



BIENNIAL REPORT

OF THE

NEW JERSEY

PUBLIC EMPLOYMENT RELATIONS COMMISSION

ON THE

POLICE AND FIRE PUBLIC INTEREST

ARBITRATION REFORM ACT AS AMENDED

BY P.L. 2010 c. 105

January 2014

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**BIENNIAL REPORT
OF THE
NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION
ON
THE POLICE AND FIRE PUBLIC INTEREST ARBITRATION REFORM ACT
WITH AMENDMENTS EFFECTIVE JANUARY 1, 2011**

January 2014

INTRODUCTION

The Police and Fire Public Interest Arbitration Reform Act (Reform Act), *P.L.* 1995, c. 425, *N.J.S.A.* 34:13A-14 *et seq.*, which took effect on January 10, 1996, was amended by *P.L.* 2010, c. 105 after 15 years. (Appendix, Tab 1). The new interest arbitration law took effect on January 1, 2011. The law establishes a 2% cap on arbitration awards during the effective period, fast-tracks the arbitration and appeal processes and makes changes to arbitrator selection, qualifications, and costs to the parties. The specific changes are outlined in the overview section. The law also establishes the Police and Fire Public Interest Arbitration Impact Task Force ("Task Force") which is comprised of eight members. The Task Force has studied the effect and impact of the 2% arbitration award cap on local property taxes, compensation rates, and collective bargaining agreements. It also examined the interest arbitration process in terms of timelines, costs and fees prescribed by the reforms. The Task Force issued its final report with recommendations on March 19, 2014. That report can be found in the Appendix at Tab 3 as well as on the Commission's website (www.state.nj.us/perc).

To assist the labor relations community in adapting to the new procedures, the Commission has developed Frequently Asked Questions and posted them to the Commission's website. (Appendix, Tab 2.) Additionally, the Agency provides constituent outreach to employer and employee organizations at conferences and seminars.

This report, the ninth submitted under the revised statute and the second submitted after the adoption of *P.L.* 2010, c. 105, 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 issue awards that may significantly affect both management and labor, and participants in the process may at times voice their opinions about the interest arbitration statute. The Commission considers and responds to constituent concerns as appropriate within the existing statutory

framework. Substantive policy discussions about the interest arbitration statute are the province of the Legislature, the Task Force, labor and management representatives, and the public in general. Consistent with its neutrality as the agency charged with administering the statute, the Commission has not initiated statutory amendments or taken positions on proposals by others that might compromise the Commission's neutrality. This report describes the Commission's actions to implement and administer the Reform Act and *P.L. 2010, c. 105* in a neutral and impartial manner and in accord with the Legislature's direction.

IMPLEMENTATION AND ADMINISTRATION OF THE REFORM ACT

Overview

The 2010 Biennial Report sets forth the changes made in the 1996 Reform Act and is available on the Commission's website.

P.L. 2010, c. 105 made the following changes to the Reform Act:

- Effective date: January 1, 2011;
- The filing of a petition to initiate compulsory interest arbitration shall terminate any other formal impasse resolution proceeding such as mediation or fact-finding;
- The Commission must randomly select by lot and appoint an interest arbitrator to resolve a collective negotiations impasse within one business day after receipt of an interest arbitration petition;
- Interest arbitrators must have knowledge of local government operations and budgeting measures and serve for three-year terms. Current arbitrators have one year to demonstrate compliance with the new standards;

- Members of the interest arbitration panel shall be required to complete annual training approved by the State Ethics Commission;
- Final Offer arbitration is eliminated and the only process is conventional arbitration;
- The completion of interest arbitration hearings and the issuance of an interest arbitration award within 45 days after an arbitrator is appointed;
- Any appeal of an interest arbitration award be filed with the Commission within seven days after the issuance of an award;
- The Commission must issue a written decision within 30 days after it receives an appeal;
- In all cases, an interest arbitration award must be implemented immediately;
- The Commission must adopt a fee schedule for the compensation of interest arbitrators providing for a maximum fee of \$1,000 per day up to a limit of \$7,500 per case;
- The fee of an interest arbitrator who does not issue a decision within the time limits imposed by the law shall be reduced by \$1,000 per day;
- An arbitrator may charge a maximum \$500 cancellation fee;
- Interest arbitration awards must be within the 2.0% limit on the aggregate amount expended by the public employer on base salary items, as defined in the statute, in the twelve months immediately preceding the end of the expired contract and set by N.J.S.A. 34:13A-16.7 for contracts falling within the window period established by N.J.S.A. 34:13A-16.9.
- During the interest arbitration proceeding the parties shall submit written evidence of the financial impact of their final offers on the taxpayers and, that the arbitrator shall certify in the interest arbitration award, that the statutory limitations imposed by the local levy cap were taken into account. Aggregate value may be distributed over the term of agreement.

- The arbitrator is required to certify the statutory limits imposed on local levy cap was taken into account;
- Where a party has refused to engage in collective negotiations within the time periods mandated by N.J.S.A. 34:13A-16a(1), the other party may file an unfair practice charge, which shall not delay the impasse resolution process, but, the losing party shall be assessed for all administrative and legal costs associated with the filing and resolution of the charge;
- All collective negotiations agreements must be submitted to PERC within 15 days of contract execution for posting on the PERC website.
- Establish an eight member Task Force within 30 days of effective date to hold its first meeting within 60 days of the new law.
 - Four members appointed by the Governor; two members appointed by the Senate President; and two members appointed by the Speaker of the General Assembly.
 - Chair of PERC is executive non-voting member;
 - Task Force may hold public hearings;
 - Task Force to study effect and impact of cap upon local property taxes, collective bargaining agreements; arbitration awards; municipal services; municipal expenditures;
 - Task force to study the interest arbitration process and its continued use;
 - Task Force to report to Governor and Legislature April 1 of each year, final report April 1, 2014;
 - Beginning April 1, 2014, the 2% arbitration cap shall become inoperative for all parties except those whose contracts expired prior to April 1, 2014, but for whom a final settlement has not been reached. When final settlement in all such negotiations is reached, the 2% arbitration cap shall expire.

In implementing the revised statute and pursuant to its rule making authority, the Commission promulgated new regulations regarding interest arbitration which became effective September 7, 2012.

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. As noted, the statute requires that the Commission assign an arbitrator by lot from its Special Panel of Interest Arbitrators. Thus, any member of the Special Panel may be assigned to the most complex and demanding interest arbitration. In recognition of this fact, the Commission continues to require that the Special Panel be composed of only those labor relations neutrals who, in the judgment of the Commission, have the demonstrated ability and experience to decide the most demanding interest arbitration matters in the most professional, competent and neutral manner. Thus, Commission rules have and will continue to require that a member of the panel must have: (1) an impeccable reputation for competence, integrity, neutrality and ethics; (2) the demonstrated ability to write well-reasoned decisions; (3) a knowledge of labor relations and governmental and fiscal principles relevant to dispute settlement and interest arbitration proceedings; (4) substantial experience as a mediator and an arbitrator; and (5) a record of competent

performance on the Commission's mediation, fact-finding and grievance arbitration panels.

Panel members serve for fixed three-year terms and are eligible for reappointment. In February 1996, the Commission appointed the initial panel of 17 interest arbitrators who met these criteria. In 2010, the panel consisted of 25 members. Only 2 of the 25 arbitrators remain on the panel. The Commission reappointed the special panel and has added 3 highly qualified and experienced arbitrators. The current panel consists of 5 members who meet the Commission's high standards.

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

Continuing Education Programs for Special Panel Members

As part of its responsibility to administer the Act, the Commission has conducted regular continuing education programs for the Special Panel, all of which have included updates by Commission staff on interest arbitration developments and interest arbitration appeals. The Commission's initial programs reviewed and analyzed 1996 Reform Act requirements and included presentations by outside financial experts on the statutes and regulations governing municipal and county budgets. In addition, experienced arbitrators led panel discussions on mediation, hearings, and opinion-writing.

The Commission's most recent programs have focused on the new interest arbitration law and benefits issues. Outside budget and financial experts explained the legislation providing incentives for shared services, joint meetings, and municipal consolidations and limiting increases in property tax levies. They also examined the property tax levy cap. A pension expert addressed funding, accounting, and actuarial issues arising under the Public Employees' Retirement System (PERS) and the Police and Firemen's Retirement System (PFRS), with particular emphasis on an explanation of public employers' renewed pension contribution obligations under these systems. The 2012 and 2013 programs included presentations on local government budgets; levy caps; the cap base; pensions; and revenue issues including ratables, collections and the State deficit. The programs also included ethics training, guide construction, updates on award appeals and new scope of negotiations rules for interest arbitration filings (refer to page 10 for a fuller description of the expedited scope of negotiations pilot program).

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. The 2012 and 2013 programs focused on municipal budget issues and the legislation affecting the parties - including the 2% property tax levy cap.

Private Sector Wage Report

In May 1996, the Commission arranged to have the New Jersey Department of Labor and Workforce Development, Division of Labor Market and Demographic

Research (NJLWD), prepare the annual private sector wage report required by the Reform Act, *N.J.S.A.* 34:13A-16.6. The first report, prepared in September 1996, shows calendar year changes, through December 31, 1995, in the average private sector wages of individuals covered under the State's unemployment insurance system. Statistics are broken down by county and include a statewide average. Subsequent reports include the same information for calendar years 1996 through 2011.¹ In addition, for calendar years 1997 through 2011, the reports also show changes in average wages for such major industry groups as construction, manufacturing, transportation, wholesale and retail trade, services, finance and insurance, and real estate. Beginning with the 2002 report, the NJLWD uses the North American Industry Classification System (NAICS) to assign and tabulate economic data by industry. 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 2011 reports describes the system and how it differs from its predecessor, the 1987 Standard Industrial Classification System.

AGENCY INITIATIVES

Interest Arbitration Resources and Information

As part of its statutory responsibility to neutrally 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

¹The most recent annual report, prepared in August 2013 and included in the Appendix, Tab 5, reflects wage figures for calendar years 2011 and 2012.

website, as were the Commission's interest arbitration appeal decisions. In 2006, responding to suggestions from members of the labor relations community, the Commission began posting on its website all collective negotiations agreements filed pursuant to a public employer's statutory obligation to file contracts with the Commission. Contracts are searchable by employer or organization name, employer type, and county.

The Division of Local Government Services in the Department of Community Affairs has assisted the Commission in collecting negotiations agreements by circulating notices to every municipal and county employer reminding them of their obligation to provide PERC with a copy of current collective negotiations agreements. The Commission currently has 724 police and fire contracts in its database. In addition, pursuant to *N.J.S.A. 34:13A-16.8(d)(2)* and the recommendation of the Task Force, the Commission designed a form which summarizes all costs and their impact associated with newly negotiated agreements. In the case of police and fire units, the form outlines the difference between economic and non-economic items reported in the previous agreement, details the increased items included in the newly negotiated agreement and the impact of those changes. The Police and Fire Collective Bargaining Agreement Summary form can be downloaded from the Commission's website. A copy of the summary form can be found in the Appendix, Tab 6. The Commission will also explore other ways to expand parties' access to information that will assist them in negotiations and interest arbitration.

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

in dispute in interest arbitration proceedings subject to the 45 day processing timeline pursuant to the interest arbitration reforms. The Commission has considered one petition on an expedited basis under to the pilot program.

Voluntary Mediation Program for Police and Fire Contract Negotiations

Due to the statutory restrictions on interest arbitration awards as well as the quick time-frames for interest arbitration proceedings, the Commission anticipates parties will consider participating in its mediation program for police and fire contract negotiations. A mediator is assigned and the Commission, rather than the parties, pays for the services. The mediator assigned is an experienced, capable neutral, but is most likely not one of those individuals who is routinely involved in interest arbitration proceedings. Parties may petition for mediation 90 days prior to expiration of a contract verses the statutory requirement limiting filing for interest arbitration until the contract expires.

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. In addition, the program offers parties the opportunity to become familiar with experienced neutrals who do not ordinarily work as interest arbitrators. If a settlement is not achieved, either party retains its right to file for interest arbitration after contract expiration.

Since the passage of the interest arbitration reforms, 44 impasse petitions have been filed by police units as opposed to no impasse petitions having been filed from fiscal year 2006 through fiscal year 2010. Five impasse petitions have been

filed by fire units since fiscal year 2011 compared to one in the prior five fiscal years (2006 - 2010).

INTEREST ARBITRATION PETITIONS

AND

AWARDS

Statistical Overview

The following statistics reflect the number of petitions filed by calendar year, arbitrators appointed and awards issued under the Interest Arbitration Act since 2003:² In the following charts, cases may be filed, appealed, decided or withdrawn in different calendar years. Cases are reported in the year which the event occurred.

Year	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
IA Filed	120	102	113	104	104	104	117	121	23	48	28
Arbitrators Appointed	101	95	107	82	107	100	114	110	34*	46	22
Mutual Selection	99	95	106	81	106	99	112	104	11^	0**	0**
By Lot Appt.	2	0	1	1	1	1	2	1	23	46	22

*In some cases, a settlement was reached after a petition was filed but before an arbitrator was appointed. ^In others, the parties have asked that the appointment of an arbitrator be held in abeyance pending negotiations. The petitions were filed before 2011 for contracts which had expired on or before December 31, 2010 thereby permitting mutual selection of an arbitrator.

**The ability to mutually select an arbitrator ended for petitions filed in 2011 and after.

²See 2010 and 2012 Biennial Reports for awards from 1995 through 2002 available on the Commission website www.state.nj.us/perc.

In addition, appointments in one calendar year may result from petitions filed in the preceding calendar year.

Year	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Awards Issued	23	27	11	13	16	15	19	14	34	36	27
Terminal Procedure Used for Pre January 2011 Filings											
Conventional	22	26	11	12	12	15	18	13	34	36	27
Final Offer	1	1	0	1	1	1	1	1	0	0*	0*

*Final offer arbitration was eliminated for petitions filed January 1, 2011 or after.

The number of awards issued over the last two years compared to the previous calendar years increased significantly. The 2012 Biennial Report indicated the total of awards issued for calendar years 2010 & 2011 was 48. The total number of awards issued for calendar years 2012 & 2013 was 63, a 31 % increase. By comparison, the average number of awards issued for the previous five years ranged from a low of 14 to a high of 36. The total number of settlements reported to the Commission for calendar year 2012 was 29 and for 2013 it was 8, a significant drop off from the two preceding years (38 in 2011 and 47 in 2010).

The bulk of the awards/settlements issued in 2011 were filings from previous years that were still open in 2011. Those awards were issued in accordance with applicable provisions of the law in effect prior to January 1, 2011. The Commission began 2011 with 187 open cases. The Commission received a total of 124 awards/settlements during 2011.

This reflects a 47% decrease in the backlog of open cases. The trend continued at the start of 2012 as there were 85 cases open. Seventy-four (74) cases were disposed of in 2012. Calendar year 2013 began with 65 cases open and ended with 57 disposed of by way of awards or settlements.

Effective January 1, 2011, the Legislature enacted the new law reforming the interest arbitration process again. The last revision was in 2008. With the passage of the new law, the number of filings decreased significantly (approximately 81%). The total number of filings in previous years averaged from 80 to 120. In 2010, the total number of petitions filed was 121. The total for 2011 was 23. In 2012, there was an increase of 25 petitions filed (total of 48), but by 2013 the number of filed petitions dropped down significantly again to 28.

Mutual selection by the parties of an interest arbitrator was eliminated effective with new law (January 1, 2011). Arbitrator appointments are done through a certified computer generated random selection process.

The random selection process is a methodologically and statistically certified program. Francis A. Steffero, PhD, CISA recently re-certified the process because the number of panel members changed dramatically to insure the agency is compliant with the requirements of the new law. (Appendix, Tab 4.)

The thrust of many of the changes in the law addresses the compensation components of the awards/settlements. A review of the overall number of awards issued for 2010 and 2011 indicates significant changes in salary. The statistics show a great deal of variation as they relate to previous years. There is a continual decrease in the overall

settlement rates and awarded salaries. Awards contain comprehensive data and creative solutions to many financially troubled jurisdictions.

The Reform Act of 2008 created substantial changes in the overall results of awards, settlements and filings. Effective January 1, 2011, additional changes were deemed necessary for the interest arbitration law resulting in the reform of the governing statute and act. The new guidelines maintain the nine criteria essential to issuing any award, but also introduced a 45-day processing deadline; reduced arbitrator's fees; incorporated a 2% cap on base salary; and established a definition of a base salary. The awards issued during the previous time period reflect a continued decline in the average salary increase. This trend occurred after the passage of the 2008 reform. The average awarded salary increase for calendar year 2010 was 2.5%. The increases for 2011 reduced again to 2.05%. The average annual awarded salary increase ranged from 3.95% in 2006 to 2.05% in 2011. The awards reflect a combination of customized results that are indicative of the faltering economy. Many awards address modifications of the health benefits, prior to the passage of *P.L. 2011, C. 78*. They also incorporate modified increases to the non-economic items as well as items now addressed in other legislation.

The downward trend in salary increases continued in 2012. The average percentage increase for awards where the 2% hard salary cap did not apply was 1.59%. For awards subject to the 2% salary cap, the average increase was 1.98%. In 2013, for those awards not subject to the 2% salary cap, the average salary increase awarded was 1.16%. For awards subject to the 2% salary cap the average salary increase was 1.89% in 2013. (See Appendix, Tab 7.)

For awards issued to which the 2% hard salary cap was applicable, the costs of base salary items such as increments and longevity must be included. For awards issued to which the cap did not apply these costs were not calculated into the cost of the award. Thus any comparative analysis of pre and post cap awards must be adjusted by these figures, a task beyond the scope of this report.

The increases for 1993 through 2013 are:

1993	5.65%
1994	5.01%
1995	4.52%
1996	4.24%
1997	3.63%
1998	3.87%
1999	3.69%
2000	3.64%
2001	3.75%
2002	3.83%
2003	3.82%
2004	4.05%
2005	3.96%
2006	3.95%
2007	3.77%
2008	3.73%
2009	3.75%
2010	2.50%
2011	2.05%

2012	2% cap: 1.98% No cap: 1.59%
2013	2% cap: 1.89% No cap: 1.16%

The quarterly issued interest arbitration salary analysis also reports the voluntary settlements. These are cases where the parties file a petition for interest arbitration, an arbitrator is appointed and the parties resolve their dispute with the assistance of the arbitrator and then he or she reports that settlement to the Commission. These settlements also reflect a decline in the average salary increases. The reported settlement for 2006 was 4.09%. Using 2006 as the starting point, annually the reported settlements declined to a low in 2012 of 1.82% followed by 1.96% in 2013. Some settlements included a zero percent increase for one or multiple years of the agreement; while others included changing health plans, no increase to longevity or other stipend allowances. (Appendix, Tab 7.)

The reported voluntary settlements³ for 1993 through 2013 are:

1993	5.56%
1994	4.98%
1995	4.59%
1996	4.19%
1997	3.95%

³Voluntary settlements may not include increases to the salary guide, step movement or longevity increases.

1998	3.77%
1999	3.71%
2000	3.87%
2001	3.91%
2002	4.05%
2003	4.01%
2004	3.91%
2005	3.94%
2006	4.09%
2007	3.97%
2008	3.92%
2009	3.60%
2010	1.86%
2011	1.87%
2012	1.82%
2013	1.96%

INTEREST ARBITRATION APPEALS

The following statistics pertain to interest arbitration appeals filed since the 1996 adoption of the Reform Act through December 31, 2013. Some cases may be appealed and disposed in different calendar years.

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

* This column reflects the cumulative total from 1996 through 12/31/2009.

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

Several appeals were filed in 1997 and in 1998, resulting in a series of Commission decisions that set forth the Commission's standard of review; interpreted Reform Act provisions; and provided guidance for arbitrators concerning the analysis required by the Reform Act. After this series of initial decisions, the number of appeals declined from 1999 through 2008, but have increased significantly in 2010 and 2011. From 1999 through 2008, the Commission decided between zero and four appeals per year. In 2010, there was nearly a 300% increase in the number of appeals filed from 5 in 2009 to 14 in 2010. There were 51 total appeals filed in the first 14 years of the Reform Act (1996-2009) and 27 total appeals for 2010 and 2011. The increasing trend continued with 33 total appeals filed in 2012 and 2013. The Commission issued 20 decisions in 2012 and 11 decisions in 2013. Two appeals were withdrawn (1 in 2012 and 1 in 2013) and there are no appeals pending. Pursuant to the reforms set forth in *P.L. 2010, c. 105*, the Commission must decide all appeals filed after January 1, 2011 within 30 days.

Since 2010, 26 awards have been affirmed by the Commission and 3 awards have been affirmed with a modification. Of the 18 awards that were remanded since 2010, 5 were remanded to a new arbitrator and 13 were remanded to the original arbitrator. There have been seven requests for special permission to appeal an interest arbitrator's interim ruling, of which all but one were denied.

From 1996 through 2013, nine of the Commission's interest arbitration decisions have been reviewed by the Courts. *Teaneck Tp. and Teaneck FMBA Local No. 42*,⁴

⁴P.E.R.C. No. 2000-33, 25 *NJPER* 450 (¶¶30199 1999), *aff'd in part, rev'd and remanded in part*, 353 *N.J. Super.* 289 (App. Div. 2002), *aff'd o.b.* 177 *N.J.* 560 (2003).

Somerset Cty. Sheriff's Office and FOP Lodge 39,⁵ and *Fort Lee and PBA Local No. 245*⁶ are detailed in the 2006 (Teaneck), 2010 (Somerset) and 2012 (Fort Lee) Biennial Reports.

Five decisions reviewing Commission interest arbitration decisions have been reviewed by the Courts in 2012 and 2013.

In *Hunterdon Cty. and FOP Lodge No. 29*,⁷ the Commission affirmed the award holding that the interest arbitrator had the authority to award a salary guide and that the award was supported by substantial credible evidence in the record. The employer appealed the Commission's decision to the Appellate Division and the Appellate Division affirmed. (Appendix, Tab 9.)

In *County of Mercer, Mercer County Prosecutor and Prosecutor's Detectives and Investigators PBA Local 339; Prosecutor's SOA*,⁸ the Commission affirmed the award holding that it defers to the arbitrator's judgment in his application of the statutory factors and his confidence that the award will not present a cap limitation issue for the employer.

⁵P.E.R.C. No. 2007-33, 32 *NJPER* 372 (¶56 2006), aff'd 34 *NJPER* 21 (¶8 App. Div. 2008).

⁶P.E.R.C. No. 2009-64, 35 *NJPER* 149 (¶55 2009), appeal of decision on remand P.E.R.C. No. 2010-17, 35 *NJPER* 352 (¶118 2009), aff'd 2011 N.J. Super. Unpub. LEXIS 931.

⁷P.E.R.C. No. 2011-80, 37 *NJPER* 205 (¶65 2011), aff'd 39 *NJPER* 1 (¶1 2012).

⁸P.E.R.C. No. 2012-15, 38 *NJPER* 183 (¶60 2011), aff'd 39 *NJPER* 112 (¶29 2012).

The employer appealed the Commission's decision to the Appellate Division and the Appellate Division affirmed. (Appendix, Tab 9.)

In *City of Camden and IAFF Local No. 788*,⁹ the Commission affirmed an interest arbitration award setting the terms and conditions of employment for a successor contract between the City of Camden and IAFF Local 788. The employer appealed the Commission's decision to the Appellate Division and the Appellate Division reversed. The Appellate Division vacated the award and remanded the case for assignment to a new arbitrator holding the arbitrator exceeded his authority in rendering an award the City could not afford and that essentially required the State of New Jersey to assume funding responsibility. The IAFF petitioned the Supreme Court for certification and certification was denied. (Appendix, Tab 9.)

In *Burlington County Prosecutor's Office and PBA Local 320*,¹⁰ the Commission affirmed the majority of the award and remanded the seniority provision to the arbitrator for clarification. The employer appealed to the Appellate Division and the Appellate Division remanded the case to the Commission for development of the arbitrator's 16g analysis holding the arbitrator did not adequately address the statutory factors. The employer petitioned the Supreme Court for certification and certification was denied. (Appendix, Tab 9.)

⁹P.E.R.C. No. 2012-18, 38 *NJPER* 188 (¶63 2012), rev'd 429 *N.J. Super.* 309 (App. Div. 2013), certif. den. 215 *N.J.* 485 (2013).

¹⁰P.E.R.C. No. 2012-61, 39 *NJPER* 20, (¶4 2012), rem'd 40 *NJPER* 41 (¶17 2013), certif. den. 2014 *N.J. LEXIS* 209.

In *County of Morris, Morris County Sheriff's Office and PBA Local 298*,¹¹ the Commission affirmed an interest arbitration award holding the arbitrator complied with the statutory requirements and adequately explained why he deviated from the County's internal settlement pattern. The employer and PBA appealed to the Appellate Division. The Appellate Division remanded the case to PERC to develop the record regarding the arbitrator's analysis of the 16g factors. (Appendix, Tab 9.)

There are eight appeals of Commission interest arbitration decisions pending before the Appellate Division.¹²

CONCLUSION

The amendments enacted in 2010 have been in place for three years. There have been challenges in implementing the reforms. Mandatory timelines for issuing awards and considering appeals are constricted. The Commission is not recommending any statutory changes as that is the purview of the Task Force. See Final Task Force Report at Tab 3. In administering the Act, the Commission has promulgated new interest arbitration rules; will continue to encourage pre-arbitration mediation; will maintain a highly qualified Special

¹¹P.E.R.C. No. 2013-27, 39 *NJPER* 200 (¶64 2012), rem'd 40 *NJPER* 241 (¶92 2013).

¹²*County of Union and PBA Local No. 108*, P.E.R.C. No. 2013-4, 39 *NJPER* 83 (¶32 2012) app. pending; *City of Camden and Camden Organization of Police Superiors*, P.E.R.C. No. 2013-49, 39 *NJPER* 318 (¶109 2013), P.E.R.C. No. 2013-81, 39 *NJPER* 503 (¶160 2013), app. pending; *Borough of Tenafly and PBA Local 376*, P.E.R.C. No. 2013-87, 40 *NJPER* 90 (¶34 2013), app. pending; *County of Warren and Warren County Corrections FOP Lodge 171*, P.E.R.C. No. 2014-23, 40 *NJPER* 225 (¶86 2013), app. pending; *Burlington County Prosecutor's Office and PBA Local 320*, P.E.R.C. No. 2014-22, 40 *NJPER* 214 (¶83 2013), app. pending.

