MCPO's proposed three-year contract is effectively more costly per year than if the arbitrator had awarded the PBA's proposed five-year contract. Finally, the MCPO contends that the arbitrator failed to give due weight to the interests and welfare of the public

(N.J.S.A. 34:13A-16(g)(1)) and improperly awarded higher salary increases to defray Chapter 78 health benefit contributions.

The PBA asserts that the arbitrator properly considered the CEBC because he acknowledged the MCPO's argument on the issue, evaluated the evidence presented on the impact of the award on the CEBC, and determined that the County has previously had enough flexibility in its overall budget to make appropriate adjustments to comply with the CEBC. It argues that the arbitrator's award of the paid 8-hour workday and the salary increases associated therewith was thoroughly explained and well-supported by the record evidence that shows it would eliminate costly and unpredictable overtime caused by employees having to work through their unpaid lunches in the current 7-hour paid workday, that the County Prosecutor had previously supported it, that it would be consistent with what the County voluntarily agreed to with its other law enforcement units, and that it is supported by comparability data from other county prosecutor's offices. The PBA also asserts that the arbitrator properly considered the N.J.S.A. 34:13A-16(g) statutory criteria, including financial impact on the governing body and its taxpayers, and the interests and welfare of the public. The PBA argues that the arbitrator did not credit the PBA with Chapter 78 contributions by offsetting them with salary increases, but

merely recognized that Chapter 78 contributions in the past and going forward detract from salary increases.

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 16(g) 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-16(g); N.J.A.C. 19:16-5.9; Lodi.

We first consider the MCPO's assertion that the arbitrator failed to properly consider the 2% CEBC and therefore did not give proper weight to statutory factors 16(g)(5), lawful authority of the employer, 16(g)(6), financial impact, and 16(g)(9), statutory restrictions. P.L. 2015, c. 249 applies to certain county entity budget entities, including county prosecutor's offices, and was first applicable to the 2017 budget year. It limits any increase in the portion of that entity's budget request that is to be raised by property taxes to 2% of the previous year's budget request. See N.J.S.A. 40A:4-45.45b(b). The county entity's budget request should also include amounts to be funded by federal or state funds, fees raised by the County entity, or other sources. N.J.S.A. 40A:4-

45.45b(a). N.J.S.A. 2A:158-7 permits the county prosecutor to seek approval from the county's Superior Court assignment judge to exceed the budget approved by the county freeholders.

The award indicates that the arbitrator considered the MCPO's assertion that the PBA's proposal would exceed the 2% CEBC cap for the entire MCPO and its assertion that Dr. Caprio failed to take the CEBC cap into account. (Award at 34-35). The arbitrator also considered the PBA's arguments that: the calculation of the CEBC must be based on the entire MCPO budget; both the PBA's and MCPO's proposals exceeded the cap as testified to by County Chief Financial Officer Miller; the County has previously had the flexibility to make necessary budget adjustments and has not had a CEBC problem despite previous overtime expenditures exceeding the budgeted amounts; and the Prosecutor could file a "Bigley Action" (N.J.S.A. 2A:158-7 request to county Superior Court assignment judge) to request a budgetary enhancement. (Award at 22, 29).

The arbitrator explained his analysis of the effect of the 2% CEBC as follows:

The County also contends that the salary increase proposed by the Union would fail to comply with the County Entity Budget Cap, N.J.S.A. §40A:4-45.44. This statute limits the budget increases for Constitutional officers such as the Prosecutor to annual increases of two percent. However, that figure concerns the entire Prosecutor's office budget, and while personnel costs represent a significant portion of the

Prosecutor's Office's costs, the Union has established that unlike the rigid hard cap which recently lapsed, there is more flexibility in the County Entity Budget Cap. On cross-examination, Chief Financial Officer Miller testified that when the County Entity Budget Cap is in danger of being reached, the County has in the past made appropriate adjustments to comply with the statute. Also, on cross-examination, CFO Miller conceded that the Prosecutor's budget for overtime was frequently understated, and that annual overtime costs often exceeded the budgeted amount.

[Award at 39.]

On remand, the arbitrator reiterated his justification for finding that the award does not present a CEBC issue, supported by citation to CFO Miller's testimony. (Remand Award at 15).

The arbitrator further examined the impact of the 2% CEBC on the award in light of the 16(g)(5), (6), and (9) statutory factors:

I am also required to consider the lawful authority of the County and the financial impact on the governing unit. N.J.S.A. 34:13-16(g)(5)&(6). As noted above, the County has stressed that the "Constitutional Officer Cap." P.L. 2015 c. 249 restricts the ability of the Prosecutor to increase his budget by more than two percent per annum. However, constitutional officers such as the Prosecutor have a broad range of discretion in setting their budgets and in reallocating funds to operate and manage their offices. I accept the testimony of Dr. Caprio, that the County is in good fiscal condition, and has a healthy fund balance and that the County had excess statutory levy capacity. . . . The final statutory provision to be reviewed is N.J.S.A. 34:13-16(g)(9) which requires me to consider the statutory restrictions placed on

the Employer. I have discussed the Constitutional Officer Cap P.L. 2015 c. 249 above, and I conclude that there is no statutory impediment to this Award.

[Award at 44, 45.]

On remand, the arbitrator reiterated this analysis with additional references to the record and noting that Dr. Caprio testified that the County had over \$2.8 million in unused revenue capacity. (Remand Award at 22, 23). Based on the above, we find that the arbitrator analyzed the parties' arguments and the record evidence on the CEBC, including testimony from the financial expert and the County's CFO, to reasonably conclude that the economic terms of his award are not precluded by the statutory budget constraints of the CEBC.

We next address the MCPO's appeal of the award of the 8-hour paid workday for the year 2022. The award indicates that the arbitrator considered both the MCPO's argument that the proposal would result in a 14.3% salary increase when implemented, and the PBA's arguments regarding projected overtime savings, previous support by the Prosecutor, and both internal and external comparability. (Award at 16-20, 27-28, 30-31, 38-39). Contrary to the MCPO's assertion, the arbitrator acknowledged Prosecutor Onofri's testimony opposing the 8-hour workday; however, he balanced that testimony against Prosecutor Onofri's previous but recent advocacy for the 8-hour workday which included letters setting forth overtime savings and scheduling flexibility from

changing to the 8-hour workday. (Award at 38-39; Remand Award at 12-15).

In the initial award, the arbitrator generally accounted for the increased salary costs of the 8-hour workday proposal by supplying a conversion factor to multiply by the previous year's hourly wage rate to calculate the new higher salary levels commensurate with the increased work hours. (Award at 40-41). In the remand award, the arbitrator's cost-out specifically accounted for the projected minimum overtime savings from the change to the 8-hour workday. (Remand Award at 23-25). The arbitrator's calculation of projected overtime savings was supported by the record, including from Prosecutor Onofri's own estimate during cross-examination. (Remand Award at 14, 24). The arbitrator's cost-out of the percentage salary increase in 2022, including both the increase caused by the change to the 8-hour workday and the concomitant reduction in overtime costs, was 4.94%, which is significantly less than the MCPO's 14.3% calculation. (Remand Award at 24-25). Accordingly, the arbitrator determined that in the context of the cost of the full award, which amounts to 11.02% over three years (3.67% annually), the 8-hour workday and overall wage increase is reasonable and in the public interest. We find that the arbitrator's award of the 8-hour workday in the third year of the award is supported by the record evidence demonstrating comparability with other units

internally and externally, operational efficiencies recently touted by the Prosecutor, and by the overall financial impact on the cost-out of the award when accounting for minimum overtime savings.

We next address the arbitrator's award of a "blended proposal" that included some elements of each party's proposals, including the MCPO's three-year contract proposal and the PBA's 8-hour workday proposal. We find that the arbitrator provided a reasonable explanation for awarding the MCPO's three-year contract proposal with modest salary increases, rather than the PBA's five-year contract proposal, as well as awarding the 8-hour workday but delaying its implementation until the third year of the award rather than awarding the change and related salary increases immediately. (Award at 39-41; Remand Award at 15-17). The arbitrator balanced the parties' interests, as well as the public interest, regarding both contract duration and the overall costs of the award over the three-year term including the 8-hour workday. (Remand Award at 15-18, 23-25).

Finally, we decline to vacate the award based on the MCPO's arguments that the arbitrator failed to give due weight to statutory factors 16(g)(1), (3), and (7). Specifically, we reject the MCPO's contention that the award improperly offset or made up for PBA unit members' Chapter 78 health premium contributions. The award indicates no credit or offset for these

increased health insurance costs, but properly takes them into account as part of the detectives' "overall compensation" (16(g)(3)) and "cost of living." (16(g)(7)). (Award at 43-44).

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. The remand award is affirmed.

ORDER

The interest arbitration remand award is affirmed.

BY ORDER OF THE COMMISSION

Chair Weisblatt, Commissioners Bonanni, Ford, Jones and Voos voted in favor of this decision. Commissioner Papero recused himself.

ISSUED: April 29, 2021

Trenton, New Jersey

P.E.R.C. NO. 2021-34

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PASSAIC COUNTY SHERIFF'S OFFICE,

Respondent,

-and-

Docket No. IA-2021-005

PBA LOCAL 197,

Appellant.

SYNOPSIS

The Public Employment Relations Commission remands an interest arbitration award to the arbitrator for a cost-out of his award that clarifies the net annual economic changes and annual costs of all base salary items. The PBA, Local 197 (PBA), which represents a non-supervisory correctional officers unit, appealed from the award setting the terms of a successor agreement with the Passaic County Sheriff's Office (County) arguing, among other things, that the arbitrator did not cost-out his award. The Commission declines to decide the PBA's other related objections to the award prior to reviewing the arbitrator's cost-out on remand. The Commission retains jurisdiction and orders the parties to file supplementary briefs following receipt of the arbitrator's cost-out and clarification.

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. 2021-34

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PASSAIC COUNTY SHERIFF'S OFFICE,

Respondent,

-and-

Docket No. IA-2021-005

PBA LOCAL 197,

Appellant.

Appearances:

For the Respondent, Florio Perrucci Steinhardt Cappelli
Tipton & Taylor, LLC, attorneys (Lester E. Taylor, III,
of counsel and on the brief)

For the Appellant, Crivelli & Barbati, LLC, attorneys
Frank M. Crivelli, of counsel and on the brief)

DECISION

On January 12, 2021, the Patrolmen's Benevolent Association, Local 197 (PBA or Local 197), appealed an interest arbitration award covering the PBA's negotiations unit. The PBA is the majority representative of non-supervisory correctional officers employed by the Passaic County Sheriff's Office (County). The County and PBA are parties to a collective negotiations agreement (CNA) effective from January 1, 2007 through December 31, 2014, and a Memorandum of Agreement (MOA) effective from January 1, 2015 through December 31, 2018. On September 3, 2020, the PBA filed a Petition to Initiate Compulsory Interest Arbitration pursuant to N.J.S.A. 34:13A-16(b)(2) to resolve an impasse over

the terms of a successor CNA. On September 17, 2020, the interest arbitrator was appointed. After the parties failed to resolve their impasse at arbitrator-led mediation sessions, arbitration hearings were held on October 27 and 29. After the parties submitted post-hearing briefs by December 5, the record was closed.

On December 21, 2020, the arbitrator issued a 58-page conventional award setting the terms of a successor CNA for a term of five years, from January 1, 2019 through December 31, 2023.

The PBA asserts that the interest arbitration award did not provide a cost-out to show the financial impact of the award on the governing unit and its taxpayers as required by N.J.S.A. 34:13A-16(g)(6), or to show the total net economic changes for each year of the award as required by N.J.S.A. 34:13A-16(d) and N.J.A.C. 19:16-5.9©. The PBA cites two passages in the award that, it contends, exemplify the award's failure to provide an adequate cost-out under the applicable law. Specifically, page 49 of the award states, in pertinent part:

Under this Award with step movement in each year of the agreement and the modest increase of 1% for those at the top step and off-guide for each year of the CNA, the base salary of the bargaining unit will increase from \$23,186,793 to \$27,000,483 for an average annual increase of 3.106%

The PBA contrasts the above-quoted statement with the following on page 51 of the award:

The cost of step movement plus the 1% increase for those at the top step and those off-guide for the five years of the agreement will be at \$1,677,336.73 or 6.98%.

The PBA argues that both statements attempt to set forth the cost of the award over the life of the agreement, yet neither specifies the total economic cost of each year of the award. Nor did the award provide or refer to a table or scattergram to support the statements. The PBA submits that an annual increase of 3.106% over the course of five years (the duration of the agreement), as set forth in the first statement, would produce a total percentage increase of 15.53% ($3.106\% \times 5$). The PBA argues that this is not consistent with the second statement's conclusion that the percentage increase over five years is 6.98%. The PBA further argues that the two statements provide different dollar amounts for base salary costs over five years: the first statement indicates that this will exceed \$3 million (the difference between \$23,186,793 and \$27,000,483); while the second statement notes that the base salary increases by approximately \$1.6 million. The PBA contends the disparities between the two statements indicate plain error, and that the statements cannot be logically reconciled.

The PBA links the arbitrator's conflicting statements regarding the ultimate cost of the salary award to his reliance

on certain cost-outs, which he ordered each party to calculate and produce after the record was closed. The PBA's cost-out utilized employee "breakage" (i.e., reductions in costs resulting from retirements or otherwise, as well as any increases in costs stemming from promotions or new hires after the expiration of the most recent CNA). The County's cost-out did not utilize breakage. Moreover, neither party accepted the other's calculations, and they so informed the arbitrator.

The PBA further contends that the cost of the award given in the statement quoted from page 49 of the award is derived directly from a cost-out provided by the County, while the financial calculation in the statement quoted from page 51 was derived from the PBA's cost-out. The PBA asserts that the award did not set forth the arbitrator's cost-out in detail or otherwise explain his reasoning regarding the conflicting statements. The PBA further argues that the arbitrator improperly relied on the parties' cost-outs, because neither party had an opportunity to challenge or "vet" their accuracy, and they are not part of the evidence in the record.

The PBA contends that the award should be vacated and remanded and that the parties may request the arbitrator's permission to supplement the record with additional information for costing out the award.

The PBA also asserted the following bases for appeal:

- The arbitrator's salary award was based on mistakes of fact and law; as such, it was not based on substantial, credible evidence in the record as a whole and therefore it must be rejected by the Commission in its entirety.
- The arbitrator's salary award failed to give due weight to the financial impact on the governing unit and the savings the County will realize as a result of the elimination of the traditional healthcare plan.
- The Commission properly determined "good cause" existed to accept the PBA's appeal as timely filed under the unique circumstances of this case in accordance with N.J.A.C. 19:10-3.1.

In response, the County acknowledges that the award contains two separate percentage increases, either 3.106% or 6.98%, when calculating the overall cost of the salary award. The County also acknowledges that these figures are derived from scattergram/cost-outs the arbitrator asked both parties to produce after the record was closed, and that the discrepancy between them was mostly due to the PBA's utilization of breakage. The County allows that, at most, the award could be remanded for the sole purpose of specifying the cost of the award. But it insists that any such remand must be conducted without re-opening the record, as an additional hearing is neither required nor necessary.

Notwithstanding, the County disputes the PBA's claim that the award's inconsistent figures regarding the cost of the salary award warrant a remand. The County argues that the award's

inclusion of a salary guide, on page 54, establishes its compliance with N.J.S.A. 34:13A-16.7, as construed by the Commission.

The County also asserted the following bases for denying the PBA's appeal:

- The salary award was a reasonable determination based upon substantial evidence in the record.
- The arbitrator gave proper weight to the financial impact on the governing unit as a result of the elimination of the traditional healthcare plan.
- The PBA cannot overcome the considerable deference that the Commission must give to an interest arbitration award.
- The Commission abused its discretion by deciding to hear the PBA's untimely appeal.

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 16(g) 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.

We first address the PBA's assertion that the arbitrator failed to provide the requisite cost-out of the award to show the net annual economic changes and enable evaluation of the financial impact of the award under the subsection 16(g)(6) factor. N.J.S.A. 34:13A-16(d) provides, in pertinent part:

The arbitrator shall determine whether the total net annual economic changes for each year of the agreement are reasonable under the nine statutory criteria set forth in subsection g. of this section and shall adhere to the limitations set forth in section 2 of P.L.2010, c.105 (C.34:13A-16.7).

We note that the limitations set forth in N.J.S.A. 34:13A-16.7, i.e., the 2% cap on average annual salary increases (P.L. 2010, c. 105; P.L. 2014, c. 11), have expired for this unit and are not applicable to this award. N.J.S.A. 34:13A-16.9. However, the determination of the "total net annual economic changes for each year of the agreement" in light of the 16(g) statutory factors remains a requirement for non-2% cap interest arbitration awards.

N.J.A.C. 19:16-5.9©, as adopted in 2018, further specifies the necessary elements required for a cost-out to comply with N.J.S.A. 34:13A-16(d):

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.

[N.J.A.C. 19:16-5.9©; emphasis added.]

In City of Orange Township, P.E.R.C. No. 2017-13, 43 NJPER 101 (¶31 2016), the Commission remanded an interest arbitration award in a non-2% cap case because it expressed the financial costs of the award as less than half of what the union's financial expert said the employer could afford, rather than specifically showing the net annual economic changes and costs of increases to base salary items. The Commission held:

[B]ecause the arbitrator did not present calculations showing the total net economic change for each year of the award and did not set out the total dollar costs of the step movement and the 1.5% annual raises over the term of the award, we remand the award to provide for such clarification.

[City of Orange Tp., 43 NJPER 101.]

Similarly, in Cumberland County Prosecutor, P.E.R.C. No. 2012-66, 39 NJPER 32 (¶10 2012), the Commission remanded a non-2% cap interest arbitration award for failing to set forth the total dollar cost of the salary step progression for each year of the award. The Commission reasoned:

Because the terms and spirit of the 2010 amendments to the interest arbitration law are aimed at transparency and consistency, we think it is appropriate for all interest arbitration awards to cost both step movement and percentage increases for each year of the contract. This explanation should be reflected in the interest arbitration award. It is not appropriate for us to perform those calculations for the first time in considering an appeal of an award. Therefore, we remand the award to provide such clarification. We expect that in future cases, interest arbitration awards will detail the dollar cost of awards, where the same or similar issues are present.

[Cumberland Cty. Pros., 39 NJPER 32, 35.]

Even prior to the enactment of P.L. 2010, c. 105 and the 2% cap, the Commission remanded interest arbitration awards that did not provide the requisite data to exhibit compliance with the statutory requirement to determine whether the total net annual economic changes for each year of the award are reasonable under the 16(g) statutory factors. See, e.g., County of Passaic, P.E.R.C. No. 2010-42, 35 NJPER 451 (¶149 2009); Borough of Paramus, P.E.R.C. No. 2010-35, 35 NJPER 431 (¶141 2009). In County of Union, P.E.R.C. No. 2004-58, 30 NJPER 97, 102 (¶38

2004), the Commission explained: "An arbitrator satisfies N.J.S.A. 34:13A-16d(2) if he or she identifies what new costs will be generated in each year of the agreement; figures the change in costs from the prior year; and determines that the costs are reasonable."^{1/}

The arbitrator's award indicates that he considered the record evidence submitted by both the County and the PBA concerning the projected costs of their respective salary offers. (Award at 22-43). The arbitrator explained the terms of his salary award in terms of step movement and salary increases, including for those at the top step and off-guide (Award at 48-49), and set forth a salary guide for the years 2018 through 2023. (Award at 54-55).

However, the arbitrator did not explain why the award appears to provide two different percentage increases and dollar amounts for the overall cost of the award. As noted, on page 49 he expressed those figures as an average annual increase of 3.106%, based on a total base-salary increase from \$23,186,704 to \$27,00,483; while on page 51 of the award he expressed those figures as a five-year total of 6.98%, based on a total dollar cost of step movement (inclusive of top-step and off-guide

^{1/} The statute cited in Union Cty., Paramus Bor., and Passaic Cty. containing the "total annual net economic changes" language, N.J.S.A. 34:13A-16(d)(2), was the predecessor to the current N.J.S.A. 34:13A-16(d).

increases) of \$1,677,336. The award provides a salary guide, but it does not provide a cost-out of his awarded salary items as applied to a scattergram of the unit members. "Even if the Commission could marshal all the pertinent financial exhibits and perform its own cost-out calculations from the base salaries and scattergrams provided, Cumberland Cty. Pros., supra, specified that the arbitrator should express these figures in the award and that it is not appropriate for the Commission to attempt to make these calculations for the first time on appeal." City of Orange Tp., 43 NJPER 101.

We find that the arbitrator did not adequately present the total net economic change for each year of the award, including the costs of base salary, increments, and longevity as required by N.J.S.A. 34:13A-16(d) and N.J.A.C. 19:16-5.9©. Accordingly, we remand the award for the arbitrator to provide a cost-out of his award that clarifies the net annual economic changes including the annual costs of all base salary items.

We note that there is no single correct methodology for costing out once the arbitrator has satisfied the requirements of N.J.S.A. 34:13A-16(d) and N.J.A.C. 19:16-5.9© discussed above. For instance, unlike in 2% cap cases, arbitrators may use their discretion in deciding whether the record supports the consideration of savings from retirements or costs from new hires that occurred since the previous CNA expired, either as part of

the overall costing or as a separate collateral analysis.

Hopewell Tp., P.E.R.C. No. 2020-10, 46 NJPER 117 (¶26 2019); see also In re State, 443 N.J. Super. 380, 390 (App. Div. 2016), certif. den., 225 N.J. 221 (2016) (“except for failure to comply with the 2% salary cap provision, we will not set aside an interest arbitration award for failure to apply a specific methodology.”)

We are not persuaded that the PBA’s appeal should be rejected as untimely. We find that under the circumstances presented, wherein the PBA ultimately filed its appeal one day late due to confusion surrounding service of the award as well as a reasonable misunderstanding of language used in a communication from PERC, it was fully within the Commission’s discretion, pursuant to N.J.A.C. 19:10-3, to accept the appeal as timely filed so as to “effectuate the purposes of the Act.”

At this time, we decline to decide the PBA’s other objections to the award prior to seeing the full financial impact expressed as part of the arbitrator’s cost-out on remand. We leave to the arbitrator’s discretion any determination of whether to request additional evidence from the parties as he may deem necessary and material to a just determination of the issues in dispute. See N.J.A.C. 19:16-5.7(e).

ORDER

A. The interest arbitration award is remanded for the arbitrator to provide clarification as to the cost-out of the award of the net annual economic changes including the annual costs of all base salary items in compliance with N.J.S.A.

34:13A-16(d) and N.J.A.C. 19:16-5.9©.

B. The interest arbitrator shall provide the cost-out and clarification described in Section A. of this Order within 60 days of receipt of this decision.

C. We retain jurisdiction. Following receipt of the arbitrator's remand award, the PBA shall have seven days to file a supplementary brief with the Commission limited to five pages and limited to responding to the cost-out and clarification provided by the arbitrator on remand. The County shall then have seven days from receipt of the PBA's supplementary brief to file a supplementary response brief limited to five pages and limited to responding to the cost-out and clarification provided by the arbitrator on remand.

BY ORDER OF THE COMMISSION

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

ISSUED: March 15, 2021

Trenton, New Jersey

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PASSAIC COUNTY SHERIFF'S OFFICE,

Respondent,

-and-

Docket No. IA-2021-005

PBA LOCAL 197,

Appellant.

SYNOPSIS

The Public Employment Relations Commission affirms a remanded interest arbitration award between the Passaic County Sheriff's Office and PBA Local 197. Rejecting the PBA's assertion that the arbitrator committed plain error by ordering the parties to submit additional cost-outs on remand, and utilizing those cost-outs in his remand award, the Commission finds that its remand Order empowered the arbitrator to do so; and the facts he adduced therefrom were verifiable and comported with the relevant scattergram evidence in the record. The PBA did not dispute that evidence or identify any particular details in the County's cost-out on remand that could not also be so verified, or that could only be tested through the cross-examination of witnesses or through the presentation of other evidence not already in the record. The Commission further finds that the arbitrator properly declined to consider an award covering the same employer but a different bargaining unit that was issued some four months after the record here closed, finding its consideration was outside the limited scope of the remand Order. But even if it had been considered, the Commission does not find that the two awards are unreasonably inconsistent with one another, to a degree that would require reversal or modification of the remand award.

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

P.E.R.C. NO. 2021-54

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PASSAIC COUNTY SHERIFF'S OFFICE,

Respondent,

-and-

Docket No. IA-2021-005

PBA LOCAL 197,

Appellant.

Appearances:

For the Respondent, Florio Perrucci Steinhardt Cappelli
Tipton & Taylor, LLC, attorneys (Lester E. Taylor, III,
of counsel and on the brief)

For the Appellant, Crivelli & Barbati, LLC, attorneys
Frank M. Crivelli, of counsel and on the brief)

DECISION

On March 15, 2021, we remanded an interest arbitration award between the Passaic County Sheriff's Office (County) and PBA Local 197 (PBA). P.E.R.C. No. 2021-34, __ NJPER __ (¶____). On remand, we asked the arbitrator to provide a cost-out of his award that clarifies the net annual economic changes including the annual costs of all base salary items. On May 13, 2021, the arbitrator issued a 30-page remand award.

Following the Commission's initial decision, the arbitrator conducted a March 19, 2021 conference call with the parties setting forth a schedule allowing both parties to submit proposed cost-outs of the award and to respond to the other party's cost-out. (Remand Award at 3.) After summarizing his initial award, the arbitrator clarified the economic aspects of the award. (Remand Award at 21-24.) Specifically, the arbitrator presented, compared, and analyzed the cost-outs provided by the parties. (Id.) The arbitrator found that the PBA's cost-out, which includes "breakage" savings, accounting for the loss of some employees and replacement of others, was more accurate. (Remand Award at 24.) However, he also determined that the County's cost-out made valid points, including that the PBA's cost-out failed to include two employees in its calculations, erroneously asserting one had retired and the other had resigned, and that employees at step 4 of the salary guide earned a higher salary than was indicated in the PBA's cost-out. (Remand Award at 23-24). The arbitrator explains that he verified the County's claims, respectively, by locating employees at the same step in the scattergram and tracing their salary progressions, and by reviewing the scattergram and locating employees whose pay was improperly listed. (Id., footnotes 8 and 9.) The arbitrator then revised the PBA's cost-out accordingly. Using the revised cost-out, the arbitrator provided the net annual economic changes

including the annual costs of all base salary items. (Remand Award at 24). He calculated the total cost of the award, as a percentage, as being 7.6% over the life of the contract, which equals a 1.52% average increase for each year of the CNA. (Id.)