Panel of Interest Arbitrators; will continue to provide panel members with pertinent continuing education; and will process interest arbitration appeals within 30 days.

APPENDIX

TAB

Police and Fire Public Interest Arbitration Reform Act <i>P.L.</i> , 2010, c. 105	1
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34:13A-14a. Short title.

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

L. 1995, c. 425, s. 1.

34:13A-15. Definitions.

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

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

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

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

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

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

not delay or impair the impasse resolution process.

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

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

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

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

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

d. The resolution of issues in dispute shall be binding arbitration under which the award on the unsettled issues is determined by conventional arbitration. The arbitrator shall determine whether the total net annual economic changes for each year of the agreement are reasonable under the nine statutory criteria set forth in subsection g. of this section and shall adhere to the limitations set forth in section 2 of P.L.2010, c.104 (C.34:13A-16.7). The non-petitioning party, within five days of receipt of the petition, shall separately notify the commission in writing of all issues in dispute. The filing of the written response shall not delay, in any manner, the interest arbitration process.

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

(2) Applicants for initial appointment to the commission's special panel of arbitrators shall be chosen based on their professional qualifications, knowledge, and experience, in accordance with the criteria and rules adopted by the commission. Such rules shall include relevant knowledge of local government operations and budgeting. Appointment to the commission's

special panel of arbitrators shall be for a three-year term, with reappointment contingent upon a screening process similar to that used for determining initial appointments. Arbitrators currently serving on the panel shall demonstrate to the commission their professional qualification, knowledge and experience, in accordance with the criteria and rules adopted by the commission, within one year of the effective date of this act. Any arbitrator who does not satisfactorily demonstrate such to the commission within the specified time shall be disqualified.

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

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

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

f. (1) At a time prescribed by the commission, the parties shall submit to the arbitrator their final offers on each economic and non-economic issue in dispute. The offers submitted pursuant to this section shall be used by the arbitrator for the purposes of determining an award pursuant to paragraph (2) of subsection d. of this section.

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

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

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

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

(5) The decision of an arbitrator or panel of arbitrators shall include an opinion and an award, and shall be rendered within 45 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 seven 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 30 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 \$ 7,500. 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 factors set forth in paragraph (6) of this subsection in any award:

(1) The interests and welfare of the public. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by P.L.1976, c.68 (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.

(50) 1977, c. 85, s. 1. Amended L. 1995, c. 425, s. 3; L. 1997, c. 183; L. 2007, c. 62, s. 14, L. 2010, c. 105, s. 1, eff. Jan. 1, 2011

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

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

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

L. 1995, c. 425, s. 4., eff. Jan. 10, 1996.

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

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

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

in which a federal decennial census becomes effective pursuant to R.S.52:4-1.

L. 1995, c. 425, s. 5, eff. Jan. 10, 1996.

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

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

L. 1995, c. 425, s. 6, eff. Jan. 10, 1996.

34:13A-16.4. Biennial reports.

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

L. 1995, c. 425, s. 7, eff. Jan. 10, 1996.

34:13A-16.5. Rules, regulations.

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

L. 1995, c. 425, s. 8, eff. Jan. 10, 1996.

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

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

L. 1995, c. 425, s. 9, eff. Jan. 10, 1996.

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

a. As used in this section:

"Base salary" means the salary provided pursuant to a salary guide or table and any amount provided pursuant to a salary

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

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

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

L. 2010, c. 105, s. 2., eff. Jan. 1, 2011

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

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

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

(1) four to be appointed by the Governor;

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

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

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

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

(2) The task force shall meet within 60 days of the effective date of P.L.2010, c.105 (C.34:13A-16.7 et al.) and shall meet

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

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

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

f. The task force shall report its findings, along with any recommendations it may have, to the Governor and the Legislature annually, on or before April 1 of each year. The task force's final report due on or before April 1, 2014 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 April 1, 2014, the task force shall expire.

L. 2010,c. 105, s. 3., eff. Jan. 1, 2011

34:13A-16.9. Effective date

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

L. 2010,c. 105, s. 4., eff. Jan. 1, 2011

Frequently Asked Questions Interest Arbitration Procedures

Introduction: This document is intended to inform parties to the interest arbitration process about the impact of amendments to the interest arbitration law (N.J.S.A. 34:13A-14a et seq.) made by the passage of P.L. 2010, Ch. 105, effective January 1, 2011. The law may be viewed through this link:

http://www.njleg.state.nj.us/2010/Bills/A3500/3393_R1a.HTM

1 Q Do all of the Commission's current rules reflect the December 2010 changes to the interest arbitration statute?

A No. However the Commission will engage in rulemaking to conform its rules to the recent statutory changes. In the meantime, parties should refer to the statute and these frequently asked questions.

2 Q What if a party refuses to negotiate prior to the expiration of the contract?

A The new law expressly provides that either party may, prior to contract expiration, file an unfair practice charge with the Commission alleging that the other party is refusing to negotiate in good faith. The Commission shall order the non-prevailing party to bear all legal and administrative costs associated with the filing and resolution of the charge. Impasse resolution procedures will not be delayed by the processing of the charge.¹

3 Q When may the employer or employee organization file for interest arbitration?

A The earliest filing date continues to be on or after the date on which their collective negotiations agreement expires.²

4 Q Does the law change the method for filing an interest arbitration petition?

A The method of filing for interest arbitration is unchanged, as is the requirement that both parties pay filing fees. As conventional arbitration is the only terminal procedure under the new law, the form for filing an interest arbitration petition is being changed to omit the choice of alternative types of interest arbitration. Hard copies of the new form will be available upon request. It may also be downloaded from the Commission's web site (http://www.state.nj.us/perc/NJ_PERC_Petition_to_Initiate_Compulsory_Interest_Arbitration_-_Form.pdf).³

- 5 **Q When must a response to a petition be filed?**
A The non-petitioning party shall notify the Commission in writing of all issues in dispute within five days of receipt of the petition.⁴
- 6 **Q When and how are arbitrators selected?**
A On the first business day after the Commission receives a petition, the Commission shall select an arbitrator using a computer program that will make a random selection from its special panel of interest arbitrators.⁵ Mutual selection of an interest arbitrator is no longer permitted.
- 7 **Q May the parties still invoke mediation or fact-finding?**
A Yes, but those proceedings terminate immediately upon the filing of an interest arbitration petition.⁶
- 8 **Q What is the terminal procedure in interest arbitration?**
A The unsettled issues shall be determined by conventional arbitration only.⁷
- 9 **Q What are the parties' responsibilities at an arbitration hearing?**
A The parties shall submit their final offers on economic and non-economic issues in dispute. In addition to presenting evidence relevant to the nine statutory factors that an arbitrator must consider in rendering an award, all parties shall introduce evidence regarding the limitations imposed upon the local unit's property tax levy and present written estimates of the financial impact of their last offer on the taxpayers with the submission of their last offer.⁸
- 10 **Q When must an arbitration award be issued?**
A The arbitrator shall issue an award within 45 days of assignment.⁹ An arbitrator who fails to render a timely award shall be fined \$1,000 for each day the award is late.¹⁰
- 11 **Q When will the award be implemented?**
A An arbitrator's award shall be implemented immediately.¹¹
- 12 **Q How can a party appeal an arbitration award that is issued after January 1, 2011, but was docketed under the former law?**
A For any award received after January 1, 2011, within seven days of receiving an award, an aggrieved party may file a notice of appeal with the Commission. As a decision on an appeal must be issued within 30 days, the Commission has suspended application of the briefing schedule in N.J.A.C.

19:16-8.1. The appellant shall file an original and nine copies of a brief along with its notice of appeal. The respondent has seven days to file any cross-appeal or its answering brief.¹²

13 Q When will the Commission decide an appeal?

A The Commission's decision shall be rendered no later than 30 days after the filing of the appeal with the Commission.¹³

14 Q What about a scope of negotiations dispute that arises during an interest arbitration proceeding?

A In addition to the rules that are superceded by the recent statutory changes, the Commission has suspended application of N.J.A.C. 19:16-5.7(h), which prohibits an arbitrator from rendering a decision on any issue which is the subject of a petition for scope of negotiations determination filed with the Commission. The requirement that an arbitrator issue a decision within 45 days of assignment precludes application of this rule. Any scope of negotiations dispute can be decided by the Commission as part of any appeal of an arbitration award.

15 Q What are the costs?

A The parties share equally in the costs of arbitration. The arbitrator's fee shall not exceed \$1,000 per day and the total cost of the services of the arbitrator shall not exceed \$7,500. If the parties cancel an arbitration hearing without good cause, the arbitrator may impose a \$500 fee. 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.¹⁴

16 Q What are the statutory restrictions on the economic components of an arbitration award?

A. If the contract expires on January 1, 2011 or any date thereafter until April 1, 2014, then the 2% cap on arbitration applies and,

1. An arbitrator shall not issue any award which, on an annual basis, increases base salary items by more than 2.0 percent of the aggregate amount expended by the public employer on the bargaining units base salary items in the twelve months immediately preceding the expiration of the collective negotiations agreement.

2. The parties may agree or the arbitrator may decide to distribute the aggregate monetary value of the award over the term of the collective negotiation agreement in unequal annual percentages.

3. No new monetary items shall be introduced. An award of an arbitrator shall not introduce base salary items and non-salary economic issues that were not included in the prior collective negotiations agreement.¹⁵

B. Beginning April 1, 2014, the 2.0% arbitration cap shall become inoperative for all parties except those whose contracts expired prior to April 1, 2014 but for whom a final settlement has not been reached. When final settlement in all such negotiations is reached, the 2.0% arbitration cap shall expire.¹⁶

C. In the case of a party that entered into a contract that expires on January 1, 2011 or any date thereafter until April 1, 2014, and where the terms of that contract otherwise meet the criteria set forth in the 2% arbitration cap, that party shall not be subject to the 2% arbitration cap when negotiating a future contract.¹⁷

17 Q What is the definition of "base salary"?

A. "Base salary" includes:

1. The salary set forth in a salary guide or table and any amount provided for salary increments.
2. Any amount provided for longevity or length of service.
3. 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.
4. Base salary shall not include non-salary economic issues, pension and health and medical insurance costs.
5. "Non-salary economic issues" means any economic issue that is not included in the definition of base salary.)¹⁸

EXAMPLES

How does the new law apply?

18 Q Contract expired 12/31/2009
IA petition filed in June 2010.
Award pending (as of 1/1/11)

A 2% cap on base salary does not apply
(Contract began and ended before new law effective date)

All other time provisions*, in the new law including but not limited to new time lines for the arbitrator, fees, arbitrator selection do not apply
(IA petition filed before new law effective date).

***Once issued: Appeal time of 7 days applies and Commission has 30 days to issue a decision. See FAQ No. 12.**

19 Q Contract expired 12/31/2009
Parties engaged in negotiations, mediation.
IA petition filed 1/5/2011

A 2% cap on base salary does not apply
(Contract began and ended before new law effective date)

All other provisions in the new law including but not limited to new time lines, fees, arbitrator selection apply.
(IA petition filed after new law effective date)

20 Q Contract expired 12/31/2010
IA petition filed 1/10/2011

A 2% cap on base salary does not apply
(Contract began and ended before new law effective date)

All other provisions in the new law including but not limited to new time lines, fees, arbitrator selection apply.

(IA petition filed after new law effective date)

21 Q Contract expires 6/30/2011
IA petition filed 7/1/2011

A 2% cap on base salary applies
(Contract began before and ended after new law effective date)

All other provisions in the new law including but not limited to new time lines, fees, arbitrator selection apply.

(IA petition filed after new law effective date)

Footnotes

1. N.J.S.A. 34:13A-16a(1)
2. N.J.S.A. 34:13A-16b(2)
3. N.J.A.C. 19:16-5.12
4. N.J.S.A. 34:13A-16d(2), as amended by P.L. 2010, Ch. 105
5. N.J.S.A. 34:13A-16e(1), as amended by P.L. 2010, Ch. 105
6. N.J.S.A. 34:13A-16b(2), as amended by P.L. 2010, Ch. 105
7. N.J.S.A. 34:13A-16d(2), as amended by P.L. 2010, Ch. 105
8. N.J.S.A. 34:13A-16f(3), as amended by P.L. 2010, Ch. 105
9. N.J.S.A. 34:13A-16f(5), as amended by P.L. 2010, Ch. 105
10. N.J.S.A. 34:13A-16e(4), as amended by P.L. 2010, Ch. 105
11. N.J.S.A. 34:13A-16f(5)(b), as amended by P.L. 2010, Ch. 105
12. N.J.S.A. 34:13A-16f(5)(a), as amended by P.L. 2010, Ch. 105
13. N.J.S.A. 34:13A-16f(5)(a), as amended by P.L. 2010, Ch. 105
14. N.J.S.A. 34:13A-16f(6), as amended by P.L. 2010, Ch. 105
15. P.L. 2010, Ch 105, §2b.
16. P.L. 2010, Ch 105, §4
17. P.L. 2010, Ch 105, §4
18. P.L. 2010, Ch. 105, §2a

FINAL REPORT

OF THE

POLICE AND FIRE PUBLIC INTEREST

ARBITRATION IMPACT TASK FORCE

TO THE GOVERNOR AND LEGISLATURE

March 19, 2014

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**POLICE AND FIRE PUBLIC INTEREST
ARBITRATION TASK FORCE MEMBERS**

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TASK FORCE REPORT

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

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

A chairperson is selected from among the appointees of the Governor and a vice chairperson from among the appointees of the Legislature. The Chair of the Public Employment Relations Commission (PERC) shall serve as non-voting executive director of the task force. Appointments to the Task Force were to be made by January 31, 2011 and the Task Force was to meet initially within 60 days of the law’s effective date.

Role of the Task Force

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

¹ This report reflects data through December 31, 2013.

continued use in connection with police and fire labor contracts disputes. The task force shall make findings as to the relative growth in total compensation cost attributable to factors subject to the arbitration award cap and to factors exempt from the arbitration award cap, for both collective bargaining agreements and arbitration awards.

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

The Task Force is required to report its findings, along with any recommendations it may have, to the Governor and the Legislature and the Task Force's final report due on or before April 1, 2014 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 April 1, 2014, the task force shall expire.

Final Report of the Task Force

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

1. Petitions Filed for Interest Arbitration

As the chart attached hereto at **Tab A** indicates, the number of cases submitted for interest arbitration in calendar year 2012 and 2013 remained much lower than the number of filings in 2010. PERC received 48 interest arbitration petitions in calendar year 2012 and 28 in 2013, up from 23 in 2011, but down from the 121 petitions it received in 2010 and well below the number of filings in calendar years 2006 through 2009.

2. Interest Arbitration Cases Disposed During Calendar Year

At the time the changes to the interest arbitration law took effect, PERC had a backlog of cases that were not covered by the new procedural time lines for completing an interest arbitration case. In calendar year 2011, interest arbitrators disposed of 124 cases, the highest rate

of disposal in the last five years. In calendar year 2012, arbitrators disposed of 74 cases and they disposed of 57 cases in calendar year 2013. See Tab B attached. This was achieved through PERC's improved case management and efforts to achieve resolution of long outstanding cases. One of the main concerns PERC had been made aware of, prior to the change in the law, was the amount of time, and the cost related to an interest arbitration proceeding. Once a case was in the hands of an interest arbitrator, however, PERC had limited tools available to it to achieve a more expeditious resolution of outstanding cases. Subject to the recommendations contained herein, the Task Force believes that the imposition of hard deadlines for the completion of an interest arbitration proceeding, and related appeals of awards to PERC, benefits all parties to the proceeding. See Recommendation Nos. 1-4 below.

In calendar year 2011, PERC had 187 open interest arbitration cases, many of these cases having been initiated prior to the new law's 45 day deadline for completion. At the start of 2012, that number dropped dramatically to 85. By the start of 2014, that number dropped further to 37 cases.² See Tab C attached.

3. Appeals

From 2010 through 2012, PERC experienced an increase in the number of appeals from interest arbitration awards. See Tab D attached. In 2013, however, that number dropped dramatically. While there is no conclusive data to explain these trends, one possible explanation for the rise in the number of appeals, especially in calendar years 2011 and 2012, could be attributable to challenges of the arbitrators' interpretations of the amendments to the interest arbitration law, which required resolution by PERC. Of the nine appeals filed with

² It should be noted that this number includes a number of cases filed prior to the 45 day completion deadline and all pending appeals before PERC and the Appellate Division.

PERC for interest arbitration awards subject to the 2% base salary cap, public employers filed six of the appeals and unions filed three of the appeals. PERC affirmed four of the nine appeals in full and one it affirmed in part and vacated in part. Of the remaining appeals, one was withdrawn, one was ordered to be filed as a scope of negotiations petition and only two were vacated and remanded. **Tab E.**

B. Reporting of Data

The Task Force has addressed one of its concerns about contract reporting and availability of information. In our 2011 report, we made recommendations to PERC regarding the compilation and reporting of interest arbitration awards. On PERC's web site, www.state.nj.us/perc, the list of public sector labor agreements has expanded as a result of those efforts. The Division of Local Government Services ("DLGS") in the Department of Community Affairs has circulated notices to every municipality, county and other public employers within their jurisdiction to remind them of their obligation to provide PERC with electronic copies of current public sector collective negotiations agreements. PERC currently has 724 police/fire contracts in its database with expiration dates from 2008 to 2017. By having this information readily available on a public web site, parties will instantly have available comparative contract information from multiple entities in the event of an interest arbitration filing. As noted previously, while this obligation already existed for all public sector labor agreements (not just police and fire contracts) under N.J.S.A. 34:13A-8.2 (which requires public employers to "file with the commission a copy of any contracts it has negotiated with public

employee representatives following the consummation of negotiations.”) the changes mentioned above will help achieve greater compliance with this requirement.³

C. Contract Summary Information

While having access to the agreements themselves is useful, one of the most difficult items to assess in the past, for police and fire agreements, was the actual cost of the contract. The Task Force did develop, and PERC implemented, a system that reports, as closely as possible, the total cost (increase to base salary) of a labor contract. Attached hereto at **Tab F** is a summary form PERC is requiring public employers to complete when it reaches a new police/fire labor agreement.⁴

D. Alternate Dispute Resolution and Voluntary Settlements

In our 2012 Report, we indicated that one of the items that the Task Force would review is the effect of the new law on the agreements reached voluntarily (based on those reported to PERC). Data collected by PERC shows that one impact P.L. 2010, c. 105 has had on police and fire collective negotiations is an increase in the number of units filing for impasse proceedings.

³N.J.S.A. 34:13A-16.8(d)(2) also provides that, in order to facilitate the work of the task force, PERC is required to 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 and any side bar agreements shall be submitted to PERC within 15 days of agreement execution.

⁴ This information, as well as the instruction sheet for employers, is already available on PERC’s web site. www.state.nj.us/perc. As noted in our 2012 Report, the reason for utilizing this form was that PERC did not have all of this information in its possession (that the new summary form requires) when it publishes its salary increase analysis of police and fire awards. For example, in 2011, it reported that the average salary increase from interest arbitration awards that year was 2.05% and the average salary increase in voluntary settlements reported that year was 1.87%. Those numbers, however, do not report, in most instances, the total percentage increase to base salary costs caused by such things as step increments and longevity payments. One purpose of the new law was to better identify and recognize those often hidden, but significant, increases to the public employer’s budget.

Filing for impasse allows the parties to utilize the services of a neutral mediator to help them voluntarily settle their agreement. **Tab G.**

Additionally, PERC has compiled data regarding voluntary settlements for agreements subject to the two percent base salary cap if the matter had proceeded to interest arbitration. Although the parties are free, under the law, to reach a voluntary settlement that exceeds that cap, the data reveals that the parties, even on a voluntary basis, are attempting to control salary increases. Of the 53 reported voluntary settlements, in cases that would have been subject to the two percent cap had they proceeded to arbitration, the average annual increase in base salary (as defined in N.J.S.A. 34:13A-16.7(a)) was 2.11%. **Tab H.**

Of the 19 reported agreements settled voluntarily, during the interest arbitration process, but prior to a formal award, the average annual increase in base salary amounted to 1.84%. **Tab I.**

E. Analysis of Particular Interest Arbitration Awards

For all interest arbitration awards subject to the 2% base salary cap, since the inception of the law, the average annual base salary increase amounted to 1.92%. The Task Force analyzed 12 interest arbitration awards as of December 31, 2013 to determine the effect of the two percent salary cap on base salary in comparison to how base salary would have been impacted if the terms of the expired agreements had not been renegotiated and all of the economic terms from the prior agreement would have been repeated in the successor agreements.⁵ **Tab J.** What this analysis shows is what would have happened if the across the board increases from the prior contract had been awarded in the current contract. Certainly, there is no guarantee, absent the

⁵ There were 17 awards during this period but PERC utilized 12 which provided it with enough background data for it to conduct a comparative analysis.

cap, that the parties, on their own, would have agreed to the same increases as the prior agreement. The importance of this analysis, however, is to underscore the difference in how the reporting of salary increases has changed due to the law. Prior to the law, public employers, unions and arbitrators would report only the amount of the across the board increases. That reporting, however, did not factor in the increases to salary costs caused by step increases or longevity payments.⁶

1. Seaside Park

- i. Average annual base salary increase pursuant to the award: 2.03%.
- ii. Average annual base salary increase if terms of expired contract had been repeated in successor contract: 5.86%.

2. Morris County Prosecutor

- i. Average annual base salary increase pursuant to the award: 2.0%.
- ii. Average annual base salary increase if terms of expired contract had been repeated in successor contract: 4.71%.

3. Atlantic City⁷

- i. Average annual base salary increase pursuant to the award: 2.0%.
- ii. Average annual base salary increase if terms of expired contract had been repeated in successor contract: 5.90%.

4. Burlington County Corrections

⁶ The Task Force was unable to re-analyze the earlier contracts for these entities to determine the increase to “base salary” under the law’s current definition because the parties and arbitrators, prior to enactment of the 2% cap, did not have to analyze the complete cost impact of a contract as they do under the new law. Specifically, the dollar effect of the step increments and/or longevity often was not identified clearly in those pre-cap awards. The current awards provided that data.

⁷ This involved a fire fighter unit.

- i. Average annual base salary increase pursuant to the award: 1.95%.
- ii. Average annual base salary increase if terms of expired contract had been repeated in successor contract: 4.62%.

5. Byram Twp.

- i. Average annual base salary increase pursuant to the award: 1.63%.
- ii. Average annual base salary increase if terms of expired contract had been repeated in successor contract: 2.98%.

6. Camden County Sheriff

- i. Average annual base salary increase pursuant to the award: 1.91%.
- ii. Average annual base salary increase if terms of expired contract had been repeated in successor contract: 4.17%.

7. Camden County Sheriff

- i. Average annual base salary increase pursuant to the award: 1.48%.
- ii. Average annual base salary increase if terms of expired contract had been repeated in successor contract: 2.45%.

8. Midland Park

- i. Average annual base salary increase pursuant to the award: 1.94%.
- ii. Average annual base salary increase if terms of expired contract had been repeated in successor contract: 5.55%.

9. Tenaflly

- i. Average annual base salary increase pursuant to the award: 1.89%.
- ii. Average annual base salary increase if terms of expired contract had been repeated in successor contract: 7.65%.

10. Riverdale

- i. Average annual base salary increase pursuant to the award: 1.99%.
- ii. Average annual base salary increase if terms of expired contract had been repeated in successor contract: 5.77%.

11. Mahwah

- i. Average annual base salary increase pursuant to the award: 1.96%.
- ii. Average annual base salary increase if terms of expired contract had been repeated in successor contract: 3.66%.

12. Ship Bottom

- i. Average annual base salary increase pursuant to the award: 2.0%.
- ii. Average annual base salary increase if terms of expired contract had been repeated in successor contract: 2.90%.

Overall, the awards in these 12 instances increased base salary on average 1.90% for each year of the contract. If the terms of the expired agreements had repeated in the successor agreement, annual base salary costs would have increased on average by 4.69%. **Tab K.**

- Impact on Step Increases and Longevity Payments

A more detailed analysis of these awards shows the contractual changes made to fit the award under the two percent cap. While one might assume that "base salary" increases only when an employee is given an across the board percentage increase, that assumption is incorrect. The percentage increases to salaries set forth in a law enforcement contract are but one of many reasons for an employee's "base salary" to increase while remaining in the same position. Base salary is defined in N.J.S.A. 34:13A-16.7(a) as "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.”

It is those salary increments, or step payments, and longevity payments, which often repeated from prior contracts, that had not been included in the past when discussing the cost increases associated with a police/fire labor contract. Increments, or step increases on a salary guide, are usually given automatically on an annual basis until the employee reaches the top of the guide and longevity payments are an additional payment to an employee (either a percentage or lump sum) based on the employee’s years of service in the unit. Traditionally, these costs are above and beyond the percentage across the board increases mentioned in contracts. The Task Force concludes that the statutory definition of “base salary” provides a more transparent and accurate depiction of salary increases over the life of an agreement.

For example, assume an employee earns \$50,000 and is on Step 1 of a contractual salary guide with ten steps going up to \$100,000. On July 1, all members of the bargaining unit receive a 2% salary increase, so the salary rises to \$51,000. Assume also that is the employee’s anniversary date and the employee moves to Step 2 of the guide, which has a salary of \$54,000. Thus, in that year, the employee's salary has risen 8%, not just 2%.

To address some of the additional costs that impact base salary and to meet the statutory 2% cap, some arbitrators added steps in the salary guide, which, in turn, reduced the amount between steps. For example, in the Ship Bottom decision, the arbitrator added two steps between

Steps 6 and 7 of the salary guide and froze the guide in the last year of the agreement.⁸ In that same agreement, the arbitrator froze longevity levels during the term of the agreement. Similarly, in Mahwah, the arbitrator decreased the longevity payment for new hires and froze it for certain officers in the unit during the term of the agreement. In Seaside Park, the arbitrator expanded the steps on the guide from seven to ten steps so that the amount of each step increment decreased. In Burlington County, Morris County and Camden County, each award contains either a complete freeze on step increments during the contract or, for at least a portion of the contract. Atlantic City, Point Pleasant and West Caldwell, each contained modifications to the step guides in those respective contracts for all new hires. The Point Pleasant awards also contained changes in the longevity calculations for new hires and presented employees, in those instances, the range of percentages paid for longevity decreased from one to ten percent to one to five percent. In Midland Park, the arbitrator added two to four steps to the salary guide based on an employee's date of hire and the arbitrator froze the step guide in the last year of the contract.