The PBA and the County submitted supplemental briefs following the issuance of the remand award, as permitted by the remand Order in P.E.R.C. No. 2021-34, which directed that the parties' post-remand submissions be "limited to five pages and limited to responding to the cost-out and clarification provided by the arbitrator on remand." Id. at 13. Our decision also left "to the arbitrator's discretion any determination of whether to request additional evidence from the parties as he may deem necessary and material to a just determination of the issues in dispute." Id. at 12.

The PBA asserts that the arbitrator committed "plain error" by ordering the parties to submit additional cost-outs that were utilized in constructing his remand award, resulting in the County producing a cost-out that differed from those it submitted prior to the issuance of the initial arbitration award. The PBA asserts that the Commission must "reject the remand award in totality" because it did not have an opportunity to challenge the veracity of any of the County's cost-outs through the presentation of witnesses and evidence.

The PBA next asserts that the arbitrator committed plain

error by failing to consider Passaic County Sheriff's Office and PBA Local 286, IA-2021-004, an award issued by a different arbitrator on April 27, 2021, subsequent to the December 21, 2020 initial award in this matter. The PBA contends that, in light of a long-standing history of wage parity between Local 197 and Local 286, their prior history as a single bargaining unit, and the fact that both units work for the Passaic County Sheriff, the award in Passaic County, IA-2021-004 (which specified a 2% annual salary increase for Local 286 members from 2019 through 2023), is directly applicable to considering a "pattern of settlement" and for purposes of evaluating comparability of wages, salaries, hours, and conditions of employment of other law enforcement personnel in the same jurisdiction, citing N.J.S.A. 34:13A-16g(2)(c). The PBA further argues that a pattern of settlement is encompassed within N.J.S.A. 34:13A-16g(8), as a factor bearing on the continuity and stability of employment and as one of the items traditionally considered in determining wages. The PBA contends that a consideration of Passaic County, IA-2021-004, was within the scope of Commission's Remand Order, and the fact that it was issued on April 27, 2021, after the record had closed in the instant matter, was not grounds for the arbitrator to refuse to consider it, because as decisional precedent (which no party appealed), it does not have to be included in the evidentiary record. The PBA further emphasizes that in his analysis of

"breakage," the arbitrator properly considered another award, Mercer County Prosecutor's Office, IA-2020-008, that was issued on April 29, 2021, two days after Passaic County, IA-2021-004.

The County objects to the PBA's post-remand submission in its entirety on procedural grounds, arguing that by incorporating prior submissions by reference and attaching them as exhibits, the PBA exceeded the five-page limit set forth in the remand Order.

Next the County argues that a consideration of Passaic County, IA-2021-004, was outside the scope of the remand and the arbitrator's purview, because his role on remand was solely to calculate a cost-out of the initial award, not change or revise the award itself. The County argues that consideration of the Passaic County award would have been inappropriate, as it constitutes superfluous evidence, citing N.J.A.C. 1:1-2.1, which defines "evidence" as "the means from which inferences may be drawn as a basis of proof in the conduct of contested cases," and "[c]lose of the record" as "that time when the record for a case closes and after which no subsequently submitted information may be considered." The County argues that while it would have been appropriate for the arbitrator to consider decisional precedent or a change in the law that occurred after the close of evidence but before he issued his initial decision, the Passaic County, IA-2021-004, award does not fit those parameters, because it was

not issued until approximately 4 months after the close of evidence and the issuance of the initial award.

The County concedes that a pattern of settlement is relevant, but asserts that the variation between awards was based upon a substantial difference in the facts and circumstances of each matter, including as to the unions' size, salaries, training, job duties/responsibilities, etc. Therefore, the County argues, the arbitrator in IA-2021-004 was not bound to provide an identical award to the one issued here, and neither was the arbitrator in this matter bound by the award in IA-2021-004. Any consideration of the IA-2021-004 award by the arbitrator in this matter would have raised issues of fact, which was outside the scope of his review, and properly disregarded. The County disagrees with the arbitrator's decision in this matter relating to the utilization of breakage, but recognizes that he relied on the recent decision in Mercer County, IA-2020-008, only to affirm his legal conclusion about breakage, not to decide an issue of fact.

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 N.J.S.A. 34:13A-16(g) 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-16(g); N.J.A.C. 19:16-5.9; Lodi.

We first consider, and reject, the PBA's assertion that the arbitrator committed plain error by ordering the parties to submit additional cost-outs on remand, and utilizing those cost-outs in his remand award. Our remand Order empowered the arbitrator with the discretion to do so. The arbitrator explained why he found the facts he adduced from County's cost-out on remand to be verifiable: they comported with the relevant scattergram evidence in the record. The PBA does not dispute the veracity of the scattergram evidence, and otherwise identifies no particular details in the County's cost-out on remand that could not also be verified through the record evidence, or that could only be tested through the cross-examination of witnesses or through the presentation of other evidence not already in the record.

We next address the PBA's assertion that the arbitrator committed plain error by failing to consider the award issued in Passaic County, IA-2021-004, which was issued on March 9, 2021. The PBA, over the County's objection, asked him to consider it on remand but, the arbitrator noted, "PERC's Order has directed me to cost-out the Initial Award. Therefore, I will not include [the IA-2021-004] Award in my analysis." (Remand Award at 15,

n.4.) We do not find that the arbitrator's refusal to consider the IA-2021-004 award on remand constitutes reversible error, or requires modification of the award on "pattern of settlement" grounds. Units of correctional officers and their superiors employed by the County have been bargaining separately since 2015. (Initial Award at 20-21; Remand Award at 13.) The arbitrator discussed the standards applicable to a pattern of settlement in both his initial award and on remand, quoting Tp. of West Windsor and P.B.A. Local 271, IA-2019-014 (2019). (Initial Award at 46-47; Remand Award at 16-17.)

We find that the arbitrator properly declined to consider the award issued in IA-2021-004. That award came out some four months after the record closed here, and its consideration was outside the limited scope of our remand Order. But even if it had been considered, we do not find, on this record, that the award issued in IA-2021-004, covering Local 286, and the award covering Local 197 in this matter, are unreasonably inconsistent with one another, to a degree that would require reversal or modification of the Remand Award. Moreover, the PBA initially argued that Local 286A, not Local 286, was the most comparable unit to Local 197. In its appeal of the Remand Award, the PBA does not challenge the arbitrator's determination that Local 197

is not directly comparable to Local 286A.^{1/} Our remand Order limited the issue on remand to a clarification of the arbitrator's cost-outs. We find the arbitrator's remand decision complies with our Order.

The fact that the arbitrator cited Mercer County, IA-2020-008, when discussing the issue of breakage in his Remand Award does not alter our conclusion. Although it also came out after the Initial Award in this matter, the Mercer County award comports with our decision in Hopewell Tp. and Hopewell PBA Local 342, P.E.R.C. No. 2020-10, 46 NJPER 117 (¶26 2019), which the arbitrator cited in both the Initial and Remand Awards, in concluding, as a legal matter, that after the statutory elimination of the 2% hard salary cap, interest arbitrators have discretion to consider breakage in their awards. (Initial Award at 28; Remand Award at 23.) Thus, the Mercer County decision merely tracked established precedent and did not consider additional factual evidence. The arbitrator's reliance on it, while refusing to consider the award in IA-2021-004, was not improper. The remand award is affirmed.

^{1/} Specifically, the PBA does not challenge the arbitrator's conclusion that Local 286A is not comparable to Local 197 because, unlike Local 197, Local 286A represents superior officers, who work in smaller units, and whose contracts provide for only limited step movement. (Initial Award at 33, 47; see also, Remand Award at 16-17.)

ORDER

The interest arbitration award, as supplemented by the remand award, is affirmed.

BY ORDER OF THE COMMISSION

Chair Weisblatt, Commissioners Bonanni, Ford and Voos voted in favor of this decision. Commissioner Jones voted against this decision. Commissioner Papero recused himself.

ISSUED: June 24, 2021

Trenton, New Jersey

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF OLD TAPPAN,

Appellant,

-and-

Docket No. IA-2021-001

PBA LOCAL 206,

Respondent.

Appearances:

For the Appellant, McCusker, Anselmi, Rosen &
Caravelli, P.C., attorneys (John L. Shahdanian II,
Esq., on the brief)

For the Respondent, Limsky Mitolo, attorneys (Merrick
H. Limsky, on the brief)

SYNOPSIS

The Public Employment Relations Commission remands an interest arbitration award to the arbitrator to clarify an issue concerning retiree healthcare contribution levels. The Borough of Old Tappan's (Borough) appeal of the award asserts that it failed to address retirees' healthcare contributions as presented in the Borough's final offers, specifically that retirees must contribute towards their healthcare at the statutory levels set forth in P.L. 2011, c.78 (Chapter 78). The PBA responds that the award does not require clarification because it clearly did not change the prior contract's healthcare benefits for current PBA members, which provided for fully paid healthcare benefits for retirees. The Commission finds that the award requires clarification because it addressed one aspect of the Borough's final offer - whether new hires would be limited to single health insurance coverage - but it did not address the other aspect - contribution levels for retiree healthcare benefits. The Commission retains jurisdiction and orders the parties to file supplementary briefs with the Commission following receipt of the arbitrator's clarification of the award.

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

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF OLD TAPPAN,

Appellant,

-and-

Docket No. IA-2021-001

PBA LOCAL 206,

Respondent.

Appearances:

For the Appellant, McCusker, Anselmi, Rosen &
Caravelli, P.C., attorneys (John L. Shahdanian II,
Esq., on the brief)

For the Respondent, Limsky Mitolo, attorneys (Merrick
H. Limsky, on the brief)

DECISION

On February 23, 2021, the Borough of Old Tappan (Borough) appealed an interest arbitration award (Award) covering the PBA Local 206 (PBA) negotiations unit.^{1/} The PBA is the majority representative of all police officers employed by the Borough, other than the Chief of Police. The Borough and PBA are parties to a collective negotiations agreement (CNA) with a term of January 1, 2015 through December 31, 2018.

^{1/} The Borough's February 23 appeal included a request for oral argument. The Borough's request for oral argument is denied given that the parties have fully briefed the issues raised.

On August 13, 2020, the Borough filed a Petition to Initiate Compulsory Interest Arbitration pursuant to N.J.S.A. 34:13A-16(b) (2) to resolve an impasse over the terms of a successor CNA. On August 19, the interest arbitrator was appointed. After the parties failed to resolve their impasse at an arbitrator-led mediation session on October 20, the parties elected to proceed with a document-only hearing. On December 4, the parties submitted and exchanged their final offers and all evidence; they submitted briefs on December 11, and the record was closed. On February 9, 2021, the arbitrator issued the 52-page conventional Award setting the terms of a successor CNA for a term of four years, from January 1, 2019 through December 31, 2022. After receipt of the Award, the Borough requested clarification on the portion of the Award addressing retiree healthcare coverage; however, the PBA would not consent to the arbitrator providing such clarification. The Borough's appeal pertains to retiree healthcare coverage only, although the Award addressed numerous issues submitted by the parties.^{2/}

The Borough's final offer submitted to the arbitrator proposed the following two items concerning retirees' healthcare benefits:

^{2/} In addition to "Retiree Healthcare", the Award addressed the following subjects: "Term of the Agreement", "Salaries", "Detective Stipend", "Outside Detail", "Out of Title Pay", and "Work Schedule".

1. New hires to receive, after retirement, single coverage until eligible for Medicare and no further healthcare coverage. (Item 1).

[Exhibit B at item (4)].

2. Retirees' healthcare coverage contribution is pursuant with levels set forth by P.L. 2011, c.78 (Item 2).

[Exhibit B at item (8)].

In the Award's "Retiree Healthcare" section, at 42-46, the arbitrator begins discussing Item 1 and then states that the PBA opposes this proposal and seeks to maintain the status quo. The arbitrator then appears to transcribe the Borough's position from its brief, stating "In defense of their proposal the Borough argues:" (Award at 42-45). Following the recitation of the Borough's position, the arbitrator proceeds similarly, stating "In defense of their position the PBA argues:" (Award at 45-46). On page 46, the arbitrator provides his analysis and award, as follows:

In this decision, this Arbitrator must Award the Borough's position that new hires will be limited post retirement to single health insurance coverage until eligible for Medicare and then no further coverage.

This Arbitrator is convinced that the Borough has met its burden of proof to demonstrate that their proposal is necessary and advisable.

The internal and external comparability evidence, provided by the Borough above, is overwhelming and outweighs, in this Arbitrator's mind, any arguments made by the

PBA to the contrary. For this Arbitrator to do anything different would not be in the interest and welfare of the public.

However, it is clear from the Borough's proposal and submissions that current PBA members will be grandfathered. Current Officers will maintain all coverage rights.

Award:

Effective the date of this decision new hires will be limited post retirement to single health insurance coverage until eligible for Medicare and then no further coverage.

Current PBA members will be grandfathered. Current Officers will maintain all coverage rights.

The Borough asserts that the Award failed to address retirees' healthcare contributions, which it claims is the only issue submitted by the parties in their final offers that was not addressed by the Award. The Borough asserts that the impasse over the retirees' healthcare contributions was the main issue that led to the initiation of compulsory interest arbitration, and the Award's failure to render a final and definite award pursuant to N.J.S.A. 2A:24-8(d) requires that the Commission remand it to the arbitrator for clarification of that unresolved issue.

Notwithstanding the foregoing arguments, the Borough further argues that, despite the lack of clarity in the Award, the arbitrator did ultimately decide the issue of retiree healthcare contributions in favor of the Borough, i.e. that retirees must

contribute towards their healthcare at the statutory levels set forth in P.L. 2011, c.78 (Chapter 78). The Borough bases this argument on several passages from the Award where the arbitrator states, among other things, "This Arbitrator is convinced that the Borough has met its burden of proof to demonstrate their proposal is necessary and advisable..."^{3/}

In response to the Borough's assertions, the PBA argues that the Retiree Healthcare Award section is not ambiguous and does not require clarification because current PBA members being "grandfathered" and maintaining "all coverage rights" clearly means that the prior contract's healthcare benefits remain unchanged for current PBA members. The prior contract provided for fully paid healthcare benefits for retirees. Thus, according to the PBA's interpretation of the Award, the only change to the retirees' healthcare benefits made by the Award was Item 1, which only applies to new hires and not current PBA members. The PBA further asserts that it is illogical for the Borough to argue that the arbitrator did not render a final and definite award which requires remand and clarification on the issue of retirees' healthcare contributions while also maintaining that the

3/ We note that the passage from pages 8-9 of the Award quoted by the Borough to evidence the arbitrator's support of its position appears to be transcribed from the Borough's arbitration brief (at page 3) to explain "The Parties Negotiation History" rather than an adoption of the Borough's position.

arbitrator ultimately awarded the Borough's entire proposal on that issue. Thus, the PBA argues the Award does not need remand and clarification, and the Borough's appeal should be dismissed.

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 16(g) 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.

Applying this standard, we find that the Award requires clarification of Item 2 concerning retiree healthcare contribution levels in the Borough's final offer. The Borough's proposal submitted two items regarding retirees' healthcare benefits: Item 1 concerning whether new hires would be limited to single health insurance coverage upon retirement; and Item 2

concerning retirees' healthcare contribution levels. The Award was clear as to Item 1, but unclear as to Item 2.

It is ambiguous whether the paragraphs, 2-4, immediately preceding the "Award" section pertain to both Items 1 and 2. The Borough and PBA have differing views on this point. As stated above, the Borough's position is that the Award, citing the second paragraph of the arbitrator's analysis, among other passages, endorsed the Borough's final position in its entirety, calling the Borough's proposal "necessary and advisable." However, it is unclear if the arbitrator's statement in the second paragraph is simply referring to his granting of Item 1, which is referenced in the first paragraph of his analysis. The PBA's interpretation of the arbitrator's statement - "Current PBA members will be grandfathered. Current Officers will maintain all coverage rights." - is that it preserves, unchanged, the status quo from the previous contract, which provides for fully paid healthcare benefits for retirees.

Regarding the PBA's interpretation of the Award, it remains unclear what the status quo in the successor CNA would be for healthcare contribution levels - Tier Four or a different level. N.J.S.A. 40A:10-21.2^{4/} provides that during negotiations for the

^{4/} This statute further provides: "A public employee whose amount of contribution in retirement was determined in accordance with section 42 (N.J.S.A. 40A:10-21.1) or 44 (N.J.S.A. 40A:5A-11.1) shall be required to contribute in
(continued...)

next CNA to be executed after employees in a unit have reached the full Chapter 78 Tier Four contributions levels, the parties "shall conduct negotiations concerning contributions for health care benefits as if the full premium share was included in the prior contract." Thus, once Tier Four is reached in a CNA, it remains the status quo until an agreement is reached on a different contribution level in a successor CNA. See Lacey Tp., P.E.R.C. No. 2020-66, 47 NJPER 49 (¶12 2020); Clementon Bd. of Ed., P.E.R.C. No. 2016-10, 42 NJPER 117 (¶34 2015), appeal dismissed as moot, 43 NJPER 125 (¶38 2016).

Here, the record demonstrates that the parties reached full implementation of Chapter 78 (Tier Four) in 2015, the first year of their 2015-2018 CNA. The CNA which is the subject of the instant interest arbitration is the first CNA following full implementation where healthcare contribution rates could become negotiable. Consistent with the above-cited cases, absent negotiations in a successor agreement establishing a lower healthcare contribution rate, Tier Four remains the status quo. Thus, the Award requires clarification as to the retirees' healthcare contribution levels in this successor CNA.

4/ (...continued)
retirement the amount so determined pursuant to section 42 or 44 notwithstanding that section 42 or 44 has expired, with the retirement allowance, and any future cost of living adjustment thereto, used to identify the percentage of the cost of coverage."

Accordingly, we remand the Award to the arbitrator to clarify the issue concerning retiree healthcare contribution levels. We leave to the arbitrator's discretion any determination of whether to request additional evidence from the parties as he may deem necessary and material to a just determination of the issues in dispute. See N.J.A.C. 19:16-5.7(e).

ORDER

A. The interest arbitration Award is remanded for the arbitrator to provide clarification as to the Borough's final proposal seeking that retirees' healthcare coverage contribution be pursuant with levels set forth by P.L. 2011, c.78.

B. The interest arbitrator shall provide clarification described in Section A. of this Order within 60 days of receipt of this decision.

C. We retain jurisdiction. Following receipt of the arbitrator's remand award, the Borough shall have seven days to file a supplementary brief with the Commission limited to five pages and limited to responding to the clarification provided by the arbitrator on remand. The PBA shall then have seven days from receipt of the Borough's supplementary brief to file a supplementary response brief limited to five pages and limited to responding to the clarification provided by the arbitrator on remand.

BY ORDER OF THE COMMISSION

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

ISSUED: April 29, 2021

Trenton, New Jersey

P.E.R.C. NO. 2022-4

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF OLD TAPPAN,

Appellant,

-and-

Docket No. IA-2021-001

PBA LOCAL 206,

Respondent.

SYNOPSIS

The Public Employment Relations Commission affirms an interest arbitration award, as clarified in the remand award ordered in P.E.R.C. No. 2021-43, 47 NJPER 468 (¶110 2021). The Arbitrator's remand award clarified that retirees must contribute towards their healthcare at the statutory levels set forth in P.L. 2011, c. 78.

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. 2022-4

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF OLD TAPPAN,

Appellant,

-and-

Docket No. IA-2021-001

PBA LOCAL 206,

Respondent.

Appearances:

For the Appellant, McCusker, Anselmi, Rosen &
Caravelli, P.C., attorneys (John L. Shahdanian II,
Esq., on the brief)

For the Respondent, Limsky Mitolo, attorneys (Merick H.
Limsky, Esq., on the brief)

DECISION

On April 29, 2021, we remanded an interest arbitration award between the Borough of Old Tappan (Borough) and PBA Local 206 (PBA). P.E.R.C. No. 2021-43, 47 NJPER 468 (¶110 2021). On remand, we asked the arbitrator to provide clarification as to the Borough's final proposal seeking that retirees' healthcare coverage contribution is pursuant with levels set forth by P.L. 2011, §. 78. On June 17, the arbitrator issued a remand award clarifying the sections regarding retiree healthcare coverage contributions in his initial decision. Pursuant to the Commission's Order in P.E.R.C. No. 2021-43, the parties were given an opportunity to file supplementary briefs to respond to

the arbitrator's clarification. On June 24, the Borough submitted its supplementary brief concurring with the arbitrator's clarification and requesting that the Commission affirm the remand award. Pursuant to the Commission's Order, the PBA had seven days from receipt of the Borough's supplementary brief to file its response. The PBA has not filed a supplementary brief.

In P.E.R.C. No. 2021-43, the Borough appealed and sought clarification of the arbitrators's initial award because it failed to completely address retirees' healthcare contributions, as presented in the Borough's final offer. The Borough's final offer submitted to the arbitrator proposed the following two items concerning retirees' healthcare benefits:

1. New hires to receive, after retirement, single coverage until eligible for Medicare and no further healthcare coverage. (Item 1)
2. Retirees' healthcare coverage contribution is pursuant with levels set forth by P.L. 2011, c. 78 (Item 2)

In his initial decision, the arbitrator awarded the following:

Effective the date of this decision new hires will be limited post retirement to single health insurance coverage until eligible for Medicare and then no further coverage.

Current PBA members will be grandfathered. Current Officers will maintain all coverage rights.

We found that the initial award was clear as to Item 1, but unclear as to Item 2.

In the remand award, the arbitrator provided the following clarification regarding the disputed sections of his initial decision:

This Arbitrator's decision was never intended to relieve anyone of their responsibility for paying their Chapter 78 contribution. This decision discussed only moving forward the post-retirement benefits for new hires. Other than the change for new hires, existing retirees are to contribute.

The arbitrator further amended his previous award with the following addition:

Retirees must contribute towards their healthcare at the statutory levels set forth in P.L. 2011, c. 78 (Chapter 78)

As we articulated in P.E.R.C. No. 2021-43, the record demonstrated that the parties reached full implementation of Chapter 78 (Tier Four) in 2015, the first year of their 2015-2018 CNA. The CNA which is the subject of the instant interest arbitration is the first CNA following full implementation where healthcare contribution rates could become negotiable. Absent negotiations in a successor agreement establishing a lower healthcare contribution rate, Tier Four remains the status quo. See Lacey Tp., P.E.R.C. No. 2020-66, 47 NJPER 49 (¶12 2020); Clementon Bd. of Ed., P.E.R.C. No. 2016-10, 42 NJPER 117 (¶34 2015), appeal dismissed as moot, 43 NJPER 125 (¶38 2016).

Given the arbitrator's clarification in his remand award of the retirees' healthcare coverage contribution issue, and the

PBA's lack of opposition to this clarification, we affirm the interest arbitration award, as clarified in the remand award.

ORDER

The interest arbitration award, as clarified in the remand award, is affirmed.

BY ORDER OF THE COMMISSION

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

ISSUED: August 26, 2021

Trenton, New Jersey

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF BERGENFIELD,

Respondent,

-and-

Docket No. IA-2021-016

PBA LOCAL 309,

Appellant.

SYNOPSIS

The Public Employment Relations Commission vacates and remands an interest arbitration award to the arbitrator for submission of additional evidence on the issues of healthcare contributions and revised final offers. The PBA appealed from the award asserting, among other things, that the arbitrator improperly considered the issue of healthcare contributions that the PBA did not identify in its petition as an issue in dispute, but that the Borough submitted in its final offer. The Commission finds that the issue of healthcare contributions (deducted from employee wages) is sufficiently connected to the issue of "wages" listed in the PBA's petition and therefore the arbitrator did not abuse his discretion by considering it. However, the Commission finds that the arbitrator improperly waited until his award to decide on the PBA's objection to the Borough's healthcare contributions proposal. The Commission declines to decide on the PBA's other objections to the award prior to reviewing the arbitrator's remand award following submission of additional evidence on the issue of healthcare contributions and revised final offers.

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

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF BERGENFIELD,

Respondent,

-and-

Docket No. IA-2021-016

PBA LOCAL 309,

Appellant.

Appearances:

For the Appellant, Loccke Correia & Bukosky, LLC,
attorneys (Michael A. Bukosky, of counsel)

For the Respondent, McCusker Anselmi Rosen Carvelli,
P.C., attorneys (John L. Shahdanian II, of counsel)

DECISION

On September 29, 2021, PBA Local 309 (PBA) appealed an interest arbitration award covering a negotiations unit of police officers employed by the Borough of Bergenfield (Borough).^{1/} The Borough and PBA are parties to a collective negotiations agreement (CNA) effective from January 1, 2018 through December 31, 2020.^{2/} On February 9, 2021, the PBA filed a Petition to

1/ The Borough's October 13, 2021 response opposing the appeal included a request for oral argument. The Borough's request for oral argument is denied given that the parties have fully briefed the issues raised.

2/ The parties' prior contract remains unsettled. The Superior Court, Appellate Division, recently directed the parties to return to the prior interest arbitrator to clarify the interest arbitration award, specifically regarding whether
(continued...)

Initiate Compulsory Interest Arbitration (IA Petition) pursuant to N.J.S.A. 34:13A-16(b) (2) to resolve an impasse over the terms of a successor CNA. The PBA's IA Petition listed "Wages" as the only issue in dispute. By letter of February 11, 2021, the Commission's Director of Conciliation and Arbitration notified the Borough of the PBA's IA Petition and attached a copy of the IA Petition. The Director's letter stated that, pursuant to N.J.S.A. 34:13A-16(d), the Borough was required to file a written response within five days to notify the Commission of all issues in dispute and, pursuant to N.J.A.C. 19:16-5.5, failure to file a timely response would be deemed as agreeing to the IA Petition as submitted by the filing party. The Borough did not file a response to the Director's letter.

On February 17, the interest arbitrator was appointed. After the parties failed to resolve their impasse at an April 1, 2021 arbitrator-led mediation session, an arbitration hearing was held on May 6, 2021. Pursuant to N.J.A.C. 19:16-5.7(g) (2), both parties submitted their final offers to the arbitrator and each other at least 10 days prior to the hearing. (Award at 12). The PBA's final offer was a proposal for a three-year contract from

2/ (...continued)
the PBA's proposed draft of the salary term is an accurate reflection of the salary term the interest arbitrator wrote for the parties. Bergenfield Bor., P.E.R.C. No. 2020-50, 46 NJPER 516 (¶114 2020), rev'd and rem'd, 2021 N.J. Super. Unpub. LEXIS 2398 (App. Div. 2021).