F. Number of Interest Arbitrators Available and Arbitration Costs

Pursuant to N.J.S.A. 34:13A-16(f)(6), the total cost of services of an arbitrator shall not exceed \$7,500.00. That requirement is in full effect for all interest arbitrations filed after January 1, 2011. PERC's most recent data revealed that the average cost of an interest arbitrator (for cases not subject to P.L. 2010 c. 105) was \$17,942 in 2009; \$17,742 in 2010 and \$14,384 in 2011.

At this time, PERC currently has five trained interest arbitrators who are randomly assigned by computer to interest arbitration matters under the cost limitations of P.L. 2010 c.

⁸ By freezing longevity payments, or step movement, in a given year, those costs do not increase in that particular year, meaning that an employee does not move to the next step on the guide or to a higher level on the longevity scale.

105. There were 21 arbitrators as of December 31, 2010 and then five as of January 1, 2011. While the Task Force agrees with the importance to control costs, it has determined that the total compensation for the arbitrator should be raised to \$10,000.00, to address the additional amount of work involved and to attract more qualified arbitrators. See Recommendation No. 3 below.

**UNANIMOUS RECOMMENDATIONS
OF THE TASK FORCE**

N.J.S.A. 34:13A-16(f)(5) provides now that the decision of an interest arbitrator shall be rendered within 45 days of PERC's assignment of an arbitrator. **RECOMMENDATION No. 1**

– The Task Force recommends that the law be revised to increase the number of days to complete the arbitration process from 45 days to 90 days. The Task Force unanimously agrees that additional time would help with scheduling issues, unexpected issues that arise in the proceedings, etc., while adhering to the Task Force's goal that the proceeding be concluded in an expeditious manner.

N.J.S.A. 34:13A-16(f)(5)(a) provides that appeals of an award to PERC must be filed within seven (7) days of receipt of an award and the Commission's decision must be rendered no later than 30 days after the filing of the appeal with PERC. **RECOMMENDATION No. 2** – The Task Force recommends that the law be amended to increase the 30 day time period to 60 days, for the Commission to render a decision on an appeal of an interest arbitration. This will continue to allow for thorough evaluation and prompt resolution of appeals to PERC but allow the Commission members time to review and schedule a meeting for an appeal within the prescribed time period. The Commission is scheduled to meet once a month and the 30 day time period made it difficult to address issues that arose at a Commission meeting about a specific appeal that caused a need for further review.

N.J.S.A. 34:13A-16(f)(6) provides that the total cost for service of the arbitrator shall not exceed seven thousand five hundred dollars (\$7,500.00). **RECOMMENDATION No. 3** – The Task Force recommends that the law be amended to increase this amount to ten thousand dollars (\$10,000.00). Many hearings take several days to complete and the arbitrator also is responsible for pre-hearing matters and authoring the extensive decision for each case. Upon reflection, due to the complexity of these cases, and the increased workload caused by requiring mathematical

analysis of the base salary cap compliance, this recommended figure recognizes the workload of an interest arbitrator, while maintaining a reasonable cap on costs.

N.J.S.A. 34:13A-16(f)(5)(a) provides that either party may appeal the interest arbitrator's award to PERC within seven days of receiving an award. **RECOMMENDATION No. 4** – The Task Force recommends that the time for appeal of an interest arbitration award should be increased from 7 days to 14 days.

**ADDITIONAL RECOMMENDATIONS AND COMMENTS BY THE
APPOINTEES OF THE GOVERNOR TO THE TASK FORCE**

David A. Cohen, Esq. – Task Force Chairman
Director – Governor’s Office of Employee Relations

Honorable Declan J. O’Scanlon, Jr.
Assemblyman – District 13

Robert M. Czech
Chair & CEO Civil Service Commission

Thomas Neff
Director, Division of Local Government Services
Department of Community Affairs

N.J.S.A. 34:13A-16.9 currently provides that the 2% base salary cap shall expire on April 1, 2014. The four appointees of the Governor to the Task Force strongly recommend that the law be amended to remove the “sunset” provision and have the cap continue without a date limitation or a limitation as to the number of agreements to which it would apply. Moreover, they recommend that this cap apply to newly-certified units which have not had an initial collective negotiations agreement prior to the effective date of the law, January 1, 2011.⁹

The appointees of the Legislature to the Task Force suggest that the 2% base salary cap has “outlived its usefulness” and should not be renewed or, if renewed, should be allowed to be adjusted upward to account for potential inflation. That recommendation will lead to higher property taxes and/or additional layoffs of public safety employees.

For many municipalities, public safety payroll is one of the largest, if not the largest, annual budgetary item. Those same municipalities are subject to the 2% property tax levy cap contained in P.L. 2010, c. 44. Allowing these budgetary costs to increase faster than revenue sources can increase will put all municipalities, and especially urban areas with low ratable bases, in difficult budget situations requiring cutbacks of other services or even layoffs of certain personnel, including law enforcement, in order to comply with the property tax levy cap.

⁹ The appointees of the Governor note that they did review reported crime data for the municipalities analyzed in Section E of the Report (to the extent that information was available), to determine if the interest arbitration base salary cap had any correlation to the amount of reported crime. The New Jersey Uniform Crime Reporting Law (N.J.S.A. 52:17 B-5.1 et. seq.) was enacted on May 16, 1966, and became effective January 1, 1967. Responsibility for the establishment, direction, control, and supervision of the Uniform Crime Reporting system was assigned to the State’s Attorney General. The Attorney General authorized the New Jersey State Police to collect and collate the crime data received from law enforcement agencies within the state. As required by statute, all law enforcement agencies in the state submit monthly and annual summary crime reports to the program. The appointees of the Governor found no conclusive data in the UCR upon which it could conclude that the law affected total crime in the State. However, the Director of DLGS notes that in several large cities, contractual increases above and beyond 2% would necessitate personnel reductions or other personnel actions to accommodate contractual increases that could not otherwise be accommodated with an increase in the levy.

Perhaps most troubling to the appointees of the Governor, is the recommendation of the Legislature's appointees that the statutory definition of "base salary" be amended to exclude "those salary increases contained in long-standing salary guides." What this means is that the appointees of the Legislature are stating that items such as step increments should not be included in the calculation of base salary and should remain hidden. Such an amendment would effectively eliminate one of the main purposes of the law; to provide taxpayers a true, accurate and complete explanation of the amount police and fire contracts will increase costs. For many years, contractual increases were "misreported" by stating only the impact of across the board increases. Items such as continued step increases have major budgetary impact. The fact that they have been repeated from prior contracts does not render them non-negotiable. Items such as step increases or longevity payments must be included in the calculation of base salary or the taxpayers will once again be misled about how their tax dollars are being spent.

Additionally, the appointees of the Legislature recommend that the Legislature amend the law to challenge certain decisions by PERC interpreting and applying the law essentially because they disagree with the outcome of those decisions. First, the appointees of the Governor point out that it is entirely inappropriate for this body to address reasonable judicial or quasi-judicial opinions, some of which are still in the appeal process. Second, with regard specifically to "breakage" savings, put simply, the appointees of the Legislature are asking that the salary costs for employees that leave the unit should be spread to the remaining members and then they could receive an additional 2% more per year. Without going into greater detail with the problems of this assertion, the appointees of the Legislature are stating that public employers must continue to spend the same amount on police and fire and that number must grow each year. That is clearly not fiscally responsible government. Further, notably there is no mention of

a public employer receiving a credit for new hires projected to occur during the contract. Finally, what the appointees of the Legislature are seeking is to have an arbitrator “forecast” what will occur in the future with the unit. The method adopted by PERC is simply the fairest and most equitable for both parties.

The appointees of the Legislature also recommend that healthcare contributions under P.L. 2011, c. 78 should be considered by an arbitrator. One of the purposes of the law was to finally require public employees to meaningfully share in health insurance costs – something that has been standard practice among private employees for many years. Allowing an arbitrator to “offset” those employee contributions would effectively pass those costs back to the employer and destroy the purpose behind c. 78 that all parties pay a fair share of the costs of health insurance.

The appointees of the Governor note that the alternative recommendation of the appointees of the Legislature that the law be continued only for another three years is misleading because they seek to have the 2% cap apply only to those units, after the current sunset, which have not been subject previously to the cap.

Contrary to what is represented below, the appointees of the Governor point out that there is no evidence that the 2% cap chills negotiations. Indeed, it may require parties to take a more complete look at compensation levels, salary scales, and automatic increments to all members just due to length of service, etc. The response of the appointees of the Legislature fails to mention one important stakeholder in this analysis – the taxpayer. The non-procedural amendments recommended by the appointees of the Legislature below would all do one thing – increase costs to the taxpayer. For this, and the reasons outlined above, the appointees of the

Governor strenuously recommend continuation of the 2% cap, without limitation and without sunset.

Lastly, the appointees of the Legislature suggest that the town by town analysis of contract values before and after the 2% arbitration award cap was put into place (Section E above) is irrelevant. On the contrary the analysis is of significant value on several levels. First, it demonstrates that contractual values have indeed trended down since the implementation of the arbitration award cap. Second, the information demonstrates clearly that contract values prior to the implementation of the arbitration award cap regularly exceeded the then extant tax levy cap. That mathematically untenable practice was completely eliminated with the implementation of the arbitration award cap.

ADDITIONAL RECOMMENDATIONS AND COMMENTS

BY THE APPOINTEES OF THE LEGISLATURE

TO THE TASK FORCE

Robert A. Fagella, Esq. – Task Force Vice Chairman
New Jersey State PBA

Ronald Bakley
New Jersey State Fraternal Order of Police

Edwin Donnelly
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International Association of Fire Fighters

Introduction

The current interest arbitration statute, P.L. 2010, Chap. 105, became effective January 1, 2011. It significantly amended earlier versions of the law, all for the purported purpose of creating a more “level playing field”. Both employers and unions have now had the opportunity to assess its impact on the issues which the law was purportedly enacted to address, including its effectiveness on stated goals, as well as employee compensation and morale. The very reason that the law included a sunset provision was to evaluate its performance rather than make it a permanent facet of labor relations for uniformed services. While the law has clearly reduced compensation for this unique group of public employees, we believe that the scales now weigh far too heavily in favor of employer interests, and that the law has outlived its usefulness. Alternatively, if it is to be continued at all, it must be significantly modified.

In the three years that the law has been in existence, its cornerstone was imposition of a “hard cap” limitation of two percent upon increases in employee compensation – at least assuming that the parties proceed to interest arbitration. While salary increases in excess of two percent are not prohibited in the course of voluntary negotiations, statistics provided to the Task Force now demonstrate that rarely have employers agreed to salary increases in excess of the inevitable limitation which would be imposed in arbitration. This puts to bed the claim that through other “creative” contract modifications, employees would gain more reasonable compensation increases. Put differently, the law not only imposes a hard cap in interest arbitration, but has also effectively limited possible increases outside of the interest arbitration process. Bargaining for salary increases against the backdrop of a hard cap Sword of Damocles leaves little room for any real negotiations beyond two percent. Accordingly, we believe this is the critical issue to be addressed by this Task Force.

Factors To Be Addressed By Task Force

Pursuant to N.J.S.A. 34:13A-16.8, the Task Force is required to address the relationship of a number of important public policy considerations and the hard cap imposed by the new law. In particular, the statute requires the Task Force to study the effect and impact of the arbitration cap upon numerous factors, including:

Local property taxes:

Municipal services;

Municipal expenditures;

Changes in crime rates;

Police and fire recruitment, hiring and retention.

However, it is apparent that none of these issues has been, or can be, addressed by this Task Force. No empirical data has been submitted or accumulated that provides any correlation between recent interest arbitration awards, municipal expenditures or real property taxes. While some may claim it is self-evident that reduced compensation for police and fire inevitably result in reduced municipal expenditures, that is not necessarily the case. For such an analysis, it would also be necessary to evaluate whether any purported savings were expended in other areas, thus resulting in equal municipal costs, but for different services. In light of the hundreds of municipalities that would have to be studied, that is a task beyond our abilities or resources. What can be said is that there is no empirical data indicating there has been reduced or slowed growth of property taxes in the last three years which can be attributed in any manner to the cap.

Not surprisingly, the Governor's representatives on the Task Force have instead focused on the admitted success of the law in limiting overall compensation increases to two percent over the prior year. However it is not appropriate to compare "projected" costs under expired contracts with final agreements under the new law. There is no basis to assume that terms of expired agreements would not have been renegotiated in the absence of the new interest arbitration law. Thus, the statistics cited by some on this Task Force, comparing salary increases under expired agreements with bargaining agreements under the amended law, improperly skews the analysis because of the unwarranted assumption that the terms of expired bargaining agreements would have continued unchanged.

Finally, while there is no empirical data addressing the relationship between the hard cap and police and fire recruitment and retention, it is surely fair to conclude that reduced compensation levels affect morale of the existing workforce, and ultimately will affect recruitment and retention, as new or prospective employees learn that compensation increases after entry level will be limited to 2% per year, regardless of existing salary guides, for reasons discussed more fully below.

The Hard Cap and Salary Guides

The law includes in "base salary", subject to the hard cap, annual increases contained in salary guides which were negotiated years ago. Generally speaking, it is not uncommon for step movements on those salary guides to exceed two percent. To put the guides in proper context, some historical analysis is in order.

Traditional step guides were negotiated to assure increased compensation in subsequent years for newly hired officers who generally started at low salaries. They were favored by

employers as well as unions as a method for attracting new employees at discounted starting rates. Conversely, applicants were inclined to accept the positions because existing contractual agreements promised reasonable annual increases ultimately leading towards a maximum salary, albeit over the course of a career. The result of the interest arbitration cap, however, is effectively to eliminate promised salary step increases contained in longstanding salary guide if, in the aggregate, they exceed two percent.

The statutory limitation of the hard cap has been magnified, to the detriment of employees, by PERC decisions interpreting the new law. In particular, PERC's decision in New Milford and New Milford PBA 83 provides that "breakage" – the savings which an employer obtains as a result of retirements of senior, highly paid officers – cannot be included in the pool of money available for salary increases within the cap. Put differently, although the retirement of an officer at \$100,000.00 per year, and his/her replacement by either no officer, or a lower paid new employee, clearly increases the employer's available pool of money for compensation increases within the cap, PERC has barred arbitrators from taking those savings into consideration in calculating the "base salary" increase. And, the recent decision of PERC in Atlantic County and PBA 243 et al sounded the death knell of long-standing salary scale movement, by abolishing 35 years of precedent which had authorized "dynamic status quo" salary step movement for employees not at maximum salary, under an existing salary guide arrangement. In combination, these factors have had a significantly adverse impact on determining fair compensation for police and fire.

Other Factors Important In Evaluating The Hard Cap

Other factors, important but not considered by the new law, have similarly had a significantly adverse impact on compensation. The cost of living over the three years the law has been in effect increased by approximately six percent - alone offsetting the permissible two percent annual increase. In addition, uniformed services are now required under Chapter 78 to make payments towards medical insurance premium in amounts which can reach 35% of the cost of the premium (at times up to \$9,000 per year). On average this mandated contribution will shortly approximate 4%-8% of salary for most officers. Chapter 78 similarly increased the pension contribution of uniformed services from 8 ½% of salary to 10%.

Thus, the combined impact of these costs upon employees whose salaries are subject to hard cap salary limitations are now approaching 8%-10% annually – resulting in a significant net decline in compensation per year even if a full two percent increase is awarded. While some may claim that these are extraneous factors which should not be taken into consideration in an analysis of a hard cap interest arbitration statute, reality argues otherwise. The cumulative effect in the face of a two percent hard cap has been a real and significant net decline in compensation for officers. It is exacerbated, moreover, for those at top scale, who can receive virtually no increases if even a modicum of an existing salary guide is retained. Viewed from any perspective, the overall compensation received by uniformed personnel is significantly diminished by additional costs or contributions which come out of their paychecks.

Two other factors, intangible but real, also should be considered. As noted, the existence of a hard cap itself causes a significant chill on collective negotiations where the parties might wish to reach an agreement without interest arbitration. The employer's knowledge that

compensation increases are ultimately limited by law to two percent makes it significantly more difficult to obtain a negotiated settlement even where warranted and funds exist. While more enlightened employers may agree to award compensation increases in excess of the statutory maximum in appropriate circumstances, the evidence has now proven otherwise in virtually every instance over the last three years.

Second, the imperceptible, but nonetheless real, impact of a hard cap upon new hires cannot be underestimated. As noted above, starting salaries have historically been lower than market value for uniformed services precisely because future salary increases were built into the compensation structure. Now, new officers do not have the assurance that salaries will ultimately reflect market value because the compensation structures that were negotiated over the course of decades have been summarily displaced.

Thus, the statistics relied upon by some members of the Task Force demonstrate that a myopic focus on the alleged positive impact of reducing the compensation of uniform services does a disservice to those individuals who have chosen a career in, and dedicated their lives to, public safety. These facts cannot be ignored in effectuating the Legislature's mandate for this Task Force to study this temporary interest arbitration statute and changes which are needed.

Recommendations

Based upon the foregoing, the State PBA and State FMBA, joined by the PFANJ and State FOP, make the following recommendations regarding the existing statute:

1. The interest arbitration hard cap has outlived its usefulness and should not be renewed after April 1, 2014.

2. At the least, significant modifications to the hard cap should be implemented. If a hard cap is to be retained, arbitrators should be permitted to take into consideration inflationary increases in the previous year in addition to the two percent cap. While recent inflationary increases have been modest, the fact remains that inflation may increase at any time, while the hard cap as currently written remains static. Recognition of increases in the cost of living for the applicable geographic area in addition to the two percent cap would at least insure that employees will not lose even more to inflation.

3. Alternatively, the statutory definition of “base salary” should be amended to exclude from the hard cap those salary increases contained in long-standing salary guides.

4. The Legislature should specifically reverse several of PERC’s crabbed interpretations of the law. “Breakage” savings resulting from retirements or layoffs should be considered as available funds for distribution when calculating funds available within the two percent cap.

5. Similarly, existing salary guides should be permitted to continue, under the “dynamic status quo” doctrine, following contract expiration. Bargaining units can determine on their own whether they wish to freeze the increment structure in order to ensure that funds under the hard cap remain available for negotiation and ultimate distribution to the bargaining unit.

6. Healthcare contributions which employees are required to make under Chapter 78 should be considered by an arbitrator and deemed outside the hard cap. While municipalities may argue that their healthcare costs are also increasing, percentage contributions by employees include the increases in the overall cost of healthcare in their jurisdiction. It is worth noting that employer health care costs are already specifically excluded from the two percent tax levy cap.

7. The parties should be permitted to request the appointment of any mutually agreeable arbitrator who is on the approved interest arbitration panel.

8. The time for appeal of an interest arbitration award should be increased from 7 days to 14 days.

9. Mandatory mediation by an interest arbitrator should be required for a 14 day period after the filing of a petition to commence interest arbitration. The time period for completion of interest arbitration should be tolled during this 14 day period.

10. Pursuant to N.J.S.A. 34:13A-16.9, bargaining units which have already submitted to the requirements of the statute are exempted from the hard cap requirements in any future arbitration. This provision should be grandfathered into any amendment of the statute.

11. Include a renewed sunset provision for the statute effective April 1, 2017.

APPENDIX

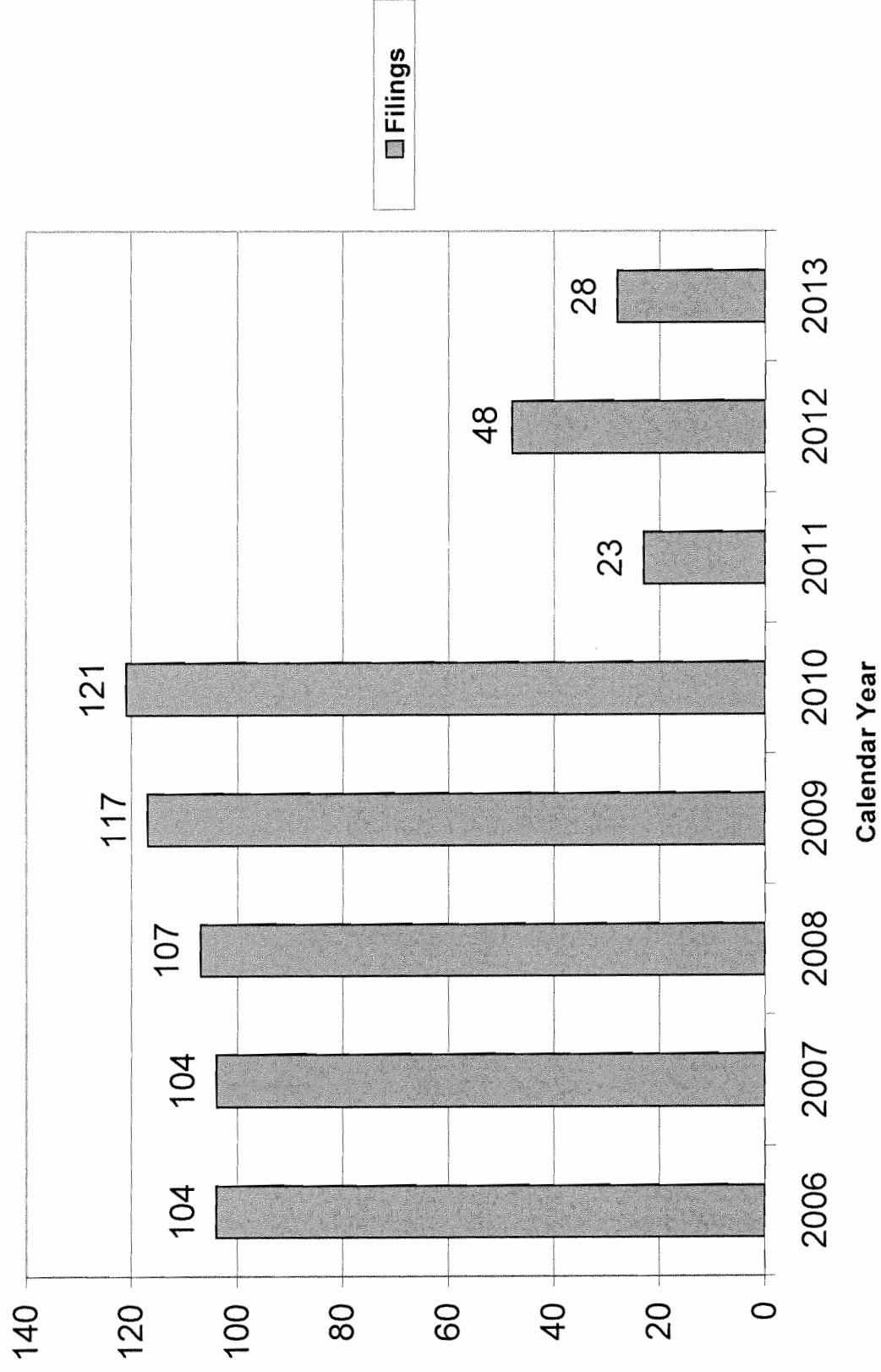
Tab A	Chart of Interest Arbitration Petitions Filed during Calendar Year
Tab B	Chart of Interest Arbitration Disposed during Calendar Year
Tab C	Chart of Interest Arbitration Cases Open at Start of Calendar Year
Tab D	Chart of Interest Arbitration Appeals Data during Calendar Year
Tab E	Appeals of Awards Subject to the 2% Base Salary Cap
Tab F	Police and Fire Collective Bargaining Agreement Summary Form
Tab G	Impasse Filings
Tab H	Voluntary Settlement Report – Cases settled prior to Arbitration
Tab I	Voluntary Settlement Report – Cases settled during Arbitration
Tab J	Interest Arbitration Award Analysis Discussed in Report
Tab K	Summary Analysis of Interest Arbitration Awards Discussed in Report