January 1, 2021 through December 31, 2023 with only the following change (Award at 7):

- A 3.0% wage increase applied across-the-board to the Salary Schedule

The Borough's final offer was a proposal for a five-year contract from January 1, 2021 through December 31, 2025 with the following changes (Award at 7-8):

- Eliminate longevity for new hires
- Maximum of 250 hours of compensatory time, which shall be paid out at the rate of the year in which it was earned
- Healthcare coverage contributions shall increase from 15% to levels consistent with P.L. 2011, c. 78
- Salary guide for new hires shall include 10 steps
- Add language stating that step movement shall be automatic during the term of "this contract only"
- Remove Article III, Section 2 of 2017 agreement stating that "Increments shall be paid in accordance with past practice."
- 2% average annual salary increases for officers who reach top step, contingent upon health contributions being increased from 15% to Chapter 78 levels; 0% salary increases for officers at top step if health contributions stay at 15%
- Include language that the PBA will present its first offer for a successor contract 18 months before contract expiration; if successor contract not settled by contract expiration, the Borough will make the appropriate step payment due at the time, with no salary increases, pending a mutual agreement or arbitration award. Further, no step increases will be awarded after the last step payment is made pursuant to this contract until a successor contract is mutually agreed on or awarded by an arbitrator.

Prior to the interest arbitration hearing, the PBA filed an objection to the Borough's final offer proposals. The PBA

asserted that the Borough violated N.J.A.C. 19:16-5.5 by failing to respond to the IA Petition and failing to identify issues in dispute, thereby waiving its right to raise additional issues in dispute at the final offer stage of interest arbitration. The arbitrator did not rule on the PBA's objection prior to or during the hearing. After the parties submitted post-hearing briefs by June 18, 2021, the record was closed. The PBA's post-hearing brief reiterated its objection to the Borough's raising of issues that it did not identify as being in dispute due to its failure to file a response to the IA Petition. The Borough's post-hearing brief responded that its final offer proposals are not barred from consideration by the arbitrator because it complied with N.J.A.C. 19:16-5.7(g) (2) by submitting them at least 10 days prior to the interest arbitration hearing.

On September 14, 2021, the arbitrator issued an 81-page conventional award, which the parties received on September 16.^{3/} The award included the arbitrator's ruling on the PBA's objection to the Borough's submission of proposals that were not included in the IA Petitions's disputed issues and had not been identified

^{3/} The award was originally due on May 18, 2021 based on the arbitrator's date of appointment. However, due to delays in the interest arbitration process related to the COVID-19 public health emergency, on April 8, 2021, the Commission Chair granted the arbitrator an extension of the 90-day statutory deadline for issuance of the award.

as disputed issues in a response to the IA Petition. (Award at 11-12). The arbitrator made the following ruling:

As both final proposals/offers were made at least 10 days prior to the Hearing, this Arbitrator finds that under the New Jersey Statutes listed above, the Borough is not barred from submitting all their issues listed in their final proposal offer from being heard and decided by this Arbitrator. And by this Arbitrator's ruling, now in this decision, PBA 309 has not been prejudiced or harmed in these proceedings.

[Award at 12.]

The arbitrator awarded the Borough's proposed 5-year contract term from January 1, 2021 through December 31, 2025. (Award at 16, 79). The "Wages/Salaries" portion of the award included the Borough's proposal of 2% annual salary increases for officers who reach top step. (Award at 69-71, 79). The award also included the Borough's proposal for a new 10 step salary guide for new hires, effective January 1, 2022. (Award at 70-71, 79). The arbitrator awarded the Borough's proposed removal of the Article III, Section 2 language from the 2017 agreement which states that "Increments shall be paid in accordance with past practice." (Award at 70, 79). The "Healthcare Contribution" section of the award partially awarded the Borough's proposal to increase health benefits contributions from 15% to the Tier 4 levels contained in Chapter 78 (P.L. 2011, c. 78). The arbitrator changed health benefits contributions levels to Tier 4 Chapter 78 levels, but capped them at 25%. (Award at 77-79).

The PBA appeals the interest arbitration award for the following reasons:

1. When the employer failed to file an answer it waived any ability to present health benefit contributions as an item to be addressed by the arbitrator.
2. The PBA has been severely prejudiced by the arbitrator's consideration of the health benefit contribution proposal of the borough.
3. The arbitrator should not have considered changes to step movement language or a salary guide for new hires.
4. The arbitrator improperly conflated health benefit premium contributions with wages.
5. The arbitrator's award should be vacated as violative of N.J.S.A. 34:13A-16(g) and controlling case law.
6. The arbitrator's decision concerning health benefits is nonsensical.
7. The arbitrator considered evidence outside of the record in a prejudicial manner.
8. The arbitrator mistakenly believed that Chapter 78 is still in existence.
9. The failure to calculate the costs of any of his award and apply the statutory criteria mandates that the award be vacated.
10. Modification of the award is not appropriate and remand to a new arbitrator is the only suitable outcome in this case.

The Borough responds with the following points:

1. Bergenfield was not barred from submitting and having the arbitrator determine all of the issues listed within its final proposal/offer, including the health benefit contribution issue.
 - A. In assuming arguendo, the term "wages" as listed in the PBA's petition encompasses more than just the base salary of PBA members, and accordingly, healthcare contribution was required to be considered by the arbitrator.

2. There is no legal basis for the award to be vacated.
 - A. The award should not be vacated because it is not violative of N.J.S.A. 34:13A-16(g).
 - B. The award should not be vacated because the arbitrator did not violate the standards in N.J.S.A. 2A:24-8 and 9 and the award is supported by substantial credible evidence in the record as a whole.
3. Although Chapter 78 is no longer in effect, controlling case law concludes that its levels represent the status quo in negotiations.

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 16(g) 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.

We first address the PBA's assertion that, pursuant to N.J.A.C. 19:16-5.5, the Borough waived any ability to present health benefit contributions in its final offer when it failed to

file an answer to the IA Petition and the PBA's list of disputed issues.^{4/} The Borough responds that N.J.A.C. 19:16-5.5 only provides that failure to respond to the IA Petition means that the non-petitioning party is deemed to have agreed to the initiation of interest arbitration. It argues that it is through N.J.A.C. 19:16-5.7(g) (2) and N.J.S.A. 34:13A-16(f) (1) that the parties are to submit their final offers to the arbitrator.

N.J.A.C. 19:16-5.3(a) (9) provides that the interest arbitration petition shall contain, among other things, "A statement indicating which issues are in dispute . . ." N.J.A.C. 19:16-5.3(c) provides that, in the absence of a joint interest arbitration petition, the Director shall "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." N.J.S.A. 34:13A-16(d) and N.J.A.C. 19:16-5.5(a) provide that the non-petitioning party "within five days of receipt of the petition, shall separately notify the Commission in writing of all issues in dispute." N.J.A.C. 19:16-5.5(b) provides, in pertinent part: "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." Following the

^{4/} The PBA primarily made this argument in points 1 and 2, and also referenced and attached the supporting motion brief that it submitted to the interest arbitrator on this issue.

identification of issues in dispute in the petition and in the response, if any, the statute and regulations provide for the appointment of an arbitrator and require that the parties submit their "final offers on each economic and non-economic issue in dispute" to the arbitrator at least 10 days before the hearing.

See N.J.S.A. 34:13A-16(f)(1); N.J.A.C. 19:16-5.7(g)(2).

In Allendale Bor., P.E.R.C. No. 98-27, 23 NJPER 508 (¶28248 1997), the Commission affirmed the interest arbitrator's decision to bar the employer's final offers on three issues that had not been included in the union's interest arbitration petition. The Commission held that N.J.A.C. 19:16-5.5 requires the timely identification of issues in dispute at the outset of the interest arbitration process through the petition and the response to the petition. The Commission also noted in Allendale that strict compliance with N.J.A.C. 19:16-5.5 could be relaxed by the Commission or an arbitrator for unusual circumstances or good cause and where strict compliance would work an injustice or unfairness. 23 NJPER at 510. The Commission "will defer to an arbitrator's decision to admit or exclude additional issues unless we find an abuse of discretion." Middlesex Cty., P.E.R.C. No. 98-46, 23 NJPER 595 (¶28293 1997).

Here, the IA Petition identified the only issue in dispute as "Wages." The Borough did not respond to the IA Petition and thereby did not identify additional issues in dispute. N.J.S.A.

34:13A-16(d); N.J.A.C. 19:16-5.5(a). Having not filed a response that identified additional issues of dispute within the time specified, the Borough was deemed to have agreed to the request for interest arbitration as submitted by the PBA. N.J.A.C. 19:16-5.5(b). The Borough's final offer to the interest arbitrator was therefore required to be limited to the issues in dispute as identified in the IA Petition. N.J.S.A. 34:13A-16(f)(1); N.J.A.C. 19:16-5.7(g)(2). The Borough's final offer included a salary proposal as well as proposals on other salary-related issues such as longevity, compensatory time, a 10-step salary guide for new hires, and changes to step and increment language. The Borough's final offer also included a proposal that healthcare premium contributions be increased from 15% to levels consistent with those found in P.L. 2011, c. 78.

The Borough asserts that even if the Commission finds that it is limited to the issues in dispute as set forth in the PBA's IA Petition, then the issue of "wages" should be found to encompass health benefit contributions. The PBA asserts that healthcare contributions are distinct from wages. The Borough directly tied its salary increase proposals to its healthcare contribution proposal, offering 2% average annual salary increases contingent upon adopting its proposed increase in healthcare contributions or, alternatively, 0% salary increases if the PBA's healthcare contributions remain at 15%. The PBA's

counter-argument likewise underscored the connection between wages and contributions, as it proposed larger salary increases if healthcare contributions are increased. (Award at 76-77). We find it significant that the Borough's proposal does not concern any substantive aspect of healthcare benefits or insurance coverage, but only the apportionment of the health insurance premium costs between the Borough and the employees. As these costs are direct contributions deducted from PBA members' wages, the issues are inextricably linked. In practical terms, net wages decrease as healthcare contributions increase. This relationship between wages and healthcare contributions has only been more pronounced since the passage of P.L. 2011, c. 78, which had required healthcare contributions of up to 35% depending on salary. Although the mandates of Chapter 78 have been fully implemented for these parties and they have since negotiated reductions in healthcare contributions to 15%, the impact of Chapter 78 remains as the PBA's contribution level is significantly higher than it was prior to Chapter 78. See Ridgefield Park Bd. of Ed., 244 N.J. 1, 20 (2020) (during negotiations for the first CNA following full implementation of Chapter 78, healthcare contributions are negotiable again, but the Chapter 78 contribution level is the status quo); see also Ridgefield Park Bd. of Ed., P.E.R.C. No. 2022-10, 48 NJPER 141 (¶36 2021); Fairfield Tp., P.E.R.C. No. 2019-31, 45 NJPER 309

(¶80 2019). For all of these reasons, we find that the issue of healthcare contributions in this case is sufficiently interconnected with the broad compensation-related issues contemplated by the term “wages” proposed in the IA Petition. Accordingly, we decline to find that the arbitrator abused his discretion by considering the issue of healthcare contributions as an issue in dispute in this interest arbitration.

Furthermore, we note that, since the passage of P.L. 2010, c. 105, as amended by P.L. 2014, c. 11, the traditional interest arbitration process has been accelerated due to statutory deadlines for issuance of the final arbitration award. N.J.S.A. 34:13A-16(d) and N.J.A.C. 19:16-5.5(a), requiring a response and identification of any other disputed issues within five days of receiving the IA Petition, were enacted and promulgated as part of that new interest arbitration “rocket docket.” In contrast, prior to the “rocket docket,” N.J.A.C. 19:16-5.5 allowed 14 days to respond to an interest arbitration petition.^{5/}

However, we find that the arbitrator improperly waited to decide on the PBA’s objection to the Borough’s healthcare contribution proposal until the issuance of his award. The PBA asserts that it relied on the regulations and Allendale in believing that the issues in dispute would be strictly limited to

^{5/} In 2001, the Commission amended N.J.A.C. 19:16-5.5 to extend the period for responding to an interest arbitration to 14 days from seven days. See 33 N.J.R. 2282(a).

"wages" and would not include the Borough's healthcare contribution proposal. It argues that it was severely prejudiced by the arbitrator's failure to decide on its objection until the award. It contends that, had it known the arbitrator would allow the issue of healthcare contributions to be included, it would have altered its final proposals on the overall compensation package and substantially altered its evidentiary submissions. The Borough responds that the PBA was not prejudiced because it had the Borough's final offer including the healthcare contribution proposal in plenty of time prior to the hearing.

In Allendale, the arbitrator also waited until the arbitration award to rule on the PBA's objection to the Borough's attempt to belatedly add disputed issues. Although the arbitrator and Commission ruled in favor of the PBA and excluded the Borough's additional proposals, the Commission vacated and remanded the award, reasoning:

However, while the arbitrator correctly applied N.J.A.C. 19:16-5.5, we believe that the Borough was disadvantaged by the fact that the arbitrator did not rule on the PBA's objection until he issued his final award and opinion. Because of the timing of the procedural ruling, the parties submitted post-hearing briefs without knowing the parameters of the dispute. Moreover, the arbitrator considered the Borough's salary offer without evaluating other proposals which, the Borough maintains, were an integral part of its economic package. The Borough might have changed the proposals considered by the arbitrator had it known its other proposals would be excluded.