Tab

A

**Chart of Interest Arbitration Petitions
Filed during Calendar Year**

IA Petitions Filed during Calendar Year

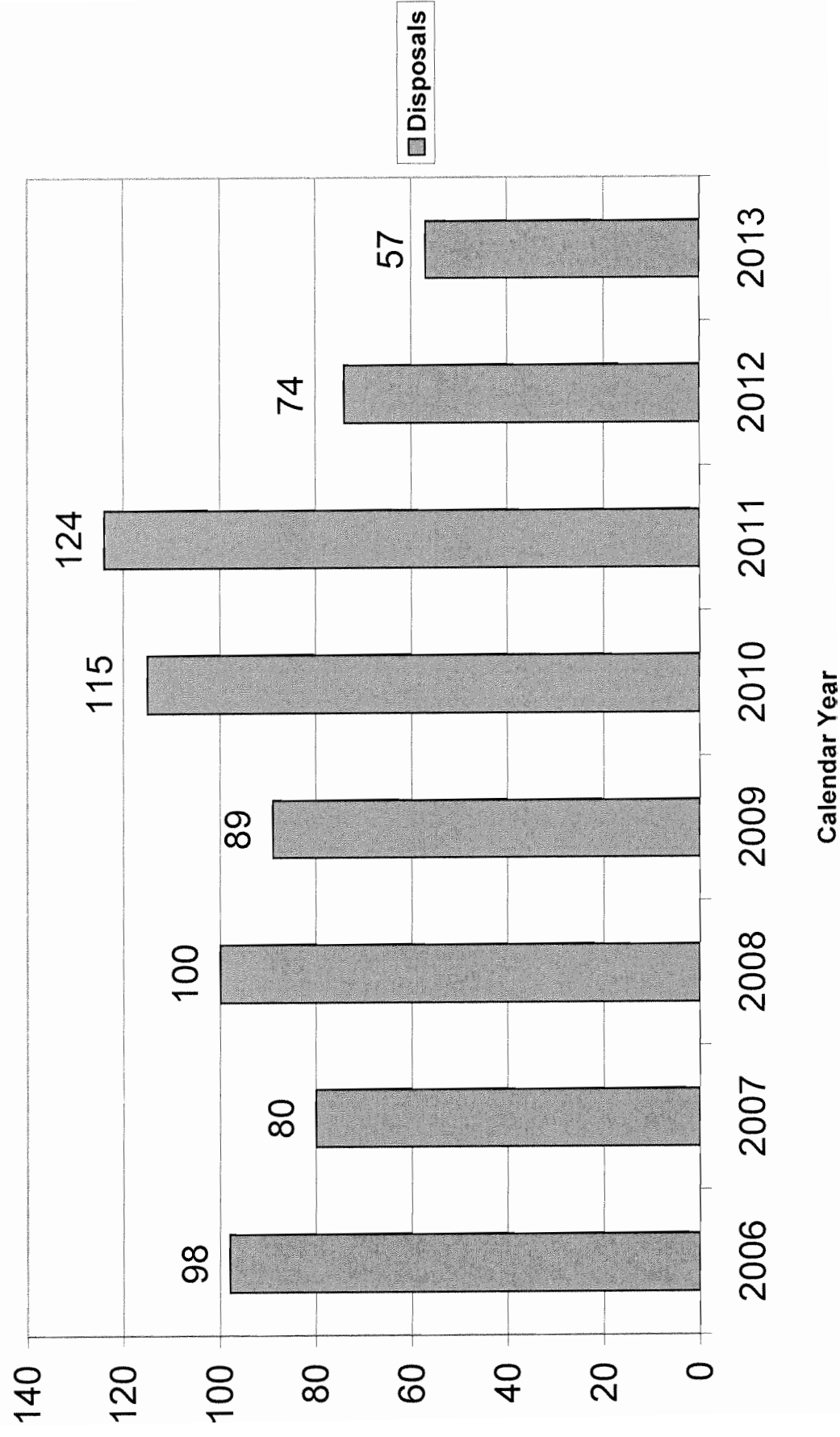


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B

**Chart of Interest Arbitration Cases
Disposed during Calendar Year**

IA Cases Disposed during Calendar Year

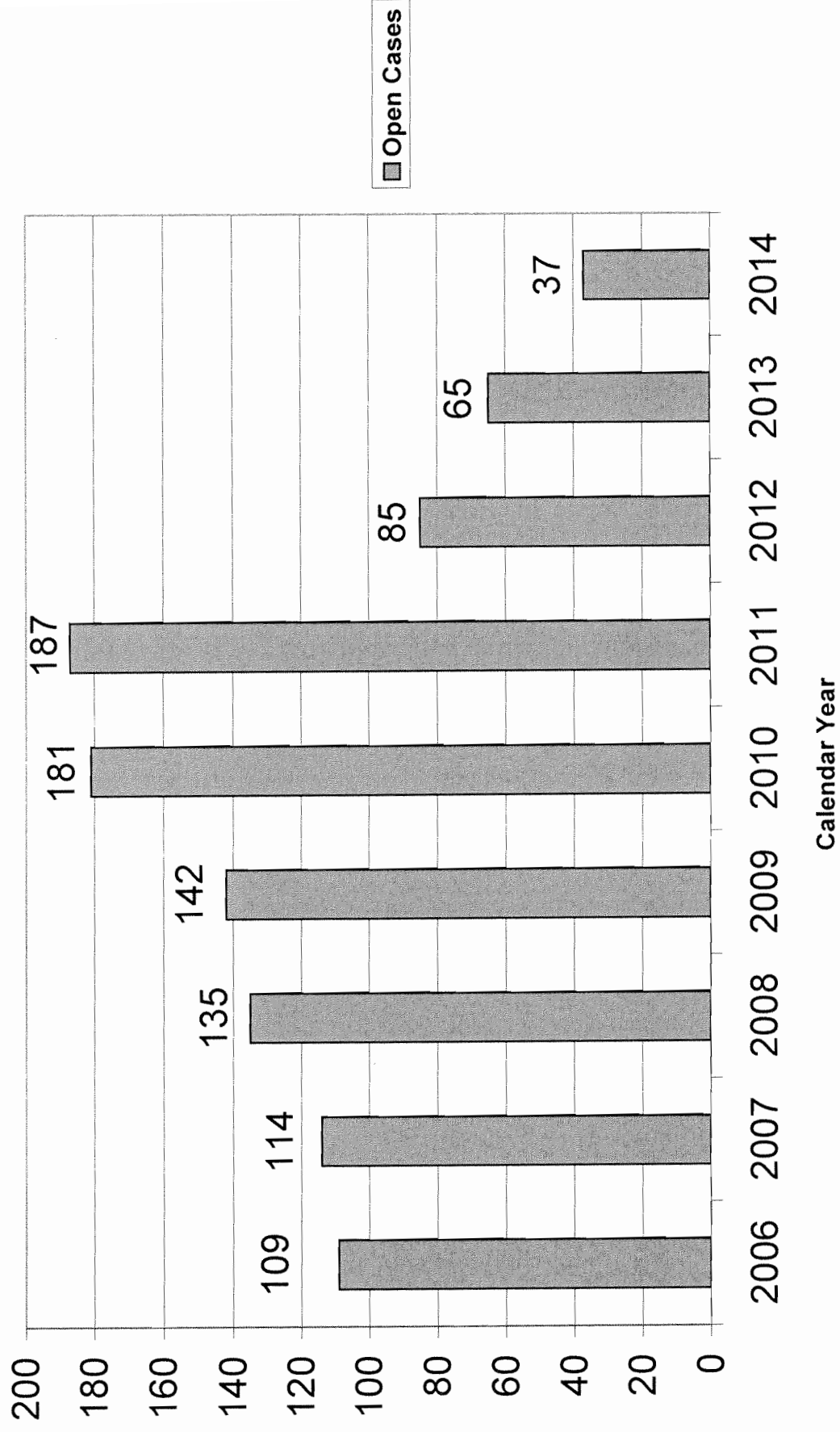


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C

**Chart of Interest Arbitration Cases Open
at Start of Calendar Year**

Interest Arbitration Cases Open at Start of Calendar Year

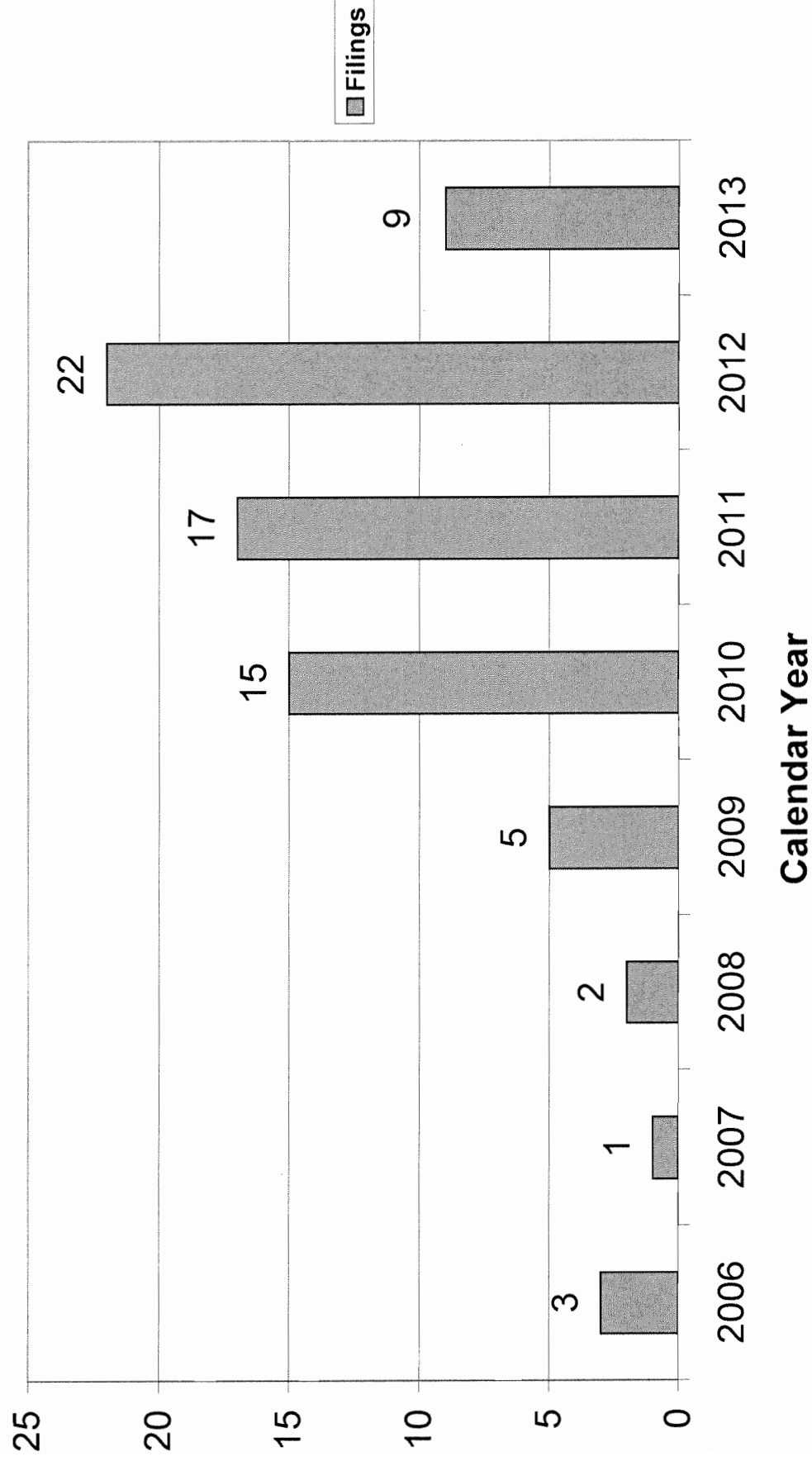


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D

**Chart of Interest Arbitration Appeals
Filings during Calendar Year**

IA Appeals Filings during Calendar Year



Tab

E

**Appeals of Interest Arbitration Awards
Subject to the 2% Base Salary Cap**

**Appeals to the New Jersey Public Employment Relations Commission of
Interest Arbitration Awards subject to the 2% Annual Salary Increase Cap**

<u>Total Number of Appeals to PERC of 2% Cap IA Awards</u>	9
<u>Employer-Filed 2% IA Award Appeals</u>	6
<u>Union-Filed 2% IA Award Appeals</u>	3
<u>Disposition of Employer-Filed 2% IA Award Appeals</u>	
Award Affirmed	2
Award Affirmed in Part, Vacated in Part	1
Award Vacated and Remanded	2
Appeal Denied and ordered to be filed with PERC as Scope petition	1
<u>Disposition of Union-Filed 2% IA Award Appeals</u>	
Award Affirmed	2
Appeal Withdrawn	1

Tab

F

**Police and Fire Collective Bargaining
Agreement Summary Form**

COLLECTIVE BARGAINING AGREEMENT SUMMARY FORM

POLICE & FIRE

Instructions for Collective Bargaining Summary

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, legislation, effective January 1, 2011, requires the public employers also provide “a summary of all costs and the impact associated with the agreement.” N.J.S.A. 34:13A-16.8(d)(2)

As noted in the attached letter, N.J.S.A. 34:13A-16.8(d) (2), in part, 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 and the sample form and instructions provide assistance compiling the information for electronic submission. The directions are user friendly and line specific.

Please review and complete the attached form and send electronically to contracts@perc.state.nj.us .

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

Section I: Agreement Details

Line 1. Please enter the name of the public employer by entering the name of the entity as it appears in the collective bargaining agreement. i.e., “City of Newark” or “City of Trenton”.

Line 2: Indicate the County in which the locale is included, if applicable.

Line 3.: Enter the name of the “Employee Organization” as it appears in the collective bargaining agreement.

Line 4: The “Base Year Contract Term” is the term of the expiring agreement. i.e., January 1, 2010 through December 31, 2011.

Line 5: “New Contract Term” is the time period for the new agreement which is the subject of this summary. i.e., January 1, 2012 through December 31, 2015

Line 6: “Type of Settlement” – please check the box indicating the appropriate process for completing the negotiations.

Arbitrator’s Award: a third party assigned arbitrator conducted hearings and issued an award; (also check this box if the matter was appealed)

Fact-Finder’s Recommendation: a third party neutral issued a “recommendation” subsequent to not settling at mediation and not filing a Petition to Initiate Compulsory Interest Arbitration; or

Voluntary Settlement: the parties settled the dispute with or without the assistance of a neutral.

Section II: Statutory Definition of Base Salary:

This section defines the “base salary” pursuant to legislation. The “base year” is the last year of the previous agreement and the “base salary” for that year is “as agreed to by the parties.”

Section III: Economic: Terms used in this section are defined as follows:

- Column A:** “Base Salary” from the previous year as agreed to by the parties. All costs in Column A are “inside the base salary” and are considered “economic.” They identify salary, increment and longevity **from the previous year.**
- Column B:** “Non salary economic” – costs outside the base.*
- Column C:** “New base salary” for the first year of the new agreement. These costs are “economic” and identify the costs associated with salary, increment and longevity, **as increased by the settlement or award.**
- Column D:** “Non salary economic” – costs outside the base.*

**The “non-salary economic” costs are not applicable for this part of the calculation.*

Base Year – Total Costs: Section III: Please enter the appropriate amounts in the coordinating columns.

- Column A, Line 1: Salary –** “Base salary” as agreed to by the parties from the previous year.
- Column A, Line 2: Increment –** “Increment” is the cost of movement between steps.
- Column A, Line 3: Longevity –** “Longevity” is payment for length of service.

New Base Year – Total Costs: Section III:

The “New Base Salary” is the base *after* the increase and upon which the succeeding years will be increased. These costs are “economic.”

- Column C, Line 1: Salary –** “**New Base Year**” salary” as increased by the agreement or award.
- Column C, Line 2: Increment –** “Increment” is the cost of movement between steps.
- Column C, Line 3: Longevity –** “Longevity” is payment for length of service.

Section IV: Additional Costs: The items listed in this section define the costs included in the base salary (Columns A & C), i.e. “economic,” and those items excluded from base salary which are “non salary economic” items. (Columns B & D).” The non -salary economic items may not be part of the base salary, however, they are still costs to the employer. Please indicate if these costs were increased in the new agreement in your final calculation.

Please list each item in the “item description” section and enter the associated cost for each item in the appropriate column indicating if the cost is from the previous agreement and economic (Column A); non-salary economic, previous agreement (Column B); new base year, economic (Column C); or new base year, non-salary economic (Column D). (Examples are provided on the demonstration page)

Section V: Totals:

Enter the totals from Columns A thru D and place the appropriate total in the respective section.

Section VI: New Agreement Analysis

Line 1: The “total economic base year” is the total entered on Section V, Column A. This total is the foundation year base salary upon which all increases will be calculated.

Line 2: Enter the “effective dates” of the new agreement for each year of the agreement.

Line 3: Enter the agreed upon “percentage increase” for each year of the new Agreement. If the increase was not a percent but a “flat dollar” increase, enter that amount.

Line 4: “Actual Dollar Increase” is the value of the total increase, in dollars, for the entire unit. Enter this number for each year of the new agreement.

Line 5: “Total Economic Cost” is the actual cost of the increase and the new base associated with each year of the new agreement. These values are based on the increase to the base year and reflect the cost of the base salary, as agreed upon by the parties, for each year of the new agreement.

Section VII: Impact of Settlement:

This section highlights the average annual increase over the term of the agreement.

Line 1: To calculate the “*average*” over the term of the agreement, add the total percentage increase, (section VI, line 3) and divide by the total number of years in the agreement, (section VI, line 2). The result of that calculation is the average percentage increase over the term of the agreement.

Line 2: To calculate the “*dollar impact*” of the settlement, add the total “actual dollar increases” (section VI, line 4) for each year of the agreement and divide that number by the total number of years in the agreement (section VI, line 2). The result of that calculation is the average dollar impact over the term of the agreement.

Section VIII: Medical Costs:

This section illustrates the costs associated with health insurance plans and will vary per employer, however, all public sector employers and employees are subject to the provisions of Chapter 78, P.L. 2011.

Section IX: Signature:

Please indicate the preparer’s name by printing it on Line 1; indicate the title for that individual; enter the completion date; and click on the “signature line,” to digitally enter the preparer’s signature on Line 2. E-mail the digitally signed completed document to contracts@perc.state.nj.us.

**POLICE AND FIRE
COLLECTIVE BARGAINING AGREEMENT SUMMARY FORM**

Section I: Agreement Details

Public Employer: Anytown, NJ County: Atlantic

Employee Organization: Any Police or Fire Organization Employees in Unit: 34

Base Year Contract Term: 1/1/2009 12/31/2011 New Contract Term 1/1/2012 12/31/2014

Type of Settlement: ☐ Arbitrator's Award ☐ Fact-Finder Recommendation ☒ Voluntary Settlement

Section II: Statutory Definition of Base Salary

N.J.S.A. 34:13A-16.7(a): Base salary is the salary provided pursuant to a salary guide or table and any amount provided pursuant to a salary increment, including any amount provided 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.

	Base Year - Total Costs (Last Year of Previous agreement)		New Base Year - Total Costs (First Year of Successor agreement)	
	Column A	Column B	Column C	Column D
	Economic Inside Base Salary	Non-salary Economic Outside Base Salary	Economic Inside Base Salary	Non-salary Economic Outside Base Salary
Section III: Economic - Costs inside base salary				
Salary	\$2,500,000	N/A	\$2,550,000	N/A
Increment				
Longevity	\$18,000		\$18,360	
Section IV: Additional Costs List economic items: indicate either inside or outside base salary as agreed to between the parties.				
Item Description				
Item 1 e.g. Uniforms		\$20,400		\$20,400
Item 2 e.g. Boot/Shoe Allowance		\$4,250		\$4,250
Item 3 e.g. Holiday Pay		\$22,000		\$22,000
Item 4 e.g. Stipends	\$12,000		\$12,240	
Item 5 e.g. Education	\$36,000		\$36,720	
Item 6 e.g. Extra Duty		\$15,000		\$15,000
Item 7 e.g. Unused Sick		\$35,000		\$35,000
Item 8 e.g. Overtime		\$100,000		\$100,000
Item 9				
Any additional items list on separate sheet Additional Items				
Section V: Totals - Sum of costs in each column	\$2,566,000 (Total Economic) Section III & IV	\$196,650 (Total Non-salary Economic)	\$2,617,320 (Total Economic) Section III & IV	\$196,650 (Total Non-salary Economic)

Section VI: Analysis of new successor agreement

NEW AGREEMENT ANALYSIS

Total Economic Base Year (previous agreement) \$2,566,000

Effective Date (m/d/yyyy)	1/1/2012	1/1/2013	1/1/2014			
Percent Increase	2.00%	1.84%	2.00%			
Actual dollar increase	\$51,320	\$48,159	\$53,310			
Total Economic Costs (successor agreement)	\$2,617,320	\$2,665,479	\$2,718,789			

Section VII: Impact of Settlement - average annual increase over term of agreement

Percentage Impact (average per year over term of agreement) 1.94%

Dollar Impact (average per year over term of agreement) \$50,930

Contributions based on plan costs and pursuant to Chapter 78

Section VIII

Medical Costs	Base Year	Year 1			
Cost of Health Plan	\$650,000	\$650,000			
Employee Contributions	\$9,750				
Prescription					
Dental					
Vision					

The undersigned certifies that the foregoing figures are true and is aware that if any of the foregoing items are false, s/he is subject to punishment.

Section IX

Prepared by: _____ Title: _____

Print Name

Signature

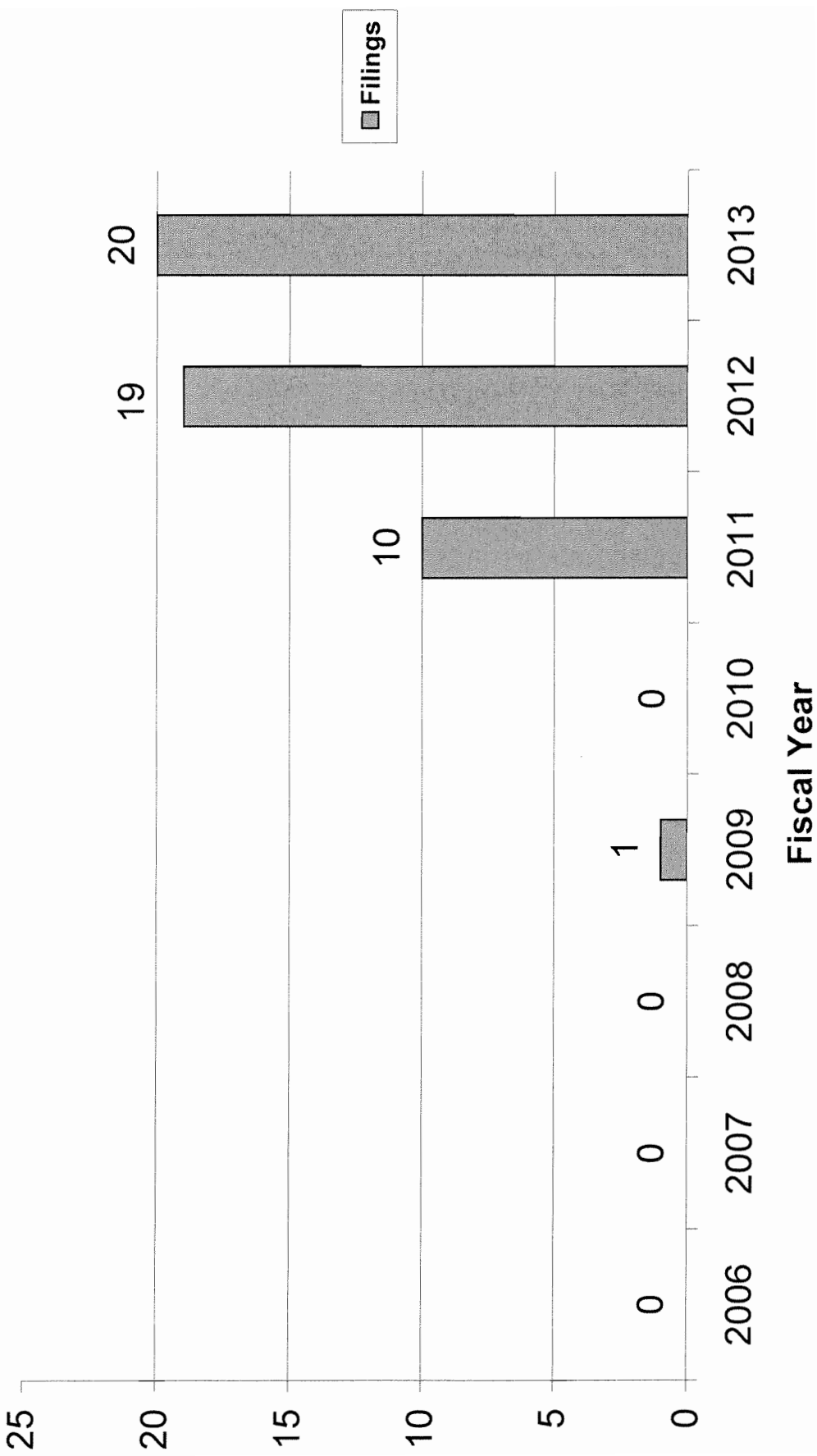
Date: _____

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Impasse Filings

Impasse Filings (Police & Fire)



Tab

H

**Voluntary Settlement – Case settled
prior to Arbitration**

<u>Voluntary Settlements, not through the IA process, that WOULD have been subject to the 2% Salary Cap if they had gone to Interest Arbitration</u>	
<u>"Percentage Impact" annual average salary increase (as reported on Summary Forms)</u>	<u>"Percentage Impact" annual average salary increase (as reported on Summary Forms)</u>
Allentown (FOP Lodge 114)	Lake Como (PBA Loc 50) 1.87%
Atlantic Cty (FOP Lodge 112)	Lakehurst (Police Assoc.) 6.33%
Audubon (Police)	Lincoln Park (PBA Loc 192) 3.13%
Avalon (PBA Loc 59)	Medford (SOA) 1.44%
Bergenfield (FMBA Loc 65)	Montgomery (PBA) 1.75%
Berlin (Police)	Montville (PBA Loc 140) 1.50%
Bernards (PBA Loc 357)	New Milford (PBA Loc 83) 1.58%
Branchburg (PBA Loc 397 & 397A)	Newark (IAFF Loc 1860) 2.40%
Brooklawn (Municipality)	North Caldwell (PBA Loc 81) 1.56%
Brooklawn (PBA Loc 30)	North Wildwood (FMBA Loc 56) 1.02%
Collingswood (Superior)	North Wildwood (PBA Loc 59) 1.99%
Collingswood (Police)	Ocean City (FMBA Loc 27) 1.17%
Deal (PBA Loc 101)	Ocean City (PBA Loc 61) 1.17%
Delanco Tp (Police)	Ocean Cty Sheriff (FMBA Loc 98) 1.50%
Delaware Tp./Hunterdon Cty (PBA Loc 188)	Pine Beach (PBA Loc 253) 3.12%
Far Hills (PBA Loc 139)	Pitman (PBA Loc 122) 2.00%
Franklin Lakes (PBA Loc 150)	Plainsboro (IAFF Loc 3451) 4.68%
Garwood (PBA Loc 117)	Stratford (PBA Loc 30) 2.00%
Glassboro (FOP Lodge 108)	Vineland (Police Captains Assoc.) 1.90%
Glassboro (FOP Lodge 108, superiors)	Voorhees (Police) 1.19%
Glassboro (Fire)	Westville (PBA Loc 322) 4.34%
Haddon Heights (PBA Loc 328)	Wildwood Crest (PBA Loc 59) 2.28%
Hamburg (FOP Lodge 57)	Winslow 1.92%
Highland Park (PBA Loc 64)	Winslow 1.97%
Hopewell (PBA)	Woodbury (FMBA Loc 62) 2.00%
Hopewell (SOA)	Woodbury Heights (PBA Loc 122) 2.00%
Hopewell (Fire District 1)	
<u>Overall Average Annual Salary Increase (reported Voluntary Settlements):</u>	
	<u>2.11%</u>

Tab



**Voluntary Settlement Report – Cases
settled during Arbitration**

<u>Voluntary Settlements made during Interest Arbitration</u>	
<u>(where the 2% Salary Cap would have applied to the IA Award)*</u>	
	Average Annual Base Salary Increase in new contract (as reported by parties)
Northvale Bor. (PBA)	1.65%
Garfield City (PBA)	1.95%
Elmwood Park Bor. (PBA)	1.95%
Newton Town (PBA)	2.08%
Newton Town (SOA)	2.08%
Bridgeton City (IAFF)	1.25%
Allendale Bor. (PBA)	2.00%
Middlesex Bor. (PBA)	2.00%
Fairfield Tp. (PBA)	2.00%
S. Orange Village (PBA)	2.00%
S. Orange Village (SOA)	2.00%
High Bridge Bor. (PBA)	1.00%
Ringwood Bor. (PBA)	2.00%
E. Hanover Tp. (PBA)	1.50%
E. Hanover Tp. (SOA)	1.50%
New Milford Bor. (PBA)	1.58%
Chester (PBA)	3.08%
Union Beach (PBA)	1.15%
Morris Cty (PBA)	2.16%
<u>Overall Average Annual Base Salary Increase (reported IA Settlements):</u>	<u>1.84%</u>
* Data includes only those municipalities that reported their settlement's annual salary increases to NJ PERC.	

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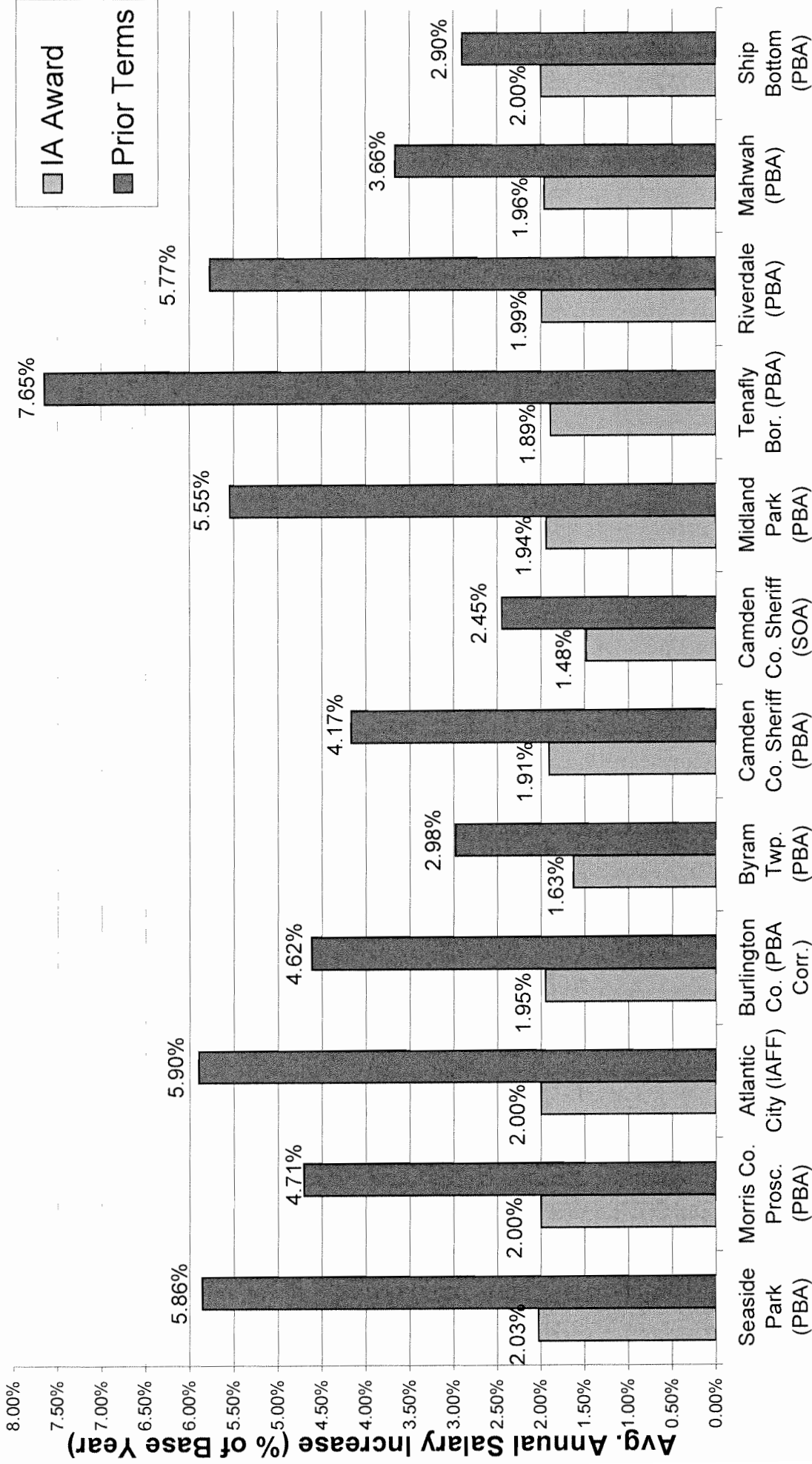
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**Interest Arbitration Award Analysis
Discussed in Report**

**Average Annual Base Salary Increase, as a % of Base Year Salary, for
all Interest Arbitration Awards subject to the 2% Salary Cap**

<u>Town/County</u>	<u>IA Award</u>
West Caldwell Tp. (PBA)	1.92%
Seaside Park (PBA)	2.03%
Morris Co. Prosc. (PBA)	2.00%
Atlantic City (IAFF)	2.00%
Burlington Co. (PBA Corr.)	1.95%
Point Pleasant Bor. (PBA)	2.00%
Point Pleasant Bor. (SOA)	2.00%
Byram Twp. (PBA)	1.63%
Atlantic City (SOA)	2.00%
Camden Co. Sheriff (SOA)	1.48%
Midland Park (PBA)	1.94%
Atlantic City (PBA)	2.00%
Camden Co. Sheriff (PBA)	1.91%
Tenafly Bor. (PBA)*	1.89%
Riverdale (PBA)	1.99%
Mahwah (PBA)	1.96%
Ship Bottom (PBA)	2.00%
<u>Overall Average Annual Base Salary Increase, for all IA Awards under 2% Cap:</u>	<u>1.92%</u>
* on appeal in N.J. Appellate Division	

IA Awards Subject to 2% Cap vs. Projected Costs if Prior Contract's Base Salary (incl. Steps & Longevity) Increase Patterns Continued



Towns/Counties with IA Awards under 2% Cap

(Sample includes only those Awards providing detailed increment/step and/or longevity guide information. This allowed comparison of the same unit of employees using the prior contract or award terms).

**Base Salary* Increases in IA Awards subject to 2% Cap vs. Base Salary
Increases if Terms of Prior Contract had been renewed****

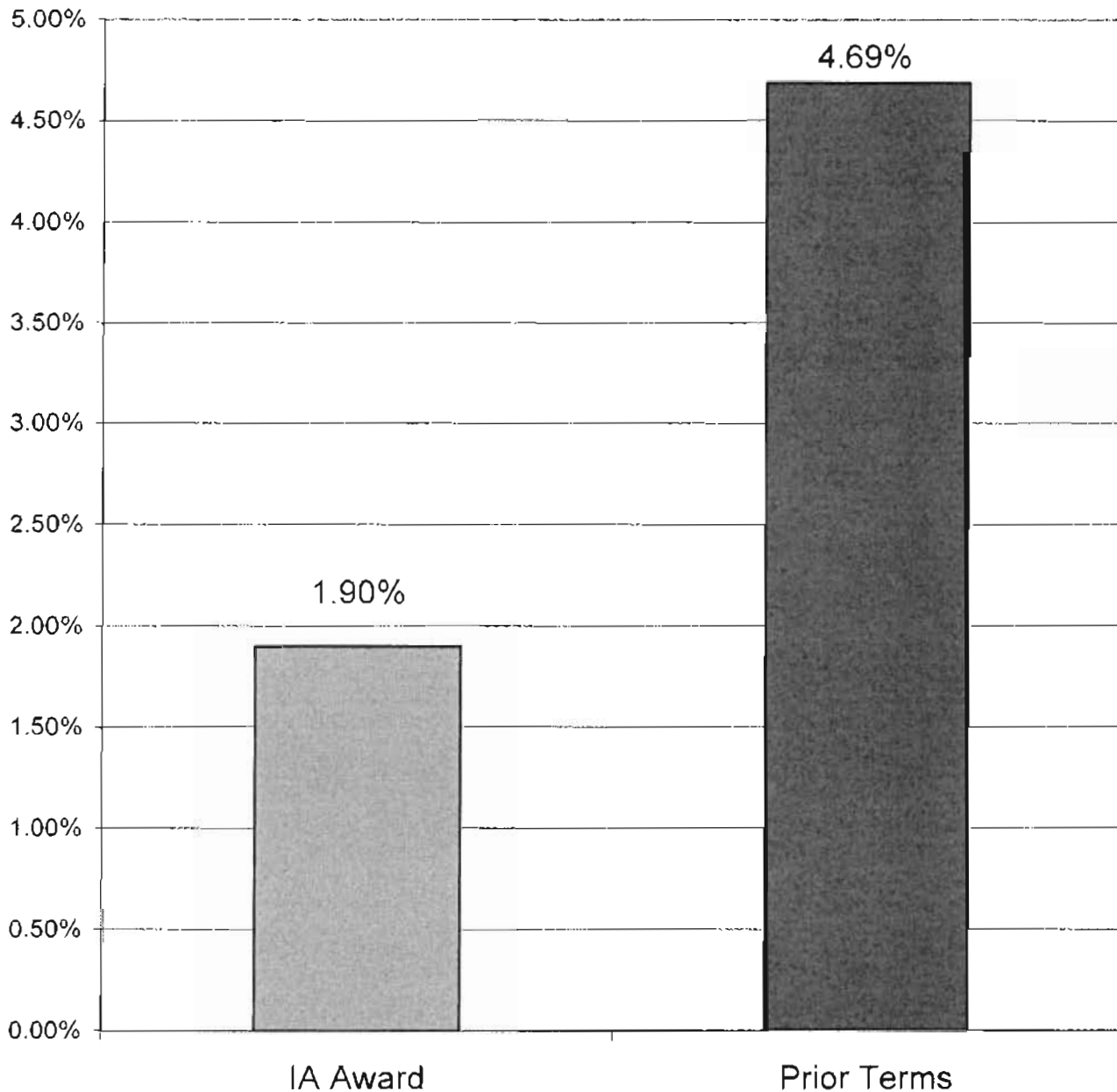
	<u>Average Annual Base Salary Increase, as a % of Base Year</u>	
<u>Town/County</u>	<u>IA Award</u>	<u>Prior Terms</u>
Seaside Park (PBA)	2.03%	5.86%
Morris Co. Prosc. (PBA)	2.00%	4.71%
Atlantic City (IAFF)	2.00%	5.90%
Burlington Co. (PBA Corr.)	1.95%	4.62%
Byram Twp. (PBA)	1.63%	2.98%
Camden Co. Sheriff (PBA)	1.91%	4.17%
Camden Co. Sheriff (SOA)	1.48%	2.45%
Midland Park (PBA)	1.94%	5.55%
Tenafly Bor. (PBA)	1.89%	7.65%
Riverdale (PBA)	1.99%	5.77%
Mahwah (PBA)	1.96%	3.66%
Ship Bottom (PBA)	2.00%	2.90%
	<u>IA Award</u>	<u>Prior Terms</u>
<u>Overall Average Annual Base Salary Increase:</u>	1.90%	4.69%
<p><i>* 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." N.J.S.A. 34:13A-16.7(a).</i></p>		
<p><i>** Sample includes only those IA Awards that provided detailed unit-wide increment/step and/or longevity information. This allowed comparison of the same unit of employees using the increment and longevity guides and across-the-board raises from the prior contract or award terms.</i></p>		

Tab

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**Summary Analysis of Interest Arbitration
Awards Discussed in Report**

**Overall Average Annual Base Salary* Increase,
IA Awards under 2% Cap vs. Terms of Prior Contract****



*** 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." N.J.S.A. 34:13A-16.7(a).

****** Sample includes only those IA Awards that provided detailed unit-wide increment/step and/or longevity information. This allowed comparison of the same unit of employees using the increment and longevity guides and across-the-board raises from the prior contract or award terms.

Salary Increases in Interest Arbitration Award subject to the 2% Cap versus Salary Increases if the Terms of the Prior Contract had been renewed**

Seaside Park Borough (PBA Loc 182)

	<u>IA Award</u>	<u>Prior Terms</u>	<u>Prior Contract's Reported Raise</u>	<u>Difference in Salary Costs</u>
2011 Base Year Salary*	\$1,273,642	\$1,273,642		
Value of 2% of Base Year Salary	\$25,473	\$25,473		
2012 Base Salary*	\$1,133,120	\$1,188,382		\$55,262
2012 Annual Increase as a % of 2011 Base	2.10%	6.54%	4.00%	
2013 Base Salary*	\$1,160,365	\$1,257,539		\$97,174
2013 Annual Increase as a % of 2011 Base	2.14%	5.43%	4.00%	
2014 Base Salary*	\$1,179,104	\$1,328,911		\$149,807
2014 Annual Increase as a % of 2011 Base	1.85%	5.60%	4.00%	
<u>Difference in Total Projected Costs - IA Award vs. Prior Terms:</u>				\$302,243
<u>Average Annual Increase in Base Salary, as a % of 2011 Base:</u>	<u>IA Award</u>	<u>Prior Terms</u>		
	<u>2.03%</u>	<u>5.86%</u>		

Morris County Prosecutor's Office (PBA Loc 327)

	<u>IA Award</u>	<u>Prior Terms</u>	<u>Prior Contract's Reported Raise</u>	<u>Difference in Salary Costs</u>
2011 Base Year Salary*	\$4,141,296	\$4,141,296		
Value of 2% of Base Year Salary	\$82,826	\$82,826		
2012 Base Salary*	\$3,851,292	\$3,937,111.21		\$85,819
2012 Annual Increase as a % of 2011 Base	1.93%	4.00%	4.00%	
2013 Base Salary*	\$3,935,816	\$4,136,949.13		\$201,133
2013 Annual Increase as a % of 2011 Base	2.04%	4.83%	4.00%	
2014 Base Salary*	\$4,019,721	\$4,356,748		\$337,027
2014 Annual Increase as a % of 2011 Base	2.03%	5.31%	4.00%	
<u>Difference in Total Projected Costs - IA Award vs. Prior Terms:</u>				\$623,979
<u>Average Annual Increase in Base Salary, as a % of 2011 Base:</u>	<u>IA Award</u>	<u>Prior Terms</u>		
	<u>2.00%</u>	<u>4.71%</u>		

* **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." N.J.S.A. 34:13A-16.7(a).

** Sample includes only those IA Awards that provided detailed unit-wide increment/step and/or longevity information. This allowed comparison of the same unit of employees using the increment and longevity guides and across-the-board raises from the prior contract or award terms.

Salary Increases in Interest Arbitration Award subject to the 2% Cap versus Salary Increases if the Terms of the Prior Contract had been renewed**

Atlantic City (IAFF Loc 198)

	<u>IA Award</u>	<u>Prior Terms</u>	<u>Prior Contract's Reported Raise</u>	<u>Difference in Salary Costs</u>
2011 Base Year Salary*	\$22,072,172	\$22,072,172		
Value of 2% of Base Year Salary	\$441,443	\$441,443		
2012 Base Salary*	\$22,793,845	\$23,426,558		\$632,713
2012 Annual Increase as a % of 2011 Base	3.27%	6.14%	4.00%	
2013 Base Salary*	\$23,179,206	\$24,764,396		\$1,585,190
2013 Annual Increase as a % of 2011 Base	1.75%	6.06%	4.00%	
2014 Base Salary*	\$23,396,502	\$25,980,960		\$2,584,458
2014 Annual Increase as a % of 2011 Base	0.98%	5.51%	4.00%	
<u>Difference in Total Projected Costs - IA Award vs. Prior Terms:</u>				\$4,802,362
<u>Average Annual Increase in Base Salary, as a % of 2011 Base:</u>	<u>IA Award</u>	<u>Prior Terms</u>		
	<u>2.00%</u>	<u>5.90%</u>		

Burlington County (PBA Loc 249 Corrections Officers)

	<u>IA Award</u>	<u>Prior Terms</u>	<u>Prior Contract's Reported Raise</u>	<u>Difference in Salary Costs</u>
2011 Base Year Salary*	\$11,984,135	\$11,984,135		
Value of 2% of Base Year Salary	\$239,683	\$239,683		
2012 Base Salary*	\$12,439,514	\$13,175,741		\$736,227
2012 Annual Increase as a % of 2011 Base	0.00%	6.14%	2.50%	
2013 Base Salary*	\$12,688,304	\$13,650,106		\$961,802
2013 Annual Increase as a % of 2011 Base	2.08%	3.96%	2.00%	
2014 Base Salary*	\$13,138,654	\$14,100,281		\$961,627
2014 Annual Increase as a % of 2011 Base	3.76%	3.76%	1.50%	
<u>Difference in Total Projected Costs - IA Award vs. Prior Terms:</u>				\$2,659,655
<u>Average Annual Increase in Base Salary, as a % of 2011 Base:</u>	<u>IA Award</u>	<u>Prior Terms</u>		
	<u>1.95%</u>	<u>4.62%</u>		

* **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." N.J.S.A. 34:13A-16.7(a).

** Sample includes only those IA Awards that provided detailed unit-wide increment/step and/or longevity information. This allowed comparison of the same unit of employees using the increment and longevity guides and across-the-board raises from the prior contract or award terms.

Salary Increases in Interest Arbitration Award subject to the 2% Cap vs. Salary Increases if the Terms of the Prior Contract had been renewed**

Byram Township (PBA Loc 138)

	<u>IA Award</u>	<u>Prior Terms</u>	<u>Prior Contract's Reported Raise</u>	<u>Difference in Salary Costs</u>
2012 Base Year Salary*	\$1,492,985	\$1,492,985		
Value of 2% of Base Year Salary	\$29,859.72	\$29,859.72		
2013 Base Salary*	\$1,311,146	\$1,334,067		\$22,921
2013 Annual Increase as a % of 2012 Base	1.05%	2.62%	2% semi-annually	
2014 Base Salary*	\$1,319,649	\$1,379,117		\$59,468
2014 Annual Increase as a % of 2012 Base	1.59%	3.02%	2% semi-annually	
2015 Base Salary*	\$1,379,223	\$1,428,649		\$49,426
2015 Annual Increase as a % of 2012 Base	2.25%	3.32%	2% semi-annually	
<u>Difference in Total Projected Costs - IA Award vs. Prior Terms:</u>				\$131,814
<u>Average Annual Increase in Base Salary, as a % of 2012 Base:</u>	<u>IA Award</u>	<u>Prior Terms</u>		
	<u>1.63%</u>	<u>2.98%</u>		

Camden County Sheriff's Office (PBA Loc 277)

	<u>IA Award</u>	<u>Prior Terms</u>	<u>Prior Contract's Reported Raise</u>	<u>Difference in Salary Costs</u>
2012 Base Year Salary*	\$11,243,301	\$11,243,301		
Value of 2% of Base Year Salary	\$224,866	\$224,866		
2013 Base Salary*	\$11,596,668	\$11,596,668		\$0
2013 Annual Increase as a % of 2012 Base	3.14%	3.14%	1.00%	
2014 Base Salary*	\$11,741,626	\$12,119,076		\$377,450
2014 Annual Increase as a % of 2012 Base	1.29%	4.65%	2.50%	
2015 Base Salary*	\$11,888,396	\$12,650,458		\$762,062
2015 Annual Increase as a % of 2012 Base	1.31%	4.73%	2.80%	
<u>Difference in Total Projected Costs - IA Award vs. Prior Terms:</u>				\$1,139,512
<u>Average Annual Increase in Base Salary, as a % of 2012 Base:</u>	<u>IA Award</u>	<u>Prior Terms</u>		
	<u>1.91%</u>	<u>4.17%</u>		

* **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." N.J.S.A. 34:13A-16.7(a).

** Sample includes only those IA Awards that provided detailed unit-wide increment/step and/or longevity information. This allowed comparison of the same unit of employees using the increment and longevity guides and across-the-board raises from the prior contract or award terms.

Salary Increases in Interest Arbitration Award subject to the 2% Cap vs. Salary Increases if the Terms of the Prior Contract had been renewed**

Camden County Sheriff's Office (SOA)

	<u>IA Award</u>	<u>Prior Terms</u>	<u>Prior Contract's Reported Raise</u>	<u>Difference in Salary Costs</u>
2012 Base Year Salary*	\$852,451	\$852,451		
Value of 2% of Base Year Salary	\$17,049	\$17,049		
2013 Base Salary*	\$860,972	\$860,972		\$0
2013 Annual Increase as a % of 2012 Base	1.00%	1.00%	1.00%	
2014 Base Salary*	\$871,821	\$882,588		\$10,767
2014 Annual Increase as a % of 2012 Base	1.27%	2.54%	2.50%	
2015 Base Salary*	\$890,265	\$915,058		\$24,793
2015 Annual Increase as a % of 2012 Base	2.16%	3.81%	2.80%	
<u>Difference in Total Projected Costs - IA Award vs. Prior Terms:</u>				\$35,560
<u>Average Annual Increase in Base Salary, as a % of 2012 Base:</u>	<u>IA Award</u>	<u>Prior Terms</u>		
	<u>1.48%</u>	<u>2.45%</u>		

Midland Park Borough (PBA Loc 79)

	<u>IA Award</u>	<u>Prior Terms</u>	<u>Prior Contract's Reported Raise</u>	<u>Difference in Salary Costs</u>
2012 Base Year Salary*	\$1,199,170	\$1,199,170		
Value of 2% of Base Year Salary	\$23,983	\$23,983		
2013 Base Salary*	\$1,251,153	\$1,252,877		\$1,724
2013 Annual Increase as a % of 2012 Base	2.22%	2.37%	0.00%	
2014 Base Salary*	\$1,271,116	\$1,357,446		\$86,330
2014 Annual Increase as a % of 2012 Base	1.66%	8.72%	3% top of guide	
<u>Difference in Total Projected Costs - IA Award vs. Prior Terms:</u>				\$88,054
<u>Average Annual Increase in Base Salary, as a % of 2012 Base:</u>	<u>IA Award</u>	<u>Prior Terms</u>		
	<u>1.94%</u>	<u>5.55%</u>		

* **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." N.J.S.A. 34:13A-16.7(a).

** Sample includes only those IA Awards that provided detailed unit-wide increment/step and/or longevity information. This allowed comparison of the same unit of employees using the increment and longevity guides and across-the-board raises from the prior contract or award terms.

Salary Increases in Interest Arbitration Award subject to the 2% Cap vs. Salary Increases if the Terms of the Prior Contract had been renewed**

Tenafly Borough (PBA Loc 376)

	<u>IA Award</u>	<u>Prior Terms</u>	<u>Prior Contract's Reported Raise</u>	<u>Difference in Salary Costs</u>
2012 Base Year Salary*	\$3,763,060	\$3,763,060		
Value of 2% of Base Year Salary	\$75,261	\$75,261		
2013 Base Salary*	\$3,922,636	\$4,060,907		\$138,271
2013 Annual Increase as a % of 2012 Base	2.82%	7.92%	3.75%	
2014 Base Salary*	\$4,029,877	\$4,362,750		\$332,873
2014 Annual Increase as a % of 2012 Base	2.85%	8.02%	3.75%	
2015 Base Salary*	\$4,029,877	\$4,626,861		\$596,984
2015 Annual Increase as a % of 2012 Base	0.00%	7.02%	3.75%	
<u>Difference in Total Projected Costs - IA Award vs. Prior Terms:</u>				\$1,068,128
<u>Average Annual Increase in Base Salary, as a % of 2012 Base:</u>	<u>IA Award</u>	<u>Prior Terms</u>		
	<u>1.89%</u>	<u>7.65%</u>		

Riverdale Borough (PBA Loc 335)

	<u>IA Award</u>	<u>Prior Terms</u>	<u>Prior Contract's Reported Raise***</u>	<u>Difference in Salary Costs</u>
2012 Base Year Salary*	\$1,348,118	\$1,348,118		
Value of 2% of Base Year Salary	\$26,962	\$26,962		
2013 Base Salary*	\$1,373,418	\$1,421,785		\$48,367
2013 Annual Increase as a % of 2012 Base	1.88%	5.46%	3.98% top of guide & superiors (\$500 all others)	
2014 Base Salary*	\$1,403,568	\$1,497,560		\$93,992
2014 Annual Increase as a % of 2012 Base	2.24%	5.62%	3.98% top of guide & superiors (\$500 all others)	
2015 Base Salary*	\$1,428,515	\$1,581,653		\$153,138
2015 Annual Increase as a % of 2012 Base	1.85%	6.24%	3.98% top of guide & superiors (\$500 all others)	
<u>Difference in Total Projected Costs - IA Award vs. Prior Terms:</u>				\$295,497
<u>Average Annual Increase in Base Salary, as a % of 2012 Base:</u>	<u>IA Award</u>	<u>Prior Terms</u>		
	<u>1.99%</u>	<u>5.77%</u>		

* **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." N.J.S.A. 34:13A-16.7(a).

** Sample includes only those IA Awards that provided detailed unit-wide increment/step and/or longevity information. This allowed comparison of the same unit of employees using the increment and longevity guides and across-the-board raises from the prior contract or award terms.

*** Prior contract was from 2008-2012, which is a longer duration than the IA Award. Therefore, only the first 3 years of the prior contract were compared. The prior contract's final year provided salary increases greater than 11% for top step officers and greater than 10% for superior officers. Those raises are not reflected in this model.

Salary Increases in Interest Arbitration Award subject to the 2% Cap vs. Salary Increases if the Terms of the Prior Contract had been renewed**

Mahwah Township (PBA Loc 143)

	<u>IA Award</u>	<u>Prior Terms</u>	<u>Prior Contract's Reported Raise</u>	<u>Difference in Salary Costs</u>
2012 Base Year Salary*	\$5,941,231	\$5,941,231		
Value of 2% of Base Year Salary	\$118,825	\$118,825		
2013 Base Salary*	\$6,081,224	\$6,179,461		\$98,237
2013 Annual Increase as a % of 2012 Base	2.36%	4.01%	2.50%	
2014 Base Salary*	\$6,173,815	\$6,376,197		\$202,382
2014 Annual Increase as a % of 2012 Base	1.56%	3.31%	2.50%	
<u>Difference in Total Projected Costs - IA Award vs. Prior Terms:</u>				\$300,619
<u>Average Annual Increase in Base Salary, as a % of 2012 Base:</u>	<u>IA Award</u>	<u>Prior Terms</u>		
	1.96%	3.66%		

Ship Bottom Borough (PBA Loc 175)

	<u>IA Award</u>	<u>Prior Terms</u>	<u>Prior Contract's Reported Raise</u>	<u>Difference in Salary Costs</u>
2012 Base Year Salary*	\$937,711	\$937,711		
Value of 2% of Base Year Salary	\$18,754	\$18,754		
2013 Base Salary*	\$956,041	\$997,734		\$41,693
2013 Annual Increase as a % of 2012 Base	1.95%	6.40%	4% on 3/1/2009	
2014 Base Salary*	\$977,505	\$1,016,588		\$39,083
2014 Annual Increase as a % of 2012 Base	2.29%	2.01%	0.00%	
2015 Base Salary*	\$993,953	\$1,019,323		\$25,370
2015 Annual Increase as a % of 2012 Base	1.75%	0.29%	0.00%	
<u>Difference in Total Projected Costs - IA Award vs. Prior Terms:</u>				\$106,146
<u>Average Annual Increase in Base Salary, as a % of 2012 Base:</u>	<u>IA Award</u>	<u>Prior Terms</u>		
	2.00%	2.90%		

* **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." N.J.S.A. 34:13A-16.7(a).