If the arbitrator had ruled on the PBA's objection before the formal hearing, the Borough could have submitted a final offer in light of his ruling. We thus conclude that it was reversible error for the arbitrator to have deferred his ruling until he issued his award. We therefore vacate the award and remand this matter to the arbitrator for reconsideration. The Borough shall be permitted to submit a new final offer but, unless the parties agree otherwise or the arbitrator requires additional submissions on an issue, the arbitrator shall issue a new opinion and award based on the record already submitted.

[Allendale, 23 NJPER at 510; emphasis added.]

Here, although by the time of the hearing both parties were aware of the final offers of the other party and of the PBA's objection, neither party knew what the "issues in dispute" to be analyzed and decided upon would ultimately be until the issuance of the award. The arbitrator should have decided the PBA's objection prior to proceeding to hearing, thus enabling the parties to amend their proposals and hearing submissions accordingly and/or seek the Commission's review of the arbitrator's interlocutory ruling pursuant to N.J.A.C. 19:16-5.17.^{6/} Consistent with Allendale, we conclude that it was

^{6/} The Commission has issued interlocutory decisions on objections to an arbitrator's identification of the issues in dispute. See, e.g., Paramus Bor., P.E.R.C. No. 2009-28, 34 NJPER 384 (¶125 2008) (exclusion of health benefits contribution proposal upheld); City of Newark, P.E.R.C. No. 98-166, 24 NJPER 360 (¶29173 1998) (exclusion of health benefits proposal upheld); City of Trenton, P.E.R.C. No. 98-165, 24 NJPER 358 (¶29172 1998); and Middlesex Cty.,
(continued...)

reversible error for the arbitrator to have deferred his ruling on the PBA's objection until he issued the award. By delaying his ruling on the scope of issues in dispute and the PBA's N.J.A.C. 19-16-5.5 objection, the arbitrator so imperfectly executed his powers that a mutual, final and definite award upon the subject matter submitted was not made. N.J.S.A. 2A:24-8(d). The arbitrator was within proper exercise of his discretion in denying the PBA's objection. However, the timing of that ruling requires that we vacate the award and remand this matter to the arbitrator for reconsideration.

On remand, the arbitrator shall allow the parties to submit additional evidence on the issue of healthcare contributions and a revised final offer. In view of our decision to vacate and remand this matter, we need not decide the remaining issues in this appeal. As the arbitrator's remand award to reconsider the issue of healthcare contributions could also impact other issues in the award, we defer ruling on any other disputed issues until issuance of the arbitrator's remand award.

As noted in footnote 2, the parties' prior contract remains unsettled. In light of the possibility that the terms of the prior contract are modified as part of that arbitrator's court-ordered remand for clarification, we direct that the arbitrator

6/ (...continued)
P.E.R.C. No. 97-63, 23 NJPER 17 (¶28016 1996).

in this case issue his remand award within 90 days from the date of issuance of the remand award in the parties' prior interest arbitration (Docket No. IA-2019-007).

Finally, we reject the PBA's assertion that remand to a new arbitrator is required. In remanding this matter, we are confident that the appointed arbitrator may reconsider the award in accordance with this opinion. See Fox v. Morris Cty., 266 N.J. Super. at 521-522 (court would presume, until shown to the contrary, that the original arbitrator would be able to take a fresh look at the case and reach a fair and impartial decision).

ORDER

A. The arbitration award is vacated and the matter remanded to the arbitrator for reconsideration in accordance with this opinion. The parties shall be permitted to submit additional evidence on the issue of healthcare contributions and a revised final offer.

B. The arbitrator shall issue the remand decision described in Section A of this Order within 90 days of being notified by the Director of Conciliation and Arbitration of the remand award in the parties' prior interest arbitration (Docket No. IA-2019-007). If the remand award in the parties' prior interest arbitration is appealed, then the arbitrator shall issue a remand decision described within Section A of this Order within 90 days of any Commission decision on appeal.

C. We retain jurisdiction. Following receipt of the arbitrator's remand award, the parties shall file briefs with the Commission on the remand award within 14 days of issuance.

BY ORDER OF THE COMMISSION

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

ISSUED: November 23, 2021

Trenton, New Jersey

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF BERGENFIELD,

Respondent,

-and-

Docket Nos. IA-2019-007;
 CO-2019-288

PBA LOCAL 309,

Appellant/
Charging Party.

SYNOPSIS

The Public Employment Relations Commission affirms an interest arbitration award in the matter of Borough of Bergenfield and PBA Local 309, as clarified on remand of the Appellate Division of the Superior Court. The Commission finds that the interest arbitrator issued a clarification, not a new award, and did not exceed his authority under the court's remand to clarify whether the PBA's proposed draft of the salary term accurately reflected the salary term the interest arbitrator wrote for the parties. The Commission finds that the interest arbitrator properly answered the court's narrow question, clarifying that the PBA's inclusion of the past practice language in the salary term was not an accurate reflection of the Award, and that he specifically did not include that language that in the salary provision of the award. The Commission further finds that it was not error for the interest arbitrator to also clarify that, in order for the CNA's salary provision to have accurately reflected the award, it should have stated that "Increments shall not be paid in accordance with past practice during the term of this agreement, but shall be paid as follows"

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.

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF BERGENFIELD,

Respondent,

-and-

Docket Nos. IA-2019-007;
CO-2019-288

PBA LOCAL 309,

Appellant/
Charging Party.

Appearances:

For the Respondent, McCusker Anselmi Rosen Carvelli, PC
(John L. Shahdanian II, of counsel)

For the Appellant/Charging Party, Loccke, Correia &
Bukosky LLC (Michael A. Bukosky, of counsel)

DECISION

On October 5, 2021, the New Jersey Superior Court, Appellate Division, in an unpublished opinion, In re Borough of Bergenfield, 2021 N.J. Super. Unpub. LEXIS 2398 (App. Div. Dkt No. A-3495-19), reversed our decision, P.E.R.C. No. 2020-50, 46 NJPER 516 (¶114 2020), and vacated our order directing the Borough of Bergenfield (Borough) to sign a collective negotiations agreement (CNA) drafted by PBA Local 309 (PBA) that memorialized an interest arbitration (IA) award (IA-2019-007).^{1/}

^{1/} Our decision held that the Borough committed an unfair labor practice in violation of N.J.S.A. 34:13A-5.4a(6) by refusing to sign the draft CNA which, the Commission held, accurately reflected the IA award by its inclusion of the phrase
(continued...)

The court remanded with direction that the parties return to the interest arbitrator to clarify his award. The court did not retain jurisdiction. On October 8, we remanded the matter to the interest arbitrator, instructing him as follows:

As you may already be aware, the Appellate Division issued the attached decision on October 5, 2021, remanding this matter back to you. Specifically, on page 18 the court directs "for the parties to return to the interest arbitrator to clarify the award [on whether the PBA's proposed draft of the salary term is an accurate reflection of the salary term the interest arbitrator wrote for the parties]."

On January 14, 2022, the interest arbitrator issued a 9-page clarification.^{2/} On January 20 the PBA filed with us "an appeal of the interest arbitrator's modification of his award and/or a request for [the] Commission's review under its unfair labor practice jurisdiction, and/or request to reopen this matter in some fashion on grounds of fundamental fairness." On January 28 the Borough filed a reply.

In determining to remand the matter to the interest arbitrator, the Appellate Division recounted the facts and issues in dispute regarding the initial IA award as follows:

1/ (...continued)
"increments shall be paid in accordance with past practice" from the parties' prior CNA.

2/ Prior to issuing his clarification, the interest arbitrator requested and received written position statements from the parties, and thereafter heard oral argument via Zoom on December 20, 2021.

[The interest arbitrator] entered a salary award, representing "the maximum salary increases that can be awarded under the cap on base salary increases^{3/} with discretion limited to the distribution of those amounts" of:

2018 0% salary increase, full step increases, longevity and senior officer differential.

2019 0% salary increase, step increases October 1, 2019, longevity compensation and senior officer differential in accordance with the terms of the Agreement.

2020 0% salary increase, no step movement, longevity and senior officer differential in accordance with the terms of the Agreement.

The arbitrator also included two other provisions in the award important to this dispute. First, he noted that "[a]ll provisions of the existing agreement shall be carried forward except for those which have been modified by the terms of this Award." Second, he "calculated the net, annual economic change in base salary over the three-year term of the new agreement, as follows: 2018 - \$248,815.26; 2019 - \$54,769.18; 2020 - \$13,888.75 (pursuant to N.J.S.A. 34:13A-16.7 A and B)."

3/ As discussed elsewhere in the court's decision, the IA award was governed by the Police and Fire Public Interest Arbitration Reform Act, N.J.S.A. 34:13A-14a to - 21, requiring the award to comply with the Property Tax Levy Cap, N.J.S.A. 40A:4-45.44 to - 45.47, and was "issued in accordance with the 2% hard cap limitation" of N.J.S.A. 34:13A-16.7 as well as "the 16g interest arbitration criteria to the extent deemed relevant," N.J.S.A. 34:13A-16(g). 2021 N.J. Super. Unpub. LEXIS 2398 at *3 (quoting the initial IA award).

Neither party appealed the award. . . . When the PBA presented a draft CNA for signature to the Borough, after the time for any appeal had expired, the Borough objected to the language proposed in Article III, Section 2 concerning the payment of salary increments. Specifically, the PBA's proposed draft provided:

Increments shall be paid in accordance with past practice except that during the year 2019 only the Salary Step Increases, where applicable, shall be effective October 1, 2019. For the year 2020 there shall be no Step movement for salary increases.

[2021 N.J. Super. Unpub. LEXIS 2398 at *6-*8.]

The court found that the PBA "proposed a salary term that incorporated a 'past practice' clause the interest arbitrator did not include in his salary provision," id. at *15, and further specified the issue to be decided by the interest arbitrator on remand:

[The parties'] dispute is over whether the interest arbitrator awarded bargaining unit members an amount of money in 2019 equal to what they would have received under the expired 2017 CNA had the 2019 step increase been delayed until October 1, in other words the monetary equivalent of a one-quarter step, or whether he decreed that those members would ascend on October 1, 2019 to their next step "in accordance with past practice" and remain there for 2020, the last year of the contract.

. . . We decide only that the parties have a legitimate dispute over whether the PBA's proposed draft of the salary term is an accurate reflection of the salary term the

interest arbitrator wrote for the parties.
As . . . Bergenfield could only be compelled to sign a contract that accurately reflected the interest arbitration award, we vacate PERC's order compelling the Borough to sign the PBA's draft and remand with directions for the parties to return to the interest arbitrator to clarify the award.

[2021 N.J. Super. Unpub. LEXIS 2398 at *17-*18 (emphases supplied).]

On remand, after considering the parties' arguments, the interest arbitrator responded to the court's direction, in pertinent part, as follows:

AWARD

The Award at issue was governed by the Police and Fire Public Interest Arbitration Reform Act, N.J.S.A. 34:13A-14a to - 21, requiring it comply with the Property Tax Levy Cap, N.J.S.A. 40A:4-45.44 to - 45.47, and the 2% hard cap limitation of N.J.S.A. 34:13A-16.7 as well as the relevant 16g interest arbitration criteria.

On October 5, 2021, the Appellate Division vacated PERC's Order compelling the Borough to sign the PBA's draft collective negotiations agreement and remanded it with directions for the parties to return to the interest arbitrator to clarify the Award. The Appellate Division determined that this "is a dispute over whether the draft contract presented by the PBA to Bergenfield accurately reflects the interest arbitration award rendered in the compulsory interest arbitration."

In my Award, because of the implication of the 2% hard cap, I specifically did not include the language that "[i]ncrements shall be paid in accordance with past practice" in the salary provision. If I intended for PBA members to receive "full step" increases in

2019 I would have used the same language for 2019 as I used when I awarded the full step increase in 2018. As such, the PBA's inclusion of such language was not an accurate reflection of the Award, especially in light of its interpretation of the language of the delayed 2019 step increase. Rather, I delayed the award of the steps until October 2019, and provided the cost of same (\$44,751.83), one-quarter of the step in 2019 due to the implication of the 2% hard cap. In 2020, the 2% hard cap limitations left no additional money to apply to a step increase beyond that paid to the PBA in 2018 and 2019. The Appellate Division correctly interpreted my Award and how I applied the 2% salary cap in the salary award, and the PBA's draft collective negotiations agreement and interpretation did not accurately reflect my Award.

[Clarification of IA Award at 9 (emphases added).]

The above-quoted follows the "Discussion and Analysis" portion of his clarification, in which the interest arbitrator stated, among other things, "As directed by the Appellate Division, I have clarified the Award." Id. at 7. The interest arbitrator also stated in the "Discussion and Analysis" section:

Using the PBA's draft language, the CNA salary provision should therefore read as follows:

Section 2

Increments shall not be paid in accordance with past practice during the term of this agreement, but shall be paid as follows; 2018-full step increases; 2019- step increases October 1, 2019 in the amount of \$44,751.83; 2020-no step increases.

The PBA now objects that the interest arbitrator made mistakes of law, in that he issued not a clarification but a "newly written award," which he was not authorized to do and which is contradictory on its face. The PBA contends the interest arbitrator created a new "quarter step" which was not mentioned in his prior award and is not provided for either in the award or in the parties' existing salary chart. The PBA asserts that under the award (as clarified) it is not clear at what step the interest arbitrator is placing unit members on the guide, or if "an employee is granted a new step increment placement but only paid a quarter of same." The PBA concedes that the concepts of "paper steps" (the grant of a step increase while only being paid a certain amount or nothing at all) and delayed steps are not unknown, and that the latter are very common in interest arbitration matters. The PBA faults the interest arbitrator for not simply stating that in 2019 "there is a paper step movement and no pay and a cash payment of only a percentage of the step," if that is what he meant.