** Sample includes only those IA Awards that provided detailed unit-wide increment/step and/or longevity information. This allowed comparison of the same unit of employees using the increment and longevity guides and across-the-board raises from the prior contract or award terms.

New Jersey Public Employment Relations Commission

Interest Arbitrator By-Lot Selection
Program:

Random Number Generation
Testing for Re-Certification

By

Francis A. Steffero, PhD, CISA

April 28, 2014

I. INTRODUCTION

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

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

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

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

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

II. BACKGROUND INFORMATION

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

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

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

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

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

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

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

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

III. METHODOLOGY

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

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

Production Server Environment

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

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

PRNG Test (Steffero, 2009)

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

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

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

Completed Application Test

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

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

Results appear in the next section.

IV. RESULTS

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

PRNG Test (from Steffero, 2009)

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

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

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

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

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

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

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

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

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

V. CONCLUSION

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

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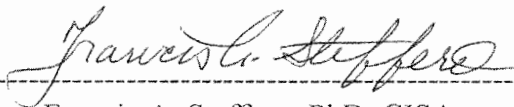
Signature Page

I hereby certify to the authenticity of the report entitled:

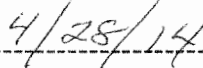
New Jersey Public Employment Relations Commission

Interest Arbitrator By-Lot Selection
Program:

Random Number Generation
Testing for Re-Certification

A handwritten signature in cursive script, reading "Francis A. Steffero", written over a horizontal dashed line.

Francis A. Steffero, PhD, CISA

A handwritten date "4/28/14" written over a horizontal dashed line.

Date



STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

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August 23, 2013

Attached is a report of private sector wage changes compiled by the New Jersey Department of Labor and Workforce Development ("NJLWD"). The first table shows changes in average wages in employment for major industry groups in New Jersey between 2011 and 2012. The calculations were made by dividing total wages paid by covered private sector employers in particular industry groups by the number of jobs reported by those employers at their work sites. Table one also shows changes in the average wages of state and local government jobs covered under the state's unemployment insurance system, as well as changes in the average wages of federal government jobs in New Jersey covered by the federal unemployment insurance system.

The second table shows changes in the average wages of private sector jobs covered under the state's unemployment insurance system between 2011 and 2012. Statistics are broken down by county and include a statewide average. These calculations were made by dividing total wages paid by covered private sector employers by the number of jobs reported by those employers at their work sites.

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

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

**NEW JERSEY
AVERAGE ANNUAL WAGES
FOR JOBS COVERED BY UNEMPLOYMENT INSURANCE
BY NAICS INDUSTRY SECTOR
2011 and 2012**

NAICS Industry Sector	2011	2012	Net Change	% Change
Total Private Sector *	\$56,888	\$58,093	\$1,205	2.1%
Utilities	\$106,173	\$108,596	\$2,423	2.3%
Construction	\$61,738	\$62,396	\$658	1.1%
Manufacturing	\$75,036	\$76,037	\$1,001	1.3%
Wholesale Trade	\$79,542	\$81,160	\$1,618	2.0%
Retail Trade	\$30,372	\$30,577	\$205	0.7%
Transportation/Warehousing	\$48,647	\$49,657	\$1,010	2.1%
Information	\$89,807	\$93,118	\$3,311	3.7%
Finance/Insurance	\$107,143	\$108,802	\$1,659	1.5%
Real Estate/Rental/Leasing	\$54,235	\$59,020	\$4,785	8.8%
Professional/Technical Services	\$91,213	\$95,769	\$4,556	5.0%
Management of Companies/Enterprises	\$137,028	\$146,508	\$9,480	6.9%
Administrative/Waste Services	\$38,227	\$38,592	\$365	1.0%
Educational Services	\$45,166	\$45,813	\$647	1.4%
Health Care/Social Assistance	\$47,650	\$48,492	\$842	1.8%
Arts/Entertainment/Recreation	\$32,333	\$34,000	\$1,667	5.2%
Accommodation/Food Service	\$20,363	\$20,591	\$228	1.1%
Other Services **	\$33,534	\$33,550	\$16	0.0%
Total Government	\$61,160	\$61,752	\$592	1.0%
Federal Government	\$74,714	\$74,271	-\$443	-0.6%
State Government	\$65,688	\$66,232	\$544	0.8%
Local Government	\$57,755	\$58,613	\$858	1.5%
TOTAL	\$57,549	\$58,651	\$1,102	1.9%

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

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

*** For additional historical employment and wage data for New Jersey, please go to the Labor Planning and Analysis - New Jersey Employment & Wage Data web site:
<http://www.wnjp.in.state.nj.us/OneStopCareerCenter/LaborMarketInformation/Imi14/index.html>

**PRIVATE SECTOR
AVERAGE ANNUAL WAGES
FOR JOBS COVERED BY UNEMPLOYMENT INSURANCE
BY COUNTY
2011 AND 2012**

County	2011	2012	% Change
Atlantic	\$ 37,568	\$ 37,143	-1.1%
Bergen	\$ 58,764	\$ 61,119	4.0%
Burlington	\$ 49,628	\$ 50,594	1.9%
Camden	\$ 45,668	\$ 46,621	2.1%
Cape May	\$ 30,103	\$ 30,231	0.4%
Cumberland	\$ 38,083	\$ 39,130	2.7%
Essex	\$ 58,971	\$ 60,141	2.0%
Gloucester	\$ 40,062	\$ 40,560	1.2%
Hudson	\$ 70,184	\$ 69,608	-0.8%
Hunterdon	\$ 54,395	\$ 55,687	2.4%
Mercer	\$ 63,808	\$ 66,135	3.6%
Middlesex	\$ 58,507	\$ 59,688	2.0%
Monmouth	\$ 47,649	\$ 47,826	0.4%
Morris	\$ 70,881	\$ 74,077	4.5%
Ocean	\$ 35,650	\$ 36,370	2.0%
Passaic	\$ 46,604	\$ 46,553	-0.1%
Salem	\$ 53,476	\$ 53,679	0.4%
Somerset	\$ 78,642	\$ 79,563	1.2%
Sussex	\$ 37,322	\$ 37,396	0.2%
Union	\$ 60,926	\$ 61,796	1.4%
Warren	\$ 44,524	\$ 44,711	0.4%
Total			
Private Sector*	\$ 56,888	\$ 58,093	2.1%

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

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

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

**POLICE AND FIRE
COLLECTIVE BARGAINING AGREEMENT SUMMARY FORM**

Section I: Agreement Details

Public Employer: _____ County: _____
Employee Organization: _____ Employees in Unit: _____
Base Year Contract Term: _____ New Contract Term: _____
Type of Settlement: ☐ Arbitrator's Award ☐ Fact-Finder Recommendation ☐ Voluntary Settlement

Section II: Statutory Definition of Base Salary

N.J.S.A. 34:13A-16.7(a): Base salary is the salary provided pursuant to a salary guide or table and any amount provided pursuant to a salary increment, including any amount provided 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.

	Base Year - Total Costs (Last Year of Previous agreement)		New Base Year - Total Costs (First Year of Successor agreement)	
	Column A	Column B	Column C	Column D
	<u>Economic Inside Base Salary</u>	<u>Non-salary Economic Outside Base Salary</u>	<u>Economic Inside Base Salary</u>	<u>Non-salary Economic Outside Base Salary</u>
Section III: Economic - Costs inside base salary				
Salary				
Increment		N/A		N/A
Longevity				
Section IV: Additional Costs List economic items; indicate either inside or outside base salary as agreed to between the parties				
	<u>Item Description</u>			
Item 1				
Item 2				
Item 3				
Item 4				
Item 5				
Item 6				
Item 7				
Item 8				
Item 9				
Any additional items list on separate sheet		Additional Items		
Section V: Totals - Sum of costs in each column				
		(Total Economic) Section III & IV	(Total Non-salary Economic)	(Total Economic) Section III & IV

Section VI: Analysis of new successor agreement

NEW AGREEMENT ANALYSIS

Total Economic Base Year (previous agreement) _____
Effective Date (m/d/yyyy) _____
Percent Increase | | | || Actual dollar increase | | | | |
| Total Economic Costs (successor agreement) | | | | |

Section VII: Impact of Settlement - average annual increase over term of agreement

Percentage Impact (average per year over term of agreement) _____
Dollar Impact (average per year over term of agreement) _____

Section VIII

<u>Medical Costs</u>	Base Year	Year 1			
Cost of Health Plan					
Employee Contributions					
Prescription					
Dental					
Vision					

The undersigned certifies that the foregoing figures are true and is aware that if any of the foregoing items are false, s/he is subject to punishment.

Section IX

Prepared by: _____ Title: _____
Signature _____ Date: _____

NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION INTEREST ARBITRATION SALARY INCREASE ANALYSIS

[illegible]

P.E.R.C. NO. 2012-35

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF ENGLEWOOD CLIFFS,

Appellant,

-and-

Docket No. IA-2010-115

PBA LOCAL No. 45,

Respondent.

SYNOPSIS

The Public Employment Relations Commission affirms an interest arbitration award establishing the terms and conditions of employment for an agreement between the Borough of Englewood Cliffs and PBA Local No. 45. The employer appealed the award arguing that the arbitrator did not properly consider or give due weight to the interest and welfare of the public, the financial impact factor and the lawful authority of the employer factor. Additionally the employer argued that the arbitrator violated the New Jersey Arbitration Act by not accepting certain evidence after the record was closed. The Commission affirms the award noting that its rules provide for the receipt of documents after the close of the record only in the discretion of the arbitrator, and that it defers to the arbitrators judgement in the application of the statutory standards.

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. 2012-35

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF ENGLEWOOD CLIFFS,

Appellant,

-and-

Docket No. IA-2010-115

PBA LOCAL No. 45,

Respondent.

Appearances:

For the Appellant, Decotiis, Fitzpatrick, Cole &
Wisler, LLP, attorneys, (Douglas F. Doyle, of counsel)

For the Respondent, Loccke, Correia, Limsky &
Bukosky, attorneys (Michael A. Bukosky, of
counsel)

DECISION

On December 23, 2011, the Borough of Englewood Cliffs ("employer") appealed from an interest arbitration award to establish, beginning on January 1, 2009, the terms of a collective negotiations agreement between the Borough and PBA Local 145 for police officers ranked below Deputy Chief. The arbitrator issued a conventional award as he was required to do absent the parties' agreement to use another terminal procedure. N.J.S.A. 34:13A-16d(2).^{1/} A conventional award is crafted by an

^{1/} Effective January 1, 2011, P.L. 2010, c. 105 eliminated all other methods of interest arbitration and only provides for conventional arbitration.

arbitrator after considering the parties' final offers in light of nine statutory factors. We affirm the award.

One unique aspect of this dispute arose from the undisputed fact that although the PBA has represented these employees since 1978, their terms and conditions of employment had never been reduced to a written agreement prior to the agreement now under negotiations. Rather, the terms and conditions of employment had been negotiated, but were contained in various Municipal Ordinances and Resolutions, as well as practices of alleged long-standing duration within the Department. During the pre-interest arbitration negotiations, much of the effort of the parties was expended in agreeing to exactly what these understandings were, and finding appropriate contractual language which both sides could agree accurately expressed them. While the vast majority of these issues were resolved prior to the opening of formal interest arbitration proceedings, there remained a significant number of so-called "status quo open" issues for the arbitrator to resolve. For purposes of this appeal, however the resolution of those issues was not raised by appellant in its challenge to the award, and therefor are not specifically addressed herein.

The employer proposed a four-year agreement covering January 1, 2009 through December 31, 2012 with: a 0% wage increase on base pay for 2009; a 0% increase on base pay for 2010 ; a 2% increase in base pay for 2011; and a 2% increase in base pay for

2012. The Borough further proposed that the number of steps in the salary guide be increased from 9 to 11. It further proposed the elimination of longevity for all new hires and modifying the existing longevity scale as follows:

4 years- 1%

8 years- 2%

12 years- 4%

16 years- 5%

20 years- 6%

24 years- 10%

28 years- 12%

and the elimination of longevity for all new hires.

The Borough also proposed the modification of sick leave as follows :

0-5 years- 10 days

After 5 years- 15 days

After 10 years- 20 days

The Borough also proposed modification of vacation as follows:

1-5 years - 10 days

6-10 years - 20 days

11-15 years- 20 days

16-20 years- 25 days

21 years and over- 30 days.

In addition, the Borough proposed the modification of death benefits so that any officer who passes away while on the job would receive all unused earned and accumulated sick leave pay up to a maximum of 150 days, and to modify terminal leave so that active employees would receive a maximum of 2 months of terminal leave, and the terminal leave benefit would be eliminated for all new hires. Finally the Borough proposed reimbursement for meal allowances with a daily limit of \$50.00 for overnight only, contingent upon submission of receipts, and modification of the continuous payment for college credits, with credits limited to a one-time payment for classes earned during a defined period.

The PBA proposed a six year contract from its inception on January 1, 2009, to its termination on December 31, 2014, salary increases of 3.5% on January 1 of each year of the contract; and it proposed maintenance of the statu quo on all other economic issues.

On December 15, 2011, the arbitrator issued a 79-page Opinion and Award. He noted that the record contained extensive and voluminous documentary evidence, and direct testimony from several witnesses.

After summarizing the parties' offers and reviewing in detail their respective supporting arguments, the arbitrator awarded a five-year agreement covering January 1, 2009 through

December 31, 2013 with a 1% salary increase for 2009, 1.5% for 2010, 2.0% for 2011, 2.5% for 2012, and 2.5% for 2013. The arbitrator noted that retroactive payment for the awarded raises for 2009 through 2010 be made within 30 days of the issuance of his award. He left in place the longevity system for current employees, but modified longevity for new hires to:

- 5 to 10 years-2%
- 11 to 15 years-4%
- 16 to 20 years-6%
- 21 to 25 years and thereafter -8%

He also awarded a reduction in education incentive to \$10.00 per credit for new hires effective January 1, 2012. Finally, he also denied the Borough's proposed language change in the out-of-title pay, which had been agreed to in one of the earlier sessions.

The employer appeals contending that the arbitrator did not properly apply the statutory criteria listed in N.J.S.A. 34:13A-16(g) in issuing the award. Specifically, the employer argues: that the arbitrator did not properly consider or give due weight to the interest and welfare of the public in deciding the wage award; did not properly consider or give due weight to the financial impact factor; did not properly consider or give due weight to the lawful authority factor; and did not consider or give due weight to the statutory restrictions factor.

Additionally, the employer asserts that the arbitrator is guilty of misconduct in violation of N.J.S.A. 2A:24-8 by refusing to hear evidence pertinent and material to the controversy, specifically by his failure to accept the Borough's Budget for 2011. The PBA responds that the arbitrator properly considered those statutory factors, and the budget at issue was not offered in a timely manner in accordance with N.J.A.C. 19:16-5.7(k).

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

- (1) The interests and welfare of the public
 . . . ;
- (2) Comparison of the wages, salaries, hours, and conditions of employment of the employees with the wages, hours and conditions of employment of other employees performing the same or similar services and with other employees generally:
 - (a) in private employment in general . . . ;
 - (b) in public employment in general . . . ;
 - (c) in public employment in the same or comparable jurisdictions;
- (3) the overall compensation presently received by the employees, inclusive of direct wages, salary, vacations,

holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received;

- (4) Stipulations of the parties;
- (5) The lawful authority of the employer . . . ;
- (6) The financial impact on the governing unit, its residents and taxpayers . . . ;
- (7) The cost of living;
- (8) The continuity and stability of employment including seniority rights . . . ; and
- (9) Statutory restrictions imposed on the employer. . . .

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

The standard for reviewing interest arbitration awards is well established. We will not vacate an award unless the appellant demonstrates that: (1) the arbitrator failed to give "due weight" to the subsection 16g factors judged relevant to the resolution of the specific dispute; (2) the arbitrator violated the standards in N.J.S.A. 2A:24-8 and 9; or (3) the award is not supported by substantial credible evidence in the record as a whole. Teaneck Tp. v. Teaneck FMBA, Local No. 42, 353 N.J. Super. 298, 299 (App. Div. 2002), *aff'd* o.b. 177 N.J. 560 (2003), citing Cherry Hill Tp., P.E.R.C. No. 97-119, 23 NJPER 287 (¶28131 1997). Because the Legislature entrusted arbitrators with weighing the evidence, we will not disturb an arbitrator's

exercise of discretion unless an appellant demonstrates that the arbitrator did not adhere to these standards. Teaneck, 353 N.J. Super. at 308-309; Cherry Hill.

Arriving at an economic award is not a precise mathematical process. Given that the statute sets forth general criteria rather than a formula, the treatment of the parties' proposals involves judgment and discretion and an arbitrator will rarely be able to demonstrate that an award is the only "correct" one. See Borough of Lodi, P.E.R.C. No. 99-28, 24 NJPER 466 (¶29214 1998). Some of the evidence may be conflicting and an arbitrator's award is not necessarily flawed because some pieces of evidence, standing alone, might point to a different result. Lodi. Therefore, within the parameters of our review standard, we will defer to the arbitrator's judgment, discretion and labor relations expertise. City of Newark, P.E.R.C. No. 99-97, 26 NJPER 242 (¶30103 1999). However, an arbitrator must provide a reasoned explanation for an award and state what statutory factors he or she considered most important, explain why they were given significant weight, and explain how other evidence or factors were weighed and considered in arriving at the final award. N.J.S.A. 34:13A-16g; N.J.A.C. 19:16-5.9; Lodi.

We will first treat with the employer's allegations regarding N.J.S.A. 2A: 24-8 (The New Jersey Arbitration Act). The first of these allegations claims that because the arbitrator

failed to fully award the Borough's proposed modifications to sick leave, vacation leave, and terminal leave, he so imperfectly executed his authority under the statute as to violate N.J.S.A. 2A:24-8. Specifically, the Borough points to Kearny PBA Local No.21 v. Town of Kearny, 81 N.J. 208 (1979) for support for its premise that the award was so internally inconsistent that the arbitrator imperfectly executed his powers. In essence the employer argues that because the arbitrator allegedly disregarded the N.J.S.A. 34:13A-16g standards, the award violated N.J.S.A. 2A:24-8 as well. While this may be accurate as a legal proposition, in the absence of an analysis of the arbitrator's award on the underlying issues it is of little value in reaching a conclusion. Said differently, if the arbitrator did not properly apply the standards set forth in N.J.S.A. 34:13A-16(g), the award would also violate N.J.S.A. 2A:24-8. However, the assertion adds little to the Commission's obligation to consider appeals on the grounds "that the arbitration failed to apply the criteria specified in subsection g of this section or violated the standards set forth in N.J.S.A. 2A:24-8 or N.J.S.A. 2A:24-9." N.J.S.A. 34:13A-16(f) (5) (a).

The employer's second assertion regarding N.J.S.A. 2A:24-8 is that the arbitrator failed and refused to receive and consider evidence which was pertinent and material to the case, which constitutes "misconduct" in violation of the Arbitration Act. The

record reveals, however that the disputed evidence that the Borough contends was not received by the arbitrator consisted of the Borough's 2011 Budget, which was not offered to be produced until after its adoption on June 11, 2011. During the proceedings, after the closing of the hearings, and after the submission of briefs by both parties, the arbitrator requested that the parties submit a revised cost-out document in order to more closely reflect the actual size of the unit and the impact of a percentage change in base salary on total base compensation. At the same time, the arbitrator inquired if the parties wanted him to consider the Borough's 2011 adopted budget. Both parties agreed to his receipt of the revised cost-out materials, but because the PBA objected to the submission of the 2011 Budget, the arbitrator withdrew his request for that document.

The PBA responds that the Borough never requested that the record be held open for submission of the Budget, did not request that the record be re-opened for submission of that document, and never requested special permission to appeal the arbitrator's decision not to include that Budget pursuant to N.J.A.C. 19:16-5.17. Further, it asserts that N.J.A.C. 19:16-5.7(k) provides that "The parties shall not be permitted to introduce any new factual material in the post-hearing briefs, except upon special permission of the arbitrator" which gives the arbitrator complete discretion to either accept or reject such evidence. In the

instant matter, it was the arbitrator himself who asked for the Budget to be submitted. It was not made as a proffer of major import by the Borough. Additionally, in the context of multi-year awards, it is anticipated that not all budgets will be available to be submitted as evidence. City of Asbury Park, P.E.R.C. No. 2011- 17, 36 NJPER 323 (¶ 126 2010).

In the instant matter the arbitrator took consideration of the Borough's concerns regarding the retroactive portion of his award that would be needed to be paid during 2011 budget year, and offered considerable analysis of this issue. (Award at 48-54).

For the reasons set forth above, the Borough's appeal regarding the N.J.S.A. 2A:24-8 grounds must be rejected. The employer objects to a number of aspects of the Award, each relating to a specific standard set forth in the Act. In each case the Borough offers no evidence reflecting its position that the arbitrator did not give due consideration to its concerns. It asserts that the arbitrator did not properly apply the interest and welfare of the public, financial impact, and the lawful authority of the employer because the arbitrator ignored the evidence of the employer's precarious financial situation that includes increased labor and public safety costs, potentially requiring layoffs, and the effect of the 2011 levy cap changes reflecting a reduction to a 2% revenue cap, and a

budget deficit. Intertwined with these arguments are a disagreement with the arbitrator's conclusions to not award the Borough's proposals regarding changes in the salary schedule, the sick leave and vacation leave systems and the longevity system that the arbitrator did modify partially as requested by the Borough.

We reject these grounds for appeal. The arbitrator found that his award would not present a problem with respect to the Cap Law limitations on the Borough's's budget as the overall budget will be reduced from the fact that there have been retirements and attrition which inure to the Borough's advantage in terms of costs. As to the issues of vacation, sick leave, longevity and terminal leave, the arbitrator replicated the cost savings estimates provided by the Borough's financial witness, Mr Steven Wielkottz at pages 19-20 of the award. Thus, the arbitrator clearly considered each of these issues with regard to each of the statutory standards to which he deemed them relevant, and also related in his view why they were not relevant to other standards. As noted above, given that the statute sets forth general criteria rather than a formula, the treatment of the parties' proposals involves judgment and discretion and an arbitrator will rarely be able to demonstrate that an award is the only "correct" one. See Borough of Lodi, P.E.R.C. No. 99-28, 24 NJPER 466 (¶29214 1998). Some of the evidence may be

conflicting and an arbitrator's award is not necessarily flawed because some pieces of evidence, standing alone, might point to a different result. Lodi. Therefore, within the parameters of our review standard, we will defer to the arbitrator's judgment, discretion and labor relations expertise. City of Newark, P.E.R.C. No. 99-97, 26 NJPER 242 (¶30103 1999). Here, the parties presented volumes of documents and the Borough has not pointed to any particular evidence in the record that requires rejecting the contract terms that were awarded.

ORDER

The interest arbitration award is affirmed.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Eskilson, Krengel and Voos voted in favor of this decision. None opposed. Commissioners Bonanni, Jones and Wall recused themselves.

ISSUED: January 20, 2011

Trenton, New Jersey

P.E.R.C. NO. 2012-37

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HUDSON COUNTY PROSECUTOR'S
OFFICE,

Petitioner,

-and-

Docket No. IA-2009-059

PBA LOCAL 232,

Respondent.

SYNOPSIS

The Public Employment Relations Commission remands an interest arbitration award for clarification of the arbitrator's salary guide calculations. The Hudson County Prosecutor appealed the award alleging the arbitrator's calculations are inaccurate. The PBA responds that the award is correct. The Commission remands the dispute to the arbitrator for 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

HUDSON COUNTY PROSECUTOR'S
OFFICE,

Petitioner,

-and-

Docket No. IA-2009-059

PBA LOCAL 232,

Respondent.

Appearances:

For the Petitioner, Scarinci & Hollenbeck, attorneys
(Sean D. Dias, of counsel)

For the Respondent, Lindabury, McCormick, Estabrook &
Cooper, attorneys (Donald B. Ross, of counsel)

DECISION

On December 23, 2011, the Hudson County Prosecutor appealed from an interest arbitration award involving a unit of approximately 74 investigators represented by PBA Local No. 232. The arbitrator issued a conventional award, as he was required to do absent the parties' agreement to use another terminal procedure.^{1/} A conventional award is crafted by an arbitrator after considering the parties' final offers in light of nine statutory factors. The County is only appealing section nine of the award which is the salary guide. Specifically, it asserts

^{1/} Effective January 1, 2011, P.L. 2010, c. 105 eliminated all other methods of interest arbitration and only provides for conventional arbitration.

that the arbitrator's calculations are inaccurate as to the actual cost of the new salary guide as well as other arguments related to the award of the guide.

The PBA responds that the County's calculations are incorrect; points to evidence supporting the arbitrators calculations; and asserts that the County is mistaken in its interpretation of the award.

Because the parties have conflicting interpretations of the meaning of the salary award, we find it necessary to remand the salary issue to the arbitrator for further explanation.^{2/} Any appeal from the arbitrator's supplemental award must be filed within seven days of receipt of the award. We caution the parties that an interest arbitration appeal is not an opportunity to re-argue their case, but must comply with our review standard.^{3/}

^{2/} Both parties have served their briefs on the arbitrator, so he is informed as to their conflicting interpretations.

^{3/} We will not vacate an award unless the appellant demonstrates that: (1) the arbitrator failed to give "due weight" to the subsection 16g factors judged relevant to the resolution of the specific dispute; (2) the arbitrator violated the standards in N.J.S.A. 2A:24-8 and 9; or (3) the award is not supported by substantial credible evidence in the record as a whole. Teaneck Tp. v. Teaneck FMBA, Local No. 42, 353 N.J. Super. 298, 299 (App. Div. 2002), aff'd o.b. 177 N.J. 560 (2003), citing Cherry Hill Tp., P.E.R.C. No. 97-119, 23 NJPER 287 (¶28131 1997).

ORDER

This matter is remanded to the arbitrator to issue a supplemental opinion and award within 45 days.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Eskilson, Jones, Krengel and Voos voted in favor of this decision. None opposed. Commissioner Wall recused himself.

ISSUED: January 26, 2012

Trenton, New Jersey

P.E.R.C. NO. 2012-44

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF BLOOMFIELD,

Respondent,

-and-

Docket No. IA-2008-002

FMBA LOCAL 19,

Appellant.