The PBA further contends that salary guide placement impacts items such as overtime, health benefit premium contributions and longevity payments, and that the award does not make it clear from what step such payments are to be calculated, or what employees' step placements will be in 2020, 2021 and upon the expiration of the contract. The PBA contends that not knowing such placements renders it impossible to cost out or negotiate successor contracts.

The PBA asserts that the interest arbitrator was directed to clarify his award, not re-write it, which he did by stating that the CNA's salary provision should include the statement that "increments shall not be paid in accordance with past practice during the term of this agreement, but shall be paid as follows; 2018-full step increases; 2019- step increases October 1, 2019 in the amount of \$44,751.83; 2020-no step increases." The PBA insists that this is a "fundamental and significant rewriting of the award and fundamentally changes what he had determined in the past." The PBA contends the arbitrator inserted this new language, while the PBA was given no notice of it or opportunity to submit evidentiary materials in opposition to it. This unfairly prejudices the PBA with respect to future contracts.

The Borough replies, in pertinent part, that it is clear from the interest arbitrator's clarification that there was to be no step "movement" and that only a monetary amount equal to one-quarter step was to be paid in 2019. Therefore the PBA's assertion that the interest arbitrator created a new "quarter step" on the salary guide is factually incorrect and legally unsupported. If PBA members were to "ascend" on the step guide in 2019, the Borough would have paid well more than the legally permissible spend under the 2% hard cap. The Borough contends that the clarification was correctly issued and in accordance with the orders, guidance and direction of both the Appellate Division and PERC; and that it

clearly articulated that the PBA's proposed draft of the salary term was not an accurate reflection of the salary term that the interest arbitrator intended and wrote for the parties.

ANALYSIS

We find that the interest arbitrator issued a clarification, not a new award, and he did not exceed his authority under the court's remand. The Appellate Division, without retaining jurisdiction, remanded to the interest arbitrator to clarify his award on a specific issue. This is akin to when the Commission remands an IA award for clarification. In such cases, as we have done here, we permit limited briefing by the parties as to any objections to the clarified award. See, e.g., Passaic County Sheriff's Office, P.E.R.C. No. 2021-54, 48 NJPER 36 (¶9 2021) (affirming IA award following remand to clarify award's net annual economic changes and costs of base salary items); Mercer County Prosecutor's Office, P.E.R.C. No. 2021-42, 47 NJPER 465 (¶109 2021) (same).

Here, the clarification on remand was limited to a narrow question as identified by the Appellate Division: whether the PBA's proposed draft of the salary term accurately reflected the salary term the interest arbitrator wrote for the parties. In order to decide that question, the court directed the interest arbitrator to clarify: (1) whether he awarded unit members an amount of money in 2019 equal to what they would have received under the expired 2017

CNA had the 2019 step increase been delayed until October 1, in other words the monetary equivalent of a one-quarter step; or (2) whether he decreed that those members would ascend on October 1, 2019 to their next step "in accordance with past practice" and remain there for 2020, the last year of the contract.

We find that the interest arbitrator resolved that question by providing the requested clarification:

In my Award,. . . I specifically did not include the language that "[i]ncrements shall be paid in accordance with past practice" in the salary provision. If I intended for PBA members to receive "full step" increases in 2019 I would have used the same language for 2019 as I used when I awarded the full step increase in 2018.

[Clarification of IA Award at 9.]

The interest arbitrator explained that his clarification was based on his application of and adherence to the statutory 2% hard cap limitation on salaries, which allowed one-quarter of the step in 2019, and no additional money to apply to a step increase beyond that paid to the PBA in 2018 and 2019. Id. As such, the interest arbitrator properly answered the court's narrow question, clarifying that the "PBA's inclusion of such [past practice] language was not an accurate reflection of the Award." For the same reasons, we find that it was not error for the interest arbitrator to also clarify that, in order for the CNA's salary provision to have accurately reflected the award, it should have stated that "Increments shall not be paid in accordance with past practice

during the term of this agreement, but shall be paid as follows; 2018-full step increases; 2019- step increases October 1, 2019 in the amount of \$44,751.83; 2020-no step increases."

ORDER

The interest arbitration award, as clarified on remand of the Appellate Division, is affirmed.^{4/5/}

BY ORDER OF THE COMMISSION

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

ISSUED: February 24, 2022

Trenton, New Jersey

^{4/} The parties are also in interest arbitration (IA-2021-016) with respect to a successor to the 2018-2020 agreement that is the subject of the clarified award at issue here. On November 23, 2021 (P.E.R.C. No. 2022-23), we remanded an initial award in that other matter to the interest arbitrator for submission of additional evidence on the issues of healthcare contributions and revised final offers, with instructions that if the court-ordered clarification of the award in this matter (IA-2019-007) is appealed, then the arbitrator (in IA-2021-016) shall issue a remand decision within 90 days of the Commission's decision in this matter.

^{5/} The PBA's unfair practice charge (CO-2019-288) was disposed of by the Appellate Division's reversal of our decision in P.E.R.C. No. 2020-50, 46 NJPER 516 (¶114 2020).

In re Borough of Bergenfield

Superior Court of New Jersey, Appellate Division

June 9, 2021, Argued; October 5, 2021, Decided

DOCKET NO. A-3495-19

Reporter

2021 N.J. Super. Unpub. LEXIS 2398 *; 2021 WL 4535330

IN THE MATTER OF BOROUGH OF BERGENFIELD,
Respondent-Appellant, and PBA LOCAL 309,
Petitioner-Respondent.

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, PERC No.
2020-50.

Counsel: John L. Shahdanian argued the cause for
appellant (McCusker, Anselmi, Rosen & Carvelli, PC,
attorneys; John L. Shahdanian, on the briefs).

Michael A. Bukosky argued the cause for respondent
PBA Local 309 (Loccke, Correia & Bukosky, attorneys;
Michael A. Bukosky and Corey M. Sargeant, of counsel
and on the brief).

John A. Boppert, Deputy General Counsel, argued the
cause for respondent New Jersey Public Employment
Relations Commission (Christine Lucarelli, General
Counsel, attorney; John A. Boppert, on the statement in
lieu of brief).

Judges: Before Judges Ostrer, Accurso, and Enright.

Opinion

PER CURIAM

Borough of Bergenfield appeals from a decision of the
Public Employment Relations Commission ordering it to
cease and desist from refusing to sign the collective
negotiations agreement drafted by the Bergenfield PBA
Local No. 309 purportedly memorializing an interest
arbitration award. Bergenfield refused to sign the new

CNA because it does not believe the agreement
accurately reflects the interest arbitrator's award. The
PBA refused Bergenfield's entreaty that the parties
return to the interest arbitrator for clarification, [*2] and
instead filed an unfair practice charge against the
Borough for its refusal to sign its draft of the new
contract, as modified by the interest arbitration award.

The Commission acknowledged the parties do not
agree on what the arbitrator awarded for the 2019 and
2020 contract years, and that the dispute only arose
when the PBA presented the draft CNA for signature —
after the fourteen-day period for appealing the award
had expired. It determined, however, that as the
Borough failed to appeal the award and does not
dispute its terms or cost calculations, the parties'
disagreement over whether the Borough correctly
implemented the step increases in 2019 and 2020 "is a
matter of contract interpretation best dealt with through
the CNA's grievance procedures" and "immaterial as to
whether [the Borough] was obligated to sign the
agreement drafted by the PBA pursuant to N.J.S.A.
34:13A-5.4(a)(6)," which prohibits public employers from
"[r]efusing to reduce a negotiated agreement to writing
and to sign such agreement." We cannot agree and
thus, reverse and remand with directions for the parties
to return to the interest arbitrator to clarify his award for
incorporation in the CNA.

After the parties bargained to [*3] impasse over the
terms of a CNA to replace their one-year agreement that
expired on December 31, 2017, the Borough petitioned
to initiate compulsory interest arbitration. PERC
appointed an arbitrator, and the parties participated in a
formal interest arbitration in late 2018, focusing on three
main issues of impasse: the duration of a new CNA,
salaries, and health benefit contributions. In his
decision, the arbitrator noted the arbitration was
governed by the Police and Fire Public Interest
Arbitration Reform Act, N.J.S.A. 34:13A-14a to - 21,
requiring the award to comply with the Property Tax
Levy Cap, N.J.S.A. 40A:4-45.44 to - 45.47, and that the

award was "issued in accordance with the 2% hard cap limitation" of N.J.S.A. 34:13A-16.7 as well as "the 16g interest arbitration criteria to the extent deemed relevant," N.J.S.A. 34:13A-16(g).¹

The PBA's final offer on duration and salary was a one-year contract extending from January 1, 2018 to December 31, 2018, with a 1.8% wage increase applied across-the-board to the salary schedules. The Borough's final offer was a four-year contract extending from January 1, 2018 to December 31, 2021, with no salary increase, no step increases and all bargaining unit members still in step to remain at the same step on the salary guide as [*4] they were on December 31, 2017, for the duration of the contract, with longevity payments frozen during the term of the contract.

The arbitrator awarded a three-year agreement from January 1, 2018 to December 31, 2020, noting when he did so "that the first year of the agreement under this award," 2018, had already passed, and that step increases and longevity compensation had been paid in accordance with the expired 2017 contract, i.e., in accordance with past practice. As to salaries, the arbitrator determined the evidence as well as the continuity and stability of employment criterion supported "the maximum allowable award under the 2% cap," noting, however, that the parties did not agree as to the base salary calculation for 2017, which in accordance with N.J.S.A. 34:13A-16.7(b), serves as the baseline for calculating the 2% hard cap.

The arbitrator accepted the Borough's calculation of base salary "as of December 31, 2017 of \$5,365,227.65 as the baseline for calculating the 2% hard cap,"² thus

¹The 2% hard cap provision expired on January 1, 2018, pursuant to a sunset provision. See N.J.S.A. 34:13A-16.9; L. 2014, c. 11, § 4. Because the parties' CNA expired on December 31, 2017, the hard cap applied to this award. See N.J.S.A. 34:13A-16.9 (providing the hard cap "shall apply only to collective negotiations between a public employer and the exclusive representative of a public police department or public fire department that relate to negotiated agreements expiring on [January 1, 2011] or any date thereafter until or on December 31, 2017, whereupon, after December 31, 2017, the provisions of section 2 of P.L.2010, c.105 (C.34:13A-16.7) shall become inoperative for all parties except those whose collective negotiations agreements expired prior to or on December 31, 2017 but for whom a final settlement has not been reached").

²The PBA's base salary calculation as of the same date was \$585,468.35 higher. The arbitrator rejected the PBA's

equating "to a permissible [additional] salary expense of \$107,304.55 in 2018." He further found that step increases in the amount of \$248,815.26 had already been paid in accordance with past practice in 2018, exceeding [*5] the cap by \$141,510.71. The arbitrator further calculated that step increases and longevity compensation in accordance with past practice in 2019 would amount to \$189,024.48, exceeding "the permissible spend of \$109,450.64 by \$79,573.84;" and in 2020 to \$189,851.00, exceeding "the permissible spend of \$111,639.65 by \$78,211.35." The arbitrator thus calculated the total permissible spend over the three-year term awarded as \$328,394.84. Because step increases and longevity compensation of \$248,815.26 had already been paid in 2018, the first year under the award, the arbitrator found only \$79,579.58 remained to be awarded for 2019 and 2020.

The arbitrator thus concluded that

application of the 2% hard cap formula over a three-year term supports the following Award: 2018-0% salary increase, full step increases, senior officer differential and longevity compensation (which have been paid); 2019-0% salary increase, step increases October 1, 2019 (\$44,751.83), senior officer differential and longevity compensation in accordance with the Agreement in the amount of \$10,017.35; 2020-0% salary increase, no step increases, senior officer differential and longevity increases in accordance with the [*6] Agreement in the amount of \$13,888.75.

He accordingly entered a salary award, representing "the maximum salary increases that can be awarded under the cap on base salary increases with discretion limited to the distribution of those amounts" of:

2018 0% salary increase, full step increases, longevity and senior officer differential.

2019 0% salary increase, step increases October 1, 2019, longevity compensation and senior officer differential in accordance with the terms of the Agreement.

2020 0% salary increase, no step movement, longevity and senior officer differential in accordance with the terms of the Agreement.

The arbitrator also included two other provisions in the award important to this dispute. First, he noted that "[a]ll provisions of the existing agreement shall be carried forward except for those which have been modified by

calculation as not in accordance with N.J.S.A. 34:13A-16.7(a).

the terms of this Award." Second, he "calculated the net, annual economic change in base salary over the three-year term of the new agreement, as follows: 2018 - \$248,815.26; 2019 - \$54,769.18; 2020 - \$13,888.75 (pursuant to N.J.S.A. 34:13A-16.7 A and B)."

Neither party appealed the award. The Borough represents it did not do so because it was satisfied with the arbitrator's [*7] decision. When the PBA presented a draft CNA for signature to the Borough, after the time for any appeal had expired, the Borough objected to the language proposed in Article III, Section 2 concerning the payment of salary increments. Specifically, the PBA's proposed draft provided:

Increments shall be paid in accordance with past practice except that during the year 2019 only the Salary Step Increases, where applicable, shall be effective October 1, 2019. For the year 2020 there shall be no Step movement for salary increases.

The Borough contends the proposed language misstates the award by inclusion of the language that "[i]ncrements shall be paid in accordance with past practice." It notes the arbitrator did not include that language when he set forth the specific salary award over the life of the new contract, and his interest arbitration award modified past practice by delaying step increases until the fourth quarter of 2019 and eliminating them altogether for 2020, the final year of the contract. The PBA argues its draft is consistent with Article III, Section 2 of the 2017 contract, which provided that "[i]ncrements shall be paid in accordance with past practice" as modified by the arbitrator's award for the second and [*8] third years of the contract.

The PERC examiner who heard the PBA's summary judgment motion on the unfair practice charge agreed with the PBA that incorporating the "past practice" language into Article III, Section 2, the salary provision of the new CNA, was consistent with the interest arbitration award, and thus the Borough committed an unfair labor practice by refusing to sign the agreement. He rejected the Borough's claim, backed up by calculations of its chief financial officer, that the costs of implementing the award pursuant to the PBA's draft CNA would greatly exceed the costs specified by the interest arbitrator in his award.

The hearing examiner found the Borough "does not object to the terms of the CNA, but to the costs of implementing those terms." He concluded that "[t]o the extent the Borough is challenging the accuracy of the arbitrator's calculations under the 2% base salary cap,"

it was obligated to appeal the award, which it failed to do. And to the extent "the Borough is choosing to interpret the 2018-2020 CNA as only requiring it to pay the salary amounts set forth in the [interest arbitration] Award, that contract interpretation may be challenged by the PBA in accordance with the CNA's [*9] grievance procedures." The arbitrator concluded that the Borough's "interpretation, however, does not change the fact that the draft CNA's terms are consistent with the [interest arbitration] Award and must be signed by the employer" pursuant to N.J.S.A. 34A-5.4(a)(6).

PERC adopted the hearing examiner's decision. It acknowledged "the parties evidently disagree about the amounts required to be paid pursuant to the step increases dictated by the Award," and noted the Borough's argument that under the PBA's proposed draft contract, "the 2020 economic change will be over \$240,000, a figure not consistent with the Award's allowance of a total spend or economic change of \$13,888.75." The Commission nevertheless concluded the draft accurately reflected the interest arbitration award by carrying over into the salary provision the language from the 2017 CNA that "[i]ncrements shall be paid in accordance with past practice," and rejected the Borough's contention that accuracy also required inclusion of the terms of the award and the arbitrator's calculations of economic change, finding "no authority for the latter proposition."

The Commission reasoned that

[t]he Arbitrator's calculations of economic change were based [*10] on the record evidence before him, and his calculations were "constructed based on evidence of financial conditions and personnel costs taken from a particular snapshot in time." *City of Orange Twp.*, P.E.R.C. No. 2017-13, 43 NJPER 101 (¶31 2016). There is no support for the Borough's assertion that the Arbitrator's calculations would necessarily be the same at another snapshot in time, such as that addressed by the Borough's subsequent independent calculations and analysis nearly one year after the [interest arbitration] Award's issuance. In any case, that analysis was not presented to the Arbitrator. N.J.S.A. 34:13A-16f(3).

Moreover, as the Borough did not appeal the Award and does not dispute its terms or cost calculations, the Borough's post-Award independent analysis can have relevance only with respect to the parties' ongoing disagreement as to whether the Borough correctly implemented the October 1, 2019 step

increases in accordance with the Award. We agree with the Hearing Examiner that this is a matter of contract interpretation best dealt with through the CNA's grievance procedures, and that the Borough's argument is immaterial as to whether it was obligated to sign the agreement drafted by the PBA pursuant to N.J.S.A. 34:13A-5.4(a)(6).

We cannot agree. This is not a disagreement over [*11] contract interpretation. It is a dispute over whether the draft contract presented by the PBA to Bergenfield accurately reflects the interest arbitration award rendered in a compulsory interest arbitration. As the only arbitrator who can resolve that dispute is the interest arbitrator who entered the interest arbitration award, we reverse PERC's decision mandating that Bergenfield sign the disputed draft and remand with direction that the parties return to the interest arbitrator to clarify his award.

"[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). As our Supreme Court has explained, 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*." *N.J. State Policemen's Benevolent Ass'n, Local 29 v. Town of Irvington*, 80 N.J. 271, 284 (1979), 403 A.2d 473 (emphasis added). The Court has instructed that "[i]t is to be distinguished from 'grievance' arbitration, which is a method of resolving differences concerning the interpretation, application, or violation of an already existing contract." *Ibid*. Compulsory interest arbitration is "a statutorily-mandated [*12] procedure for resolving the terms of a new contract." *Hillsdale PBA Local 207*, 137 N.J. at 80.

This clear distinction between compulsory interest arbitration and grievance arbitration was missed here. The only issue in this case is whether the PBA accurately copied down the new salary term the interest arbitrator wrote for the parties. The arbitrator's award reads as follows:

AWARD

1. Duration. January 1, 2018 through December 31, 2020.
2. Salary. 2018-0% salary increase, full step increases, longevity and senior officer differential; 2019-0% salary increase, step increases October 1,

2019, longevity compensation and senior officer differential in accordance with the terms of the Agreement; 2020-0% salary increase, no step movement, longevity and senior officer differential in accordance with the terms of the Agreement.

3. Health Benefit Contributions. Fifteen (15%) of the cost of premiums.

4. All other proposals by the Borough and the PBA not awarded herein are denied and dismissed.

5. All provisions of the existing agreement shall be carried forward except for those which have been modified by the terms of this Award.

6. Pursuant to N.J.S.A. 34:13A-16(f), I certify that I have taken the statutory limitation imposed on the local tax levy cap into [*13] account in making the award. My Award also explains how the statutory criteria factored into my final determination.

7. I have also calculated the net, annual economic change in base salary over the three-year term of the new agreement, as follows: 2018-\$248,815.26; 2019-\$54,769.18; 2020-\$13,888.75 (pursuant to N.J.S.A. 34:13A-16.7 A and B).

In his decision, the arbitrator makes clear "[t]he salary amounts awarded represent the maximum salary increases that can be awarded under the cap on base salary increases *with discretion limited to the distribution of those amounts*." (Emphasis added.)

As is immediately apparent from a review of the award, the interest arbitrator did not include the language that "[i]ncrements shall be paid in accordance with past practice," in the salary provision of the award. Instead, he noted only that "longevity and senior officer differential [be paid] in accordance with the terms of the [expired] Agreement" for 2019 and 2020. Bergenfield asserts that inserting the phrase "[i]ncrements shall be paid in accordance with past practice" into the new salary provision is inconsistent with the salary term the arbitrator wrote for the parties, and makes the provision ambiguous, at best, [*14] necessitating, if not correction, at least the inclusion of the interest arbitrator's calculated costs of the step increases and longevity compensation for each year of the contract to make it an accurate reflection of the interest arbitrator's decision.

Bergenfield attempted to illustrate the error in the PBA's proposed salary term by presenting its CFO's calculations of the cost of increments paid in accordance with the PBA's draft. The Borough obviously hoped that a comparison between what the arbitrator

calculated as the permissible additional spend in the second and third years of the contract — \$54,769.18 for 2019 and \$13,888.75 for 2020 — against the additional spend calculated in accordance with the PBA's proposed draft — \$140,330.00 for 2019 and \$265,294.00 for 2020 — would make clear the PBA had not accurately copied the interest arbitration award's salary term into its proposed CNA. Unfortunately, the hearing examiner and PERC misinterpreted Bergenfield's objection to the "past practice" language in the new salary provision as an objection "to the costs of implementing" the terms of the new contract and deemed Bergenfield's calculations of the cost of increments paid in accordance [*15] with the PBA's proposed salary term relevant "only with respect to the parties' ongoing disagreement" as to whether Bergenfield "correctly implemented the October 1, 2019 step increases in accordance with the Award," which they deemed a contract interpretation issue appropriately resolved through grievance arbitration.³

The PBA proposed a salary term that incorporated a "past practice" clause the interest arbitrator did not include in his salary provision: "[i]ncrements shall be paid in accordance with past practice except that during the year 2019 only the Salary Step Increases, where applicable, shall be effective October 1, 2019. For the year 2020 there shall be no Step movement for salary increases." And it left out the "past practice" clause the interest arbitrator did include: that "longevity and senior officer differential [be paid] in accordance with the terms of the [expired] Agreement." Although the PBA's proposed salary term may appear, on first blush, to be a not inaccurate recapitulation of the interest arbitrator's salary award, a closer review of the interest arbitrator's award, including his careful calculations of "the maximum allowable award under the 2% hard cap," [*16] suggests the language does not accurately reflect his decision on the parties' salary impasse.

Specifically, the arbitrator determined that in 2018, the first year of the new contract, step increases and longevity compensation, which were paid in accordance with past practice, cost Bergenfield \$248,815.26, exceeding the 2% hard cap of \$107,304.55 by \$141,510.71. According to the interest arbitrator, if step increases and longevity compensation were awarded in accordance with past practice for the duration of the new contract, Bergenfield would pay \$189,024.48 in 2019, "exceed[ing] the permissible spend of

\$109,450.64 by \$79,573.84," and \$189,851.00 in 2020, "exceed[ing] the permissible spend of \$111,639.65 by \$78,211.35."

Because the 2% hard cap limited the total permissible spend over the three-year term awarded to \$328,394.84, the arbitrator made clear his "discretion [was] limited to the distribution" of that amount over the three-year term. As \$248,815.26 of the available \$328,394.84 had already been spent in the first year when step increases and senior officer differential were paid in accordance with past practice, he calculated only \$79,579.58 remained available to him for distribution [*17] in 2019 and 2020. Employing that discretion, the interest arbitrator determined the salary award for 2019 and 2020 would consist in 2019 of "step increases October 1, 2019 (\$44,751.83), senior officer differential and longevity compensation in accordance with the [expired] Agreement in the amount of \$10,017.35," and in 2020 "no step increases, senior officer differential and longevity increases in accordance with the [expired] Agreement in the amount of \$13,888.75." As Bergenfield attempted to explain to the hearing examiner and PERC, the PBA's inclusion of the "past practice" language into the salary term, which the arbitrator did not include, would suggest a spend in 2020 of an amount much closer to the \$248,815.26 in step increases and longevity differential the Borough paid in 2018, than the \$13,888.75 the interest arbitrator awarded for 2020, limited to the longevity differential.⁴

Although not clearly explained in the parties' submissions, their dispute is over whether the interest arbitrator awarded bargaining unit members an amount of money in 2019 equal to what they would have received under the expired 2017 CNA had the 2019 step increase [*18] been delayed until October 1, in other words the monetary equivalent of a one-quarter step, or whether he decreed that those members would ascend on October 1, 2019 to their next step "in accordance with past practice" and remain there for

³ The parties have advised the PBA has since grieved the Borough's payment of increments due in 2019 and 2020.

⁴ We accordingly reject PERC's finding that the interest arbitrator's included calculations of economic change amount to nothing more than "evidence of financial conditions and personnel costs taken from a particular snapshot in time." They were instead the arbitrator's calculations demonstrating his award would not increase base salary by more than 2% per contract year for a three-year contract in accordance with *Borough of New Milford and PBA Local 83*, P.E.R.C. No. 2012-53, 38 N.J.P.E.R. ¶340, 2012 N.J. PERC LEXIS 18 at 13 (2012). See *In re State*, 443 N.J. Super. 380, 384-85, 128 A.3d 1152 (App. Div. 2016).

2020, the last year of the contract.

Although the calculations the interest arbitrator included in his decision suggest the "past practice" language in the new CNA salary term does not accurately reflect the interest arbitrator's contract award, that decision is not one for this court. We decide only that the parties have a legitimate dispute over whether the PBA's proposed draft of the salary term is an accurate reflection of the salary term the interest arbitrator wrote for the parties. As it is readily apparent that Bergenfield could only be compelled to sign a contract that accurately reflected the interest arbitration award, we vacate PERC's order compelling the Borough to sign the PBA's draft and remand with directions for the parties to return to the interest arbitrator to clarify the award.

We add only the following. This was a compulsory interest arbitration over the terms of a new contract. The arbitrator decided the duration of the new contract [*19] and, in effect, wrote the new salary term for inclusion in the new CNA. See *N.J. State Policemen's Benevolent Ass'n*, 80 N.J. at 284. The failure of the hearing examiner and PERC to recognize this was a dispute over whether the PBA had accurately copied down the interest arbitrator's salary term instead of a disagreement over "the interpretation, application, or violation of an already existing contract," *ibid.*, led both to conclude, erroneously, that the matter could be resolved through grievance arbitration.

Besides thwarting the legislative goal of ensuring the prompt resolution of labor disputes through compulsory interest arbitration, see *Newark Firemen's Mut. Benevolent Ass'n v. Newark*, 90 N.J. 44, 56, 447 A.2d 130 (1982), PERC's decision also overlooked that this award, in the words of the interest arbitrator, "represent[ed] the maximum salary increases that can be awarded under the [2% hard] cap" with his "discretion limited to the distribution of those amounts." Because the interest arbitrator was prohibited by statute from entering an award that would increase base salary by more than two percent of the prior year's expenditure, N.J.S.A. 34:13A-16.7, see *In re State*, 443 N.J. Super. 380, 384-85, 128 A.3d 1152 (App. Div. 2016), PERC's decision that a grievance arbitrator could resolve the amounts due under the interest arbitration award, potentially resulting in salary increases exceeding the two percent [*20] hard cap, was error.

Reversed and remanded. We do not retain jurisdiction.