SYNOPSIS

The Public Employment Relations Commission dismisses an interest arbitration appeal filed by FMBA Local 19 from a one-issue clarification of an interest arbitration award that determined acting pay for captains employed by the Township of Bloomfield. The Commission determines that the appeal is untimely.

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. 2012-44

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF BLOOMFIELD,

Respondent,

-and-

Docket No. IA-2008-002

FMBA LOCAL 19,

Appellant.

Appearances:

For the Respondent, The Law Office of Brian J. Aloia
LLC, attorneys (Brian J. Aloia, of counsel)

For the Appellant, Fox and Fox LLP, attorneys (David I.
Fox, of counsel)

DECISION

On May 31, 2009, an interest arbitrator issued an award addressing a single disputed issue regarding acting pay for firefighters who serve in the higher rank of captain. All other issues in dispute between the Township of Bloomfield and FMBA Local 19 were resolved prior to the close of the record. Neither party appealed the award at that time.

After receipt of the award, the parties' eventually had a disagreement about the effective date of the award. They jointly sought clarification from the arbitrator as to the effective date to determine how much retroactivity was due to firefighters who served as captains between March 17, 2008 through May 31, 2009.

On January 14, 2012, the arbitrator served his clarification of award on the Commission. On January 14, the FMBA filed an appeal asserting the arbitrator: violated Commission standards of review in his clarification decision; failed to appropriately consider the relevant factors implicated in the award; and violated the standards set forth in N.J.S.A. 2A:24-8.

The Township replies that the clarification of award must be affirmed because the record clearly shows that the arbitrator provided a detailed analysis of the relevant factors; the arbitrator appropriately executed his statutory powers and issued a mutual, final and definite award; and the Commission must disregard the FMBA's reference to a settlement of an unfair practice charge to support its position.

On February 13, 2012, the parties were requested to file an additional brief addressing whether the submission of the FMBA constitutes an appeal of an interest arbitration award and if so, whether it is timely. On February 15 and 16, the parties filed their responses. We dismiss the appeal.

We have previously dismissed interest arbitration appeals filed by parties as they relate to an arbitrator's clarification of an award. Township of Mount Olive, P.E.R.C. No. 2011-21, 36 NJPER 349 (¶134 2010) (interest arbitration appeal dismissed where arbitrator issued a clarification of parties' voluntary settlement); Borough of Fort Lee, P.E.R.C. No. 2011-87, 38 NJPER

67(¶12 2011) app. pending, (appeal of arbitrator's clarification of language dismissed post-award). We also find that this appeal does not meet our filing requirements. N.J.A.C. 19:16-8.1. If there is a dispute as to the interpretation of an arbitrator's award, a party must appeal to the Commission in the first instance to seek clarification or the appellant is deemed to have waived that appeal right. See Hudson Cty., P.E.R.C. No. 2012-37 _ _ NJPER _ (¶__ 2012) (award remanded to arbitrator for clarification of salary guide calculations).

ORDER

FMBA Local 19's appeal is dismissed.

BY ORDER OF THE COMMISSION

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

ISSUED: February 29, 2012

Trenton, New Jersey

P.E.R.C. NO. 2012-53

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF NEW MILFORD,

Appellant,

-and-

Docket No. IA-2012-008

PBA LOCAL 83,

Respondent.

SYNOPSIS

The Public Employment Relations Commission vacates and remands an interest arbitration award to the arbitrator for issuance of a new award. The Borough of New Milford appealed the award that set the terms and conditions of employment for members of PBA Local 83 alleging that it violated the 2% cap on base salary set forth in the interest arbitration statute. The Commission amends its review standard to include that it must determine whether the arbitrator established that the award will not increase base salary by more than 2%. The Commission remands the award to the arbitrator with instructions on how to make the calculations and to consider additional arguments of the parties.

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 NEW MILFORD,

Appellant,

-and-

Docket No. IA-2012-008

PBA LOCAL 83,

Respondent.

Appearances:

For the Appellant, DeCotiis, Fitzpatrick & Cole,
attorneys (Douglas F. Doyle, of counsel; Avis Bishop-
Thompson, on the brief)

For the Respondent, Loccke, Correia, Limsky & Bukosky,
attorneys (Michael A. Bukosky, of counsel)

DECISION

The Borough of New Milford appeals from an interest arbitration award involving a unit of approximately 32 police officers in the ranks of patrol officer, sergeant and lieutenant who are represented by PBA Local 83.^{1/}

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

^{1/} We deny the Borough's request for oral argument. The issues have been fully briefed.

The PBA proposed:

1. A four-year contract with 2.75% across-the-board wage increases effective February 1 of each year;
2. Elimination of the 25% offset on the holiday fold-in provision to have the full value of holidays used in computation.
3. Modify Work in Higher rank to provide that whenever a member shall be paid at the higher rank position then said member shall be at the highest rank rate of compensation for all time so worked.

The Borough proposed:

Economic Proposals

1. A three-year contract with the following wage increases:

January 1, 2012:	0%
January 1, 2013:	0%
January 1, 2014:	2%
2. Effective January 1, 2012, all new hires will be hired pursuant to a new salary guide which will contain 2 additional steps. These steps shall be one (1) year step and will be between Step 1 and the maximum Step 9. The Probation Step will be changed to Pre-Academy Certification Rate.

3. Revise Article 9, Work Day, Work Week and Overtime/Comp Time:

Overtime Compensation: Insertion of par. E to read:

In the event the Borough Hall is closed due to inclement weather, hurricane, or power outages, only those employees scheduled to work shall receive the regular salary. No additional compensation or overtime will be granted unless authorized by the Chief of Police or his designee.

Inclement Weather: Limit pay during inclement weather as follows:

In the event the Borough Hall is closed due to inclement weather, hurricane, or power outages, only those employees scheduled to work shall receive the regular salary at straight pay. No additional compensation or overtime will be granted unless authorized by the Chief of Police or his designee.

4. Modify Article 14, Longevity as follows:

Current employees: Effective January 1, 2012, all longevity payments currently paid per the following schedule in an amount not to exceed an annual payment of \$10,000 until retirement or separation from employment:

- 3% of base pay after 4 years of service
- 4% of base pay after 8 years of service
- 5% of base pay after 12 years of service
- 6% of base pay after 16 years of service
- 7% of base pay after 20 years of service
- 8% of base pay after 24 years of service

New employees: Employees hired after December 31, 2011 will adhere to the following schedule for annual payments until retirement or separation from employment:

- Completion of 10 years - \$1,500
- Completion of 15 years - \$3,000
- Completion of 20 years - \$4,500
- Completion of 25 years - \$6,000

5. Modify Article 17, vacation for new hires as follows:

- 0-5 years - 5 days
- 5-15 years - 10 days
- 15+ years - 15 days

Employees will be permitted to carry up to six weeks unused vacation days from one year to the next (non-cumulative)

6. Modify Article 18, Personal Leave as follows:

Each employee will have 3 days of personal leave. The personal leave shall not accumulate and must be used in the year it is used.

7. Modify Article 19, Holiday as follows:

Holidays shall be eliminated and the 13 holidays will be converted into base pay effective January 1, 2011.; the amount shall be calculated based on the base salary divided by 1946 hours. The 2011 base with holiday rolled in will be effective for all employees of the bargaining unit as set forth in the revised Appendix A3.

8. Modify Article 20 Sick Leave as follows:

Current employees: Employees hired before January 1, 2012 will adhere to the following. Employees shall be eligible to receive 5 sick days for each calendar year. Upon retirement or death, the employee or his/her estate or designated beneficiary will receive full payment for any unused accumulated sick leave computed on the basis of final wages in an amount not to exceed \$15,000. Current employees with more than \$15,000 shall be capped at the level that is "in the bank" as of December 31, 2011.

New employees: Employees hired after January 1, 2012 shall be eligible to receive 5 sick days for each calendar year worked with benefits when he is unable to work due to a verifiable sickness, injury or illness ... Employees will not be permitted to bank any sick days.

9. Article 23, Medical Contract:

Current employees: All employees shall contribute a percentage of the employee's total annual salary or a percentage of the annual premium as per State law. Also, the employee may opt out and receive a cash payment from the Borough, to be included in the paycheck spread out over the course of the year in the amount of 25% of the premium or \$5,000 whichever is greater.

Retirees: Payment for retiree health benefits subject to State law.

10. Article 50, Terminal Leave:

Modify paragraph B: All accumulated and unused holidays earned prior to January 1, 2011 shall be frozen at the then current rate to date of retirement.

Modify paragraph C: All unused vacation days as well as those personal days earned prior to December 31, 2011 shall be frozen at the then current rate.

Eliminate paragraph E.

Modify paragraph F to read:

The employee shall submit his/her retirement requests at least 6 months prior to the date of retirement. Upon calculation of the accumulated leave banks, the Borough reserves the right to pay for all time due over a 5 year period rather than a lump sum payment in lieu of a protracted terminal leave. The failure to provide at least 6 months notice shall result in a forfeiture of the additional 20 days. No payment under this section shall count toward nor affect, either by increasing or decreasing, any pension or retirement benefit due the employee.

Eliminate paragraph G.

The arbitrator issued a 37-page Opinion and Award. After summarizing the parties' arguments on their respective proposals, the arbitrator awarded a three-year agreement effective January 1, 2012 through December 31, 2014 with a 1% salary increase effective July 1, 2012; 2% effective January 1,

2013; and 2.5% effective January 1, 2014.^{2/} The arbitrator also awarded the following regarding terminal leave:

Paragraph E is deleted.

Paragraph F is re-designated Paragraph E, and modified to state:

- E. If the employee submits his/her retirement request prior to October 1st of any given year, in lieu of terminal leave, the employee can receive a lump sum payment payable by April 15th of the following year (year of retirement) for all time due in lieu of protracted terminal leave.

Alternatively, the employee may within two months prior to his/her planned retirement request periodic payments, as follows:

1/3 of the total payable within 60 days of the effective retirement date;

An equal amount of 1/3 payable 365 days thereafter; and

A final amount of 1/3 payable 365 days thereafter.

The choice between a lump sum, and a 1/3 payment schedule shall remain solely with the employee.

Former paragraph G is re-designated as paragraph F

Former paragraph H is re-designated as paragraph G

^{2/} The arbitrator stated that all items not specifically awarded as proposed by the Borough and PBA are denied and that except as the parties may mutually agree, the provisions of the prior agreement shall continue in the new agreement.

The Borough appeals arguing that:

THE COMMISSION SHOULD VACATE THE ARBITRATION AWARD AS THE ARBITRATOR FAILED TO COMPLY WITH THE STATUTORY CRITERIA ESTABLISHED BY THE ARBITRATION REFORM ACT

THE ARBITRATOR EXCEEDED OR SO IMPERFECTLY EXECUTED HIS POWERS THAT A MUTUAL, FINAL AND DEFINITE AWARD UPON THE SUBJECT MATTER WAS NOT MADE AS REQUIRED BY N.J.S.A. 2A:24-8

THERE WAS AN EVIDENT MISCALCULATION OF FIGURES AND AN EVIDENT MISTAKE IN THE DESCRIPTION OF A PERSON, THING OR PROPERTY REFERRED TO THEREIN, PERMITTING MODIFICATION UNDER N.J.S.A. 2A:24-9

THE ARBITRATOR'S AWARD FAILED TO CORRECTLY APPLY THE CRITERIA SPECIFIED IN N.J.S.A. 34:13A-16G(1), WHICH ADDRESSES THE INTEREST AND WELFARE OF THE PUBLIC

THE ARBITRATOR FAILED TO APPLY THE CRITERIA SET FORTH IN N.J.S.A. 34:13A-16G(3), WHICH ADDRESSES THE OVERALL COMPENSATION PRESENTLY RECEIVED BY THE EMPLOYEES

THE ARBITRATOR FAILED TO REASONABLY APPLY THE CRITERIA SET FORTH IN N.J.S.A. 34:13A-16G(6), RELATING TO THE FINANCIAL IMPACT OF THE AWARD ON THE GOVERNING UNIT

THE ARBITRATOR FAILED TO PROPERLY CONSIDER THE CRITERIA SET FORTH IN N.J.S.A. 34:13A-16G(9), THE STATUTORY RESTRICTIONS IMPOSED ON THE EMPLOYER

THE ARBITRATOR HAS VIOLATED THE CLEAR PUBLIC POLICY AGAINST PROTECTING THE PUBLIC INTEREST BY MAINTAINING THE WELFARE OF THE BOROUGH'S RESOURCES AND ITS CITIZENS, THEREBY, IN ACCORDANCE WITH NEW JERSEY SUPREME COURT PRECEDENT, THE COMMISSION SHOULD VACATE HIS AWARD

THE ARBITRATOR INCORRECTLY APPLIED THE STATUTORY CRITERIA SPECIFIED IN N.J.S.A. 34:13A-16g(2)

The PBA responds that the arbitrator complied with and considered all of the relevant statutory criteria; provided a well reasoned and comprehensive award; did not increase salaries

in excess of the 2% cap; properly considered each of the items submitted by the Borough; and correctly considered the economic interests and welfare of the public.

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

(1) The interests and welfare of the public. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by P.L. 1976, c. 68 (C.40A:4-45.1 et seq.).

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

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

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

(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).

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

The standard for reviewing interest arbitration awards is well established. We will not vacate an award unless the appellant demonstrates that: (1) the arbitrator failed to give "due weight" to the subsection 16g factors judged relevant to the resolution of the specific dispute; (2) the arbitrator violated the standards in N.J.S.A. 2A:24-8 and -9; or (3) the award is not supported by substantial credible evidence in the record as a whole. Teaneck Tp. v. Teaneck FMBA, Local No. 42, 353 N.J. Super. 298, 299 (App. Div. 2002), *aff'd* o.b. 177 N.J. 560 (2003), citing Cherry Hill Tp., P.E.R.C. No. 97-119, 23 NJPER 287 (¶28131

1997). Because the Legislature entrusted arbitrators with weighing the evidence, we will not disturb an arbitrator's exercise of discretion unless an appellant demonstrates that the arbitrator did not adhere to these standards. Teaneck, 353 N.J. Super. at 308-309; Cherry Hill.

Arriving at an economic award is not a precise mathematical process. Given that the statute sets forth general criteria rather than a formula, except as set forth below by P.L. 2010 c. 105 the treatment of the parties' proposals involves judgment and discretion and an arbitrator will rarely be able to demonstrate that an award is the only "correct" one. See Borough of Lodi, P.E.R.C. No. 99-28, 24 NJPER 466 (¶29214 1998). Some of the evidence may be conflicting and an arbitrator's award is not necessarily flawed because some pieces of evidence, standing alone, might point to a different result. Lodi. Therefore, within the parameters of our review standard, we will defer to the arbitrator's judgment, discretion and labor relations expertise. City of Newark, P.E.R.C. No. 99-97, 26 NJPER 242 (¶30103 1999). However, an arbitrator must provide a reasoned explanation for an award and state what statutory factors he or she considered most important, explain why they were given significant weight, and explain how other evidence or factors were weighed and considered in arriving at the final award. N.J.S.A. 34:13A-16g; N.J.A.C. 19:16-5.9; Lodi.

P.L. 2010, c. 105 amended the interest arbitration law

N.J.S.A. 34:13a-16.7 provides:

a. As used in this section:

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

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

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

This is the first interest arbitration award that we review under the new 2% limitation on adjustments to base salary.

Accordingly, we modify our review standard to include that we

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

award does not increase the employer's costs for base salary by more than 2% per contract year or 6% in the aggregate.

The Base Salary Increase

The Borough argues that the award exceeds the 2% arbitration award cap when all economic factors are included. Specifically, the Borough states that while the arbitrator included wages, step increments and longevity costs, he did not include all of the additional costs comprising base salary including college credits, detective stipend and uniform allowance. It alleges the actual costs of the award are 2.56% for 2012, 3.44% for 2013, and 3.18% for 2014.

The PBA responds that the Borough's calculations ignore the savings it has realized from the retirement of two officers, adds holiday pay to its calculations which is already a part of the base salary costs, and erroneously adds in college credits, detective squad and uniform allowance that it asserts are not part of the parties' base salary. The PBA requests that we find that the arbitrator only needs to establish that the award does not exceed the caps when the savings of retirements are factored in. As the Arbitrator noted at page 34 of the award, "Emergencies, health conditions, family issues, opportunities, or simply being "worn out" may all influence when someone decides to end employment. Officers may not know until late in the game when retirement is prudent, or for that matter essential."

Indeed eligibility for retirement is not the equivalent of retirement, nor is retirement mandatory at the time of eligibility. Since an arbitrator, under the new law, is required to project costs for the entirety of the duration of the award, calculation of purported savings resulting from anticipated retirements, and for that matter added costs due to replacement by hiring new staff or promoting existing staff are all too speculative to be calculated at the time of the award. The Commission believes that the better model to achieve compliance with P.L. 2010 c. 105 is to utilize the scattergram demonstrating the placement on the guide of all of the employees in the bargaining unit as of the end of the year preceding the initiation of the new contract, and to simply move those employees forward through the newly awarded salary scales and longevity entitlements. Thus, both reductions in costs resulting from retirements or otherwise, as well as any increases in costs stemming from promotions or additional new hires would not effect the costing out of the award required by the new amendments to the Interest Arbitration Reform Act.

The arbitrator calculated base salary as wages including step increases plus longevity. However, the arbitrator has not provided the calculations he made to reach his total base salary or explain why other economic figures presented by the Borough were not included in base salary. Further, the arbitrator does

not provide a cost analysis of each year of the award that includes at a minimum step increments and longevity. These calculations are a mandatory requirement under the new law. We therefore vacate and remand the award to the arbitrator to provide a new award that explains which figures were taken into his accounting of base salary and the costs of each year of the award. Then, the arbitrator must calculate and determine that the annual costs of the award do not increase the employer's 2011 base salary costs by more than 2% per year or 6% in the aggregate. We note that the cap on salary awards in the new legislation does not provide for the PBA to be credited with savings that the Borough receives from retirements or any other legislation that may reduce the employer's costs. It is an affirmative calculation based on the total 2011 base salary costs regardless of any changes in 2012. Likewise, the PBA will not be debited for any increased costs the employer assumes for promotions or other costs associated with maintaining its workforce.

Internal Settlement Pattern

The Borough also appeals the award arguing that the arbitrator failed to properly consider or give due weight to the 16g(2) comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of

other employees. Specifically, the Borough asserts that although the arbitrator gave weight to this factor, he did not analyze the evidence presented of the Borough's internal pattern of settlement with other units that included wage freezes.

Similar to how an arbitrator may not only focus on external comparisons under the 16g(2) criteria, it is also improper for an arbitrator to only focus on the internal settlement pattern of the Borough with other units. PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71, 85-86; Washington Tp. v. New Jersey PBA Local 206, 137 N.J. 88 (1994); Fox v. Morris Cty., 266 N.J. Super. at 516-517; Cherry Hill. While an arbitrator must be careful to avoid whipsawing when analyzing the wages of other employer units, interest arbitrators have traditionally found that internal settlements are a significant factor. See Somerset Cty. Sheriff's Office and Somerset Cty. Sheriff FOP, Lodge No. 39, P.E.R.C. No. 2007-33, 32 NJPER 372 (¶156 2006), aff'd 34 NJPER 21(¶8 App. Div. 2008). While the arbitrator made findings of fact regarding the settlements the Borough has reached with other units, he did not analyze the evidence of internal comparability in his 16g2 analysis. Thus, on remand, the arbitrator must evaluate the 16g2 factor; explain the weight he gave this factor; and make a determination based on the evidence.

Other Proposals of the Parties

Having vacated the award, we do not need to reach every argument the Borough has made on appeal. As to the other proposals of the parties that were not awarded, the arbitrator stated:

Conventional arbitration takes place in the "disputed issue" context. Indeed, the statutory framework lists factors that arbitrators are to consider when resolving differences over the parties' proposals. A reasoned interest arbitration analysis must be preceded by proposals having been: identified; examined; debated examined; and ultimately recognized as in dispute. Those obligations, as shown by the record, were clearly met so far as contract term, wage increments and terminal leave.

The same cannot be said for other proposals for which the record is insufficient to allow a determination on these other issues.

(Award at 36).

The record indicates that the Borough did not abandon its proposals regarding inclement weather, longevity, sick and vacation leave, personal leave and the holiday pay roll-in calculation. Indeed, the Borough presented documentary evidence and testimony to support its proposals. We find that the arbitrator did not adequately evaluate the parties' proposals in light of the statutory criteria; explain why he gave more weight to some factors and less to others; and issue a comprehensive award that reasonably determined the issues and is supported by substantial credible evidence as to all of the parties'

proposals. This does not require the arbitrator to adopt the parties' proposals, but where there has been evidence presented in support of a proposal, the reason for its adoption, modification or rejection must be analyzed. Essex Cty., P.E.R.C. No. 2011-92, 38 NJPER 76 (¶17 2011). On remand, the arbitrator must analyze why he rejects any proposal of the parties' made in their final offers for which adequate evidence was entered into the record for analysis.

The interest arbitration award is vacated and remanded to the arbitrator for issuance of a new award within 45 days from this decision. We do not agree with the Borough that remanding this case to a new arbitrator is required particularly in light of the fact that this was the first award we have reviewed under the new statutory award cap imposed by P.L. 2010, c. 105.

ORDER

The interest arbitration award is vacated and remanded to the arbitrator for a new award within 45 days consistent with this decision. Any additional appeal by the parties must be filed within seven calendar days of service of the new award.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Eskilson, Krengel and Voos voted in favor of this decision. None opposed. Commissioners Bonanni, Jones and Wall recused themselves.

ISSUED: April 9, 2012

Trenton, New Jersey

P.E.R.C. NO. 2012-54

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF WEST CALDWELL,

Appellant,

-and-

Docket Nos. IA-2012-012
SN-2012-052

WEST ESSEX PBA LOCAL 81 (WEST
CALDWELL UNIT),

Respondent.

SYNOPSIS

The Township of West Caldwell appeals an interest arbitration award, specifically a denial of its proposal to modify a contract clause addressing eligibility for out-of-title pay. The Township also filed a scope of negotiations petition with regard to the disputed language. The essence of the Township's claim on appeal is that the disputed language infringes upon its managerial prerogative to set appropriate staffing levels and to assign the number and types of officers to a particular shift. The Public Employment Relations Commission determines that the Township's appeal should be processed pursuant to the legal standards for evaluating a scope of negotiations petition rather than the legal standards for reviewing interest arbitration appeals and directs the parties to file briefs regarding the merits of the Township's scope petition.

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

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF WEST CALDWELL,

Appellant,

-and-

Docket Nos. IA-2012-012
SN-2012-052

WEST ESSEX PBA LOCAL 81 (WEST
CALDWELL UNIT),

Respondent.

Appearances:

For the Appellant, Riker, Danzig, Scherer, Hyland &
Perretti, attorneys (James Lott, Jr., of counsel)

For the Respondent, Loccke, Correia, Limsy & Bukosky,
attorneys (Richard D. Loccke, of counsel)

DECISION

The Township of West Caldwell appeals from an interest arbitration award involving a unit of approximately 21 police officers, including 4 Lieutenants, 5 Sergeants and 12 non-supervisory officers, represented by the West Essex PBA, Local 81.^{1/} The Township is only appealing the arbitrator's denial of its proposal to modify Article II, Section H of the collective negotiations agreement between the Township and the PBA. With regard to the language contained in that provision which addresses eligibility for out-of-title pay, the Township also filed a scope of negotiations petition with its appeal.

1/ The Township's request for oral argument is denied.

Article II, Section H reads as follows:

1. In the event a vacancy shall exist for any reason except as a result of a Department-assigned training or schooling and, as a result, an Officer or Superior is directed to assume, in an acting capacity, a higher rank and perform the duties and responsibilities of such higher rank for a period of at least ten (10) working days, then such officer or Superior shall receive the salary or pay for the higher rank for any period so worked beginning with the first hour of the eleventh (11th) day.

2. Whenever an Employee is assigned to work at a higher rank in a particular position and performs in that position for ten (10) working days either at one time or cumulatively during several assignments during a calendar year that Officer will be entitled to pay at the higher rank beginning on the eleventh (11th) day of such assignments. . . .

3. This Section shall be interpreted and applied consistent with the Grievance Arbitration and Award of grievance Arbitrator Joel Douglas (PERC Docket No. AR-99-122/issued December 30, 1999 and affirmed by the New Jersey Superior Court, Chancery Division on July 11, 2000 (Docket No.: C 110 00)).

The Township proposed that Article II, Section H be modified to delete sections 1 and 3. Its proposal also included modifying section 2 to provide for out-of-title pay for officers assuming the position of Acting Sergeant only and upon assignment to that position by the Chief only.

The arbitrator issued a 73 page Opinion and Award.

Regarding his denial of the Township's proposal to modify Article II, Section H, he found as follows:

I can reasonably conclude that there is a monetary cost to the Township if and when an officer receives acting pay. On this record, however, I cannot state with any certainty that the cost associated with providing acting pay would prohibit the Township from meeting its statutory obligations or cause it to exceed its lawful authority.

As to the Township's claim that there has been an infringement upon its managerial authority, it is an issue the Township must address through a scope of negotiations proceeding before PERC. Accordingly, I conclude that the evidence does not require me to modify Section H or to change the manner in which the parties have addressed Section H in the past.

On appeal, the Township argues that the arbitrator failed to consider the lawful authority of the employer and give due weight to the evidence presented of comparable jurisdictions. Alternatively, the Township requests a scope of negotiations determination.

The gravamen of the Township's argument on appeal is that the language of Article II, Section H infringes upon its managerial prerogative to set appropriate supervisory staffing levels and to assign the number and types of officers to a particular shift. Accordingly, the Township's claim should be evaluated pursuant to the legal standards for a scope of

negotiations determination rather than the legal standards for appealing interest arbitration awards. The PBA asserts that the Township should be estopped from seeking a scope of negotiations determination since the negotiability of the language in Article II, Section H was not raised at the time that the Township filed its Petition to Initiate Compulsory Interest Arbitration, as required by N.J.A.C. 19:16-5.5 (c).

We recently amended our interest arbitration rules in response to changes to the interest arbitration law, N.J.S.A. 34:13A-14a et seq.^{2/} While N.J.A.C. 19:16-5.5(c) remains unchanged by the amendments, there are other rules relating to the filing of scope of negotiations petitions in interest arbitration appeals that were affected by the amendments. We created Frequently Asked Questions to help parties conform to the amended interest arbitration law and interest arbitration rules.

FAQ 1 reads:

Q. Do all of the Commission's current rules reflect the December 2010 changes to the interest arbitration statute?

A. No. However the Commission will engage in rulemaking to conform its rules to the recent statutory changes. In the meantime, parties should refer to the statute and these frequently asked questions.

^{2/} Those rule amendments are currently pending in the public comment period, which concludes on May 18, 2012.

FAQ 14 reads:

Q. What about a scope of negotiations dispute that arises during an interest arbitration proceeding?

A. In addition to the rules that are superceded by the recent statutory changes, the Commission has suspended application of N.J.A.C. 19:16-5.7(h), which prohibits an arbitrator from rendering a decision on any issue which is the subject of a petition for scope of negotiations determination filed with the Commission. The requirement that an arbitrator issue a decision within 45 days of assignment precludes application of this rule. Any scope of negotiations dispute can be decided by the Commission as part of any appeal of an arbitration award.

[emphasis supplied]

This case is the first time, since the recent interest arbitration rule amendments, that we will address the new requirements for the processing of a scope of negotiations petition related to interest arbitration proceedings.^{3/} FAQ 1 sets out that parties should refer to the statute and the FAQs for guidance on the changes to the interest arbitration statute, but does not refer to the rules. FAQ 14 provides that a scope of

^{3/} Prior to the rule amendments implemented in response to the amendment of the interest arbitration law, a scope of negotiations petition would halt interest arbitration proceedings until we rendered a scope of negotiations determination. The current practice enumerated in the proposed rules provides that a scope of negotiations petition is processed as part of an appeal of the interest arbitration award. This change is due to the compressed time period within which interest arbitration proceedings must now be completed.

negotiations dispute can be decided by the Commission as part of any appeal of an arbitration award, however, it also does not refer to the requirement set forth in N.J.A.C. 19:16-5.5(c) that a scope of negotiations petition be filed within 14 days of the filing of an interest arbitration petition.^{4/}

N.J.A.C. 19:10-3.1(b) provides us with the ability to construe our rules liberally to effectuate the purposes of the New Jersey Employer Employee Relations Act, N.J.S.A. 34:13A-1 et seq., and when strict compliance would result in an injustice. We find that under these circumstances, where the language of FAQs 1 and 14 could have been more precise with regard to the new procedures for the filing of a scope petition as part of an interest arbitration appeal, we are compelled to consider the Township's scope of negotiations petition. The Township is directed to file a brief regarding the merits of its petition within 14 days of this decision. The PBA shall respond within 14 days of service of the Township's brief. The Township may file a reply brief within seven days after service of the PBA's brief. Since we will be evaluating the Township's claim on appeal as a scope of negotiations matter, the Township's appeal of the interest arbitration award is denied.

^{4/} In response to the issues raised by this case, we will be clarifying the text of FAQs 1 and 14.

ORDER

The Township of West Caldwell's appeal of the interest arbitration award is denied. The Township is directed to file a brief regarding the merits of its scope of negotiations petition within 14 days of this decision. The PBA shall respond within 14 days of service of the Township's brief. The Township may file a reply brief within seven days after service of the PBA's brief.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Eskilson, Krengel and Voos voted in favor of this decision. None opposed. Commissioners Jones and Wall recused themselves.

ISSUED: April 20, 2012

Trenton, New Jersey

P.E.R.C. NO. 2012-59

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

OCEAN COUNTY PROSECUTOR,

Respondent,

-and-

Docket No. IA-2011-006

OCEAN COUNTY PROSECUTOR'S
DETECTIVES & INVESTIGATORS
ASSOCIATION, PBA LOCAL 171,

Appellant.

SYNOPSIS

The Public Employment Relations Commission affirms an interest arbitration award establishing the terms and conditions of employment for a new agreement between the Ocean County Prosecutor and the Ocean County Prosecutor's Detectives & Investigators Association, PBA Local 171. The PBA appealed the award of the employer's proposal to require 15 years of County service in order to be eligible for retiree health benefits; the step delay in year 3; and the step freeze at the expiration of the contract. The Commission affirms the award as it is supported by substantial credible evidence and the PBA is relying on new arguments and evidence in its appeal.

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. 2012-59

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

OCEAN COUNTY PROSECUTOR,

Respondent,

-and-

Docket No. IA-2011-006

OCEAN COUNTY PROSECUTOR'S
DETECTIVES & INVESTIGATORS
ASSOCIATION, PBA LOCAL 171,

Appellant.

Appearances:

For the Respondent, Apruzzese, McDermott, Mastro & Murphy, attorneys (Robert T. Clarke, of counsel and on the brief; Robert J. Merryman, on the brief)

For the Appellant, Loccke, Correia, Limsky & Bukosky, attorneys (Merick H. Limsky, of counsel and on the brief)

DECISION

The Ocean County Prosecutor's Detectives & Investigators Association, PBA Local 171 appeals from an interest arbitration award involving a unit of approximately 51 investigators employed by the Ocean County Prosecutor's Office.

The arbitrator issued a conventional award as he was required to do absent the agreement of the parties' to another terminal procedure.^{1/} A conventional award is crafted by an

^{1/} Effective January 1, 2011, all interest arbitration proceedings must be by conventional arbitration. P.L. 2010, c. 105.

arbitrator after considering the parties' final offers in light of statutory factors. The parties' final offers are as follows.

The PBA proposed:

1. A four-year agreement from April 1, 2010 to March 31, 2014 with 3.5% across-the-board increases at all steps of the salary guide.

The Prosecutor proposed:

1. A two-year agreement from April 1, 2010 to March 31, 2012.

2. Salary

Article 6, Section shall be deleted and replaced with the following language:

Effective April 1, 2010, those employees eligible to move to the next step on the salary schedule set forth in the Collective Bargaining Agreement as Appendix A shall move. Those employees at step 9 shall remain at that salary.

Effective April 1, 2011, the salary schedule set forth in the Collective Bargaining Agreement as Appendix A shall be eliminated. The starting annualized salary for a new hire shall be \$49,275 after the completion of probation. During probation an employee shall receive an annualized salary of \$36,889. Any employee at an annualized salary of \$49,275 or higher shall receive a two (2%) percent increase retroactive to April 1, 2011. If the employee has already received an increase greater than two (2%) percent because of step advancement, the employee shall reimburse the County

the difference between two (2%) of his/her March 2011 salary and the April 1, 2011 salary received as a result of the advancement on the salary schedule. Said reimbursement shall occur over a 12-month period, in equal deductions from the employee's periodic compensation.

3. Longevity:

Effective April 1, 2011, Article 14 shall be deleted from the Agreement and replaced with the following:

All employees hired on or after April 1, 2011 shall not be eligible for longevity pay. Any employee hired before April 1, 2011 shall receive longevity pay based upon the following schedule:

15 years	- \$4,000
20 years	- \$5,000
25 years	- \$6,000

4. Holidays:

Article 7, paragraph 1, shall be deleted and replaced with the following:

Each full-time employee covered by the Agreement shall receive the State employees' holiday schedule with pay.

5. College Credit:

Article 16 shall be deleted from the Agreement.

6. Health Benefits:

Article 13, Health Benefits shall be changed to "Hospital Surgical, Major Medical, Prescription and

Retirement Benefits." Section 1, delete A through E and replace with the following:

- A. All full-time employees shall be permitted to enroll in the health benefits two (2) months from their date of hire. The County of Ocean currently provides medical coverage to the County employees through the New Jersey State Health Benefits Program as supplemented by NJ Local Prescription Drug Program and Chapter 88 P.L. 1974, as amended by Chapter 436 P.L. 1981. The parties recognize that the State Health Benefits Program is subject to changes enacted by the State of New Jersey that may either increase or decrease benefits, including employee premium sharing.
- B. The County shall not change the health insurance coverage referred to in paragraph A except for a Plan that is equivalent to the plan in effect at the time of the change. The parties recognize that if the County leaves the State Health Benefits Plan the HMO plans offered by the new plan provider may be different.
- C. All current and future employees who retire on or after April 1, 2010 in order to be eligible for health benefits upon retirement, must have served a minimum of fifteen(15) years with the County and have twenty-five (25) years or more of service credit in a State or locally administered retirement system at the time of retirement.

Effective April 1, 2010, the following changes will affect all new hires:

Employees will be offered the NJ Direct 15 plan, or its replacement. New Hires may elect a higher level of coverage at their expense. Continuation of spousal coverage after the death of the retiree

will no longer be offered at the County's expense. The County will no longer reimburse retiree Medicare Part B premiums.

- D. An eligible employee may change his/her coverage only during the announced open enrollment period for each year after having been enrolled in the former plan for a minimum of one (1) full year. Regardless of this election, employees are specifically ineligible for any deductible reimbursement.
- E. When an employee is granted the privilege of a leave of absence without pay for illness, health coverage will continue at County expense for the balance of the calendar month in which the leave commences plus up to three (3) additional calendar months next following the month in which the leave commences. After that time has elapsed, if necessary, coverage for an additional period of eighteen (18) months may be purchased by the employee under the C.O.B.R.A. plan.

In the case of consecutive leaves of absence without pay, it is understood and agreed that the responsibilities of the County to pay for benefits remains limited to the original period of up to four (4) months.

Delete Section 5 and replace with the following:

Employees after the first month following their full months of employment shall be eligible for the same prescription benefits as are provided to County employees in general.

The arbitrator issued a 119-page Opinion and Award. He noted the record consisted of witness testimony and hundreds of documentary exhibits totaling thousands of pages in support of their last offers. After summarizing the parties' arguments on their respective proposals, the arbitrator analyzed the proposals within the statutory factors and awarded a three-year agreement effective April 1, 2010 through March 31, 2013 with the following terms:

1. Salary and Salary Guide:

- (a) Effective April 1, 2010, Step 9, the maximum step on Appendix A, the Salary Guide, shall be increased by 2.0%. All other steps shall be frozen.
- (b) Effective April 1, 2011, Step 9, the maximum step on Appendix A, the Salary Guide, shall be increased by 2.0%. All other steps shall be frozen.
- (c) Effective April 1, 2012, Step 9, the maximum step on Appendix A, the Salary Guide, shall be increased by 2.0%. All other steps shall be frozen. Article 6, Section 1 shall be modified to make the "automatic annual step guide" salary increases effective January 1, 2013.
- (d) Article 6, Section 1 of the CNA shall be modified as follows:

Section 1: The annual salaries for employees covered by this contract shall be set forth in Appendix A

annexed. The Salary Guide is an automatic annual step guide with movement from one step to the next effective April 1 of each year. This shall be applicable to annual step guide movement in 2010-2011 and 2011-2012.

In 2012-2013, the "automatic annual step guide" salary increases shall not be paid on April 1, 2012. The "automatic annual step guide" salary increases shall be delayed until January 1, 2013. Effective February 1, 2013, the continued application of the April 1st increment payment date shall be suspended. This suspension shall be effective until the parties reach a voluntary agreement for a successor CNA or by the terms of an interest arbitration award.

- (e) Effective April 1, 2012, all new hires will be hired pursuant to a new Salary Guide (Appendix A-1) which will include two additional steps. The "Probation" step shall be eliminated and replaced by Step 1 which shall be a full, twelve-month step. Thus, the new Salary Guide shall have twelve steps to maximum. The new Step 1 shall be \$38,000. All other steps shall be equalized between Step 1 and Step 12, the maximum step of \$96,350. The Senior Investigator stipend shall be eliminated for new hires.
- (f) All salary increases are fully retroactive to the above effective dates.

- (g) Effective April 1, 2012, the longevity schedule for new hires shall be as follows:

Completion of 15 years	2% of base rate
Completion of 20 years	4% of base rate
Completion of 25 years	6% of base rate

2. The language of Article 13, Health Benefits, shall be replaced by the following:

ARTICLE 13

**HOSPITAL, SURGICAL, MAJOR MEDICAL, PRESCRIPTION
AND RETIREMENT BENEFITS**

Section 1:

All full-time employees covered by this bargaining unit shall be permitted to enroll in health benefits two (2) months from their date of hire.

- A. The County of Ocean currently provides medical coverage to the County employees through the New Jersey State Health Benefits Program as supplemented by NJ Local Prescription Drug Program and Chapter 88 P.L. 1974, as amended by Chapter 436 P.L. 1981. The parties recognize that the State Health Benefits Program is subject to changes enacted by the State of New Jersey that may either increase or decrease benefits.
- B. The County shall not change the health insurance coverage referred to in paragraph A except for a Plan that is equivalent or better. Provided, however, that the parties expressly recognize that the components of HMO plans are changed periodically by the plan providers and that the County has

no control over or any obligations regarding such changes.

- C. All employees current and future who retire on or after January 1, 2013, in order to be eligible for the lifetime health benefits upon retirement, must have served a minimum of fifteen (15) of the required twenty-five (25) years with the County. This applies to all types of retirements, including disability.
- D. An eligible employee may change his/her coverage only during the announced open enrollment period for each year after having been enrolled in the former plan for a minimum of one (1) full year. Regardless of this election, employees are specifically ineligible for any deductible reimbursement.
- E. When a member of this bargaining unit is granted the privilege of a leave of absence without pay for illness, health coverage will continue at County expense for the balance of the calendar month in which the leave commences plus up to three (3) additional calendar months next following the month in which the leave commences. After that time has elapsed, if necessary, coverage for an additional period of eighteen (18) months may be purchased by the employee under the C.O.B.R.A. plan.
- F. In the case of consecutive leaves of absence without pay, it is understood and agreed that the responsibilities of the County to pay for benefits remains limited to the original period of up to four (4) months.

G. Effective April 1, 2012, the following changes will affect all new hires:

1. Employees will be offered to NJ Direct 15 plan, or its replacement. New Hires may elect a higher level of coverage at their expense.
2. Continuation of spousal coverage after the death of the retiree will no longer be offered at the County's expense.
3. The County will no longer reimburse retiree Medicare Part B premiums.

Sections 2, 3 and 4 shall remain unchanged.
Section 5 shall be deleted from the CNA effective May 1, 2012.

3. All other proposals of the County and the PBA are denied.

The PBA appeals the arbitrator's award of the Prosecutor's proposal requiring 15 years of County service in order for an employee to be eligible for retiree health benefits. It further appeals the step delay in the third year and the step freeze in the years after the expiration of the contract. The Prosecutor has not appealed the award.

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

- (1) The interests and welfare of the public
 . . . ;
- (2) Comparison of the wages, salaries,
 hours, and conditions of employment of
 the employees with the wages, hours and
 conditions of employment of other
 employees performing the same or similar
 services and with other employees
 generally:
 - (a) in private employment in
 general . . . ;
 - (b) in public employment in
 general . . . ;
 - (c) in public employment in the
 same or comparable
 jurisdictions;
- (3) the overall compensation presently
 received by the employees, inclusive of
 direct wages, salary, vacations,
 holidays, excused leaves, insurance and
 pensions, medical and hospitalization
 benefits, and all other economic
 benefits received;
- (4) Stipulations of the parties;
- (5) The lawful authority of the employer
 . . . ;
- (6) The financial impact on the governing
 unit, its residents and taxpayers
 . . . ;
- (7) The cost of living;
- (8) The continuity and stability of
 employment including seniority rights
 . . . ; and
- (9) Statutory restrictions imposed on the
 employer. . . .

The standard for reviewing interest arbitration awards is well established. We will not vacate an award unless the appellant demonstrates that: (1) the arbitrator failed to give "due weight" to the subsection 16g factors judged relevant to the resolution of the specific dispute; (2) the arbitrator violated the standards in N.J.S.A. 2A:24-8 and -9; or (3) the award is not supported by substantial credible evidence in the record as a whole. Teaneck Tp. v. Teaneck FMBA, Local No. 42, 353 N.J. Super. 298, 299 (App. Div. 2002), *aff'd o.b.* 177 N.J. 560 (2003), citing Cherry Hill Tp., P.E.R.C. No. 97-119, 23 NJPER 287 (¶28131 1997). Because the Legislature entrusted arbitrators with weighing the evidence, we will not disturb an arbitrator's exercise of discretion unless an appellant demonstrates that the arbitrator did not adhere to these standards. Teaneck, 353 N.J. Super. at 308-309; Cherry Hill.

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. Borough of Lodi, P.E.R.C. No. 99-28, 24 NJPER 466 (¶29214 1998). Therefore, within the parameters of our review standard, we will defer to the arbitrator's judgment, discretion and labor relations expertise. City of Newark. However, an arbitrator must provide a reasoned explanation for an award and state what statutory factors he or she considered most important, explain why they were given significant weight, and explain how other

evidence or factors were weighed and considered in arriving at the final award. N.J.S.A. 34:13A-16g; N.J.A.C. 19:16-5.9; Lodi.

The PBA argues that the award must be vacated because the arbitrator failed to give due weight to the statutory criteria and issued an award that failed to consider the impact of its decision. Specifically, the PBA asserts that in requiring 15 years of service for current employees to receive health benefits in retirement- including disability retirement - the arbitrator completely ignored the impact of the decision on nine unit members who will now have to work well beyond twenty-five years prior to retirement. It objects to the great weight the arbitrator gave to the internal settlement pattern of other County units who have agreed to the 15-year floor for retiree health benefits and asserts the 9 members were induced to accept employment with the County because there was not a service requirement, but only twenty-five years in the pension system for retiree health benefits eligibility. It further alleges that this provision creates an early retirement incentive. In support of its argument, the PBA has submitted certifications from unit members who came from other law enforcement agencies. The certifications state that they would not have accepted their positions if they were advised that their retiree health benefits were in jeopardy. Due to these alleged promises, the PBA asserts that the arbitrator did not consider the lawful authority of the employer in awarding the Prosecutor's proposal.

The Prosecutor responds that the PBA's appeal is procedurally deficient; the arbitrator adequately addressed all of the statutory criteria; the arbitrator did not exceed his authority and considered the lawful authority of the employer in modifying the eligibility criteria for retiree health benefits; and the award is supported by substantial credible evidence in the record.

The PBA argued below that the Prosecutor's retiree health benefits proposal is not mandatorily negotiable as it is preempted by P.L. 2011, c. 78 which made changes to public employee pension and health benefit contributions. The arbitrator rejected this argument noting that the PBA did not file a scope of negotiations petition with this Commission and did not cite any legal authority to support this position. In his discussion of the retiree health benefits, the arbitrator stated:

The County argues that pattern of settlement is entitled to great weight by the Arbitrator. Interest arbitration awards and PERC decisions are replete with references to "pattern" bargaining and maintaining uniformity of benefits. The County notes that when an employer has demonstrated a clear pattern of settlement with respect to changes in benefits, the Arbitrator should give significant weight to such pattern. The County disputes the PBA's assertion that the County did not negotiate changes in health benefits with its non-police negotiations units. The County cites ten CNAs showing "nearly identical changes to health benefits as those sought by the County in its final offer in this proceeding were the bargaining

units." The County also notes that the CNAs between the County and other bargaining units, which were added to the record after the hearing date, also contain the same changes in health benefits contained in the County's final offer. The County submits that these agreements show a clear pattern of settlement has been established with respect to the County's proposed health benefits changes.

A review of the County CNAs in the record shows that the County health benefits proposal is similar, but not identical, to the language in the CNAs with other bargaining units. (C-122). The County's argument regarding pattern of settlement and uniformity of benefits means that any changes, if awarded, must be identical to the current language in the negotiated CNAs, not the similar, but identical language, in its last offer.

[Award at 110-11].

The arbitrator then analyzed the contracts in evidence and determined that a pattern of settlement with twelve county-wide negotiations units including the Prosecutor's Clerical Association and the need to establish uniformity in health benefits within the Prosecutor's Office among the Investigators, the Sergeants, Lieutenants, and Captains favored a modification to conform the language included in the civilian CNAs and the Prosecutor's superior officer bargaining units. The arbitrator made the changes effective January 1, 2012 to give current employees proper notice of the change.

We find that the arbitrator adequately evaluated all the statutory criteria; explained why he gave more weight to some factors and less to others; and issued a comprehensive award that reasonably determined the issues and is supported by substantial credible evidence as to the health benefits award. We do not perform a de novo review of the evidence and defer to the arbitrator's judgment, discretion and labor relations expertise where he weighed all the statutory criteria and his award is supported by evidence in the record as a whole. City of Newark. Health benefit proposals are mandatorily negotiable as long as they are not specifically preempted by statute. Where a statute sets forth a minimum contribution, an arbitrator must consider a party's proposal to exceed that contribution. See Essex Cty., P.E.R.C. No. 2011-92, __ NJPER __ (¶__ 2011) (award remanded for arbitrator to consider County's proposal for premium sharing in excess of 1.5%).

N.J.S.A. 34:13A-16g(2) requires the arbitrator to make a comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of other employees. While an arbitrator must be careful to avoid whipsawing when analyzing the wages of other employer units, interest arbitrators have traditionally found that internal settlements are a significant factor. See Somerset Cty. Sheriff's Office and Somerset Cty. Sheriff FOP, Lodge No. 39,

P.E.R.C. No. 2007-33, 32 NJPER 372 (¶156 2006), aff'd 34 NJPER 21(¶8 App. Div. 2008). We determine that the arbitrator made findings of fact regarding the settlements the County has reached with other units and adequately analyzed the evidence of internal comparability in his 16g(2) analysis. The arbitrator was conscious of the award's impact on the current employees as he delayed implementation of this provision until 2013 to ensure the employees have proper notice of the change.

As to the PBA's argument that 9 members were promised that their retiree health benefits would not change and therefore the arbitrator exceeded his authority in changing these vested rights, we determine that this is the first time this argument has been specifically raised. We have reviewed the record and have determined that the certifications of the employees were not submitted to the arbitrator nor was there specific testimony or argument in this regard. The Prosecutor's retiree health benefits proposal was clearly within its final offer and this argument should have been made to the arbitrator. We will not consider this new evidence, readily available to the PBA at the time of the hearing, on appeal.^{2/}

We also reject the PBA's argument that because the Prosecutor did not require its health benefit proposal to apply

^{2/} We neither rule on the merits of any individual causes of action these employees may pursue in another forum, nor does our decision prevent the parties from further negotiating with regard to these employees.

to disability retirements, the arbitrator exceeded his authority in awarding this aspect of the award. As noted above the Prosecutor did in fact propose under Health Benefits Paragraph C that "all current and future employees who retire..." (Emphasis Added). The arbitrators reference to "disability retirees" merely aligns the language of his award with that contained in other Ocean County contracts in the record upon which he relied. Thus the claim by the PBA that the arbitrator went beyond the proposal of the Prosecutor is unfounded and must be rejected.

The PBA next challenges the arbitrator's awarding of a step delay in the third year and the step freeze in the years after the expiration of the contract. Specifically, the PBA argues that the arbitrator does not have authority to make any award or decision for the period of time after the expiration of the agreement he is ruling upon and that the award was procured by undue means in violation of N.J.S.A. 2A:24-8a.

In his discussion of step movement, the arbitrator stated:

The cumulative salary savings generated by a new salary schedule also benefits the bargaining unit as a whole. Salary schedules that allow accelerated movement to the maximum step will eventually undermine the ability of the parties to negotiate salaries for maximum step Investigators since a significant expenditure of available funds will be needed to pay less experienced officers high salaries. As maximum salaries have increased significantly in the last 15-20 years, it follows that additional steps must be added to ensure that experienced Investigators continue to receive competitive salary increases. Ignoring this issue will

create serious problems for the parties in future negotiations. This is becoming increasingly important as resources decline and the cost of annual increments becomes a bigger part of the funds available for salary increases. During the last several years, it has become commonplace to see arbitrated and negotiated contracts with extended salary schedules for new hires. The above analysis is applicable to my decision to delay the payment of step increases to January 1, 2013 and the suspension of their application on April 1, 2013 until such time as the parties reach a voluntary agreement or an interest arbitrator issues an award.

[Award at 87-88].

The arbitrator then reasoned that the delay of the automatic increments from April of 2012 to January of 2013 and the "freezing" of the step increase system after the last awarded increment will assist the parties in reaching an agreement if the 2% cap on base salaries, inclusive of incremental costs, pursuant to P.L. 2010, c. 105 applies to the next contract.

We reject the PBA's argument. The arbitrator properly elucidated his reasoning for both the deferral of the last payment of step movement increases from April of 2012 to January of 2013 and his award to, in effect, freeze step movement thereafter. Contrary to the PBA's assertion neither of these aspects of the arbitrator's salary award constituted a decision for a time frame which exceeded the date of the expiration of the agreement which he was ruling upon.

ORDER

The interest arbitration award is affirmed.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Eskilson, Krengel and Voos voted in favor of this decision. None opposed. Commissioners Jones and Wall recused themselves.

ISSUED: May 3, 2012

Trenton, New Jersey

P.E.R.C. NO. 2012-60

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF RAMSEY,

Respondent,

-and-

Docket No. IA-2012-015

RAMSEY PBA LOCAL NO. 155,

Appellant.

SYNOPSIS

The Public Employment Relations Commission remands an interest arbitration award. The PBA asserted that the arbitrator computed base salary for 2011 in error by miscalculating when step movements occurred. In its response, the Borough certified that the PBA's contention as to when step movement occurred was in error, however, it also admitted that the scattergram submitted to the arbitrator contained inaccurate salary/step movement with regard to two officers. On remand, the arbitrator should provide a revised analysis for the Borough's 2011 expenditure for base salary which reflects accurate figures for the salary/step movement for two officers as certified by the Borough.

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 RAMSEY,

Respondent,

-and-

Docket No. IA-2012-015

RAMSEY PBA LOCAL NO. 155,

Appellant.

Appearances:

For the Respondent, Ruderman & Glickman, attorneys
(Mark Ruderman, of counsel)

For the Appellant, Loccke, Correia, Limsky & Bukosky,
attorneys (Merick H. Limsky, of counsel)

DECISION

Ramsey PBA Local No. 155 appeals from an interest arbitration award involving a unit of approximately 28 police officers including two Lieutenants, seven Sergeants and 19 patrol officers.^{1/}

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

^{1/} We deny the PBA's request for oral argument. The matter has been fully briefed.

The issues in dispute during the interest arbitration proceedings involved various economic and non-economic subjects. However, the issues on appeal center around wage increases and longevity only. For 2012, 2013 and 2014, the Borough proposed 0% increases with increments of 2.67%, 1.57% and 1.94% respectively. It also proposed a 12-step salary guide with new employees not having the ability to advance to Senior Officer level. Additionally, it proposed the freezing of longevity for current employees and the elimination of longevity for new employees. The PBA proposed a 2.5% across-the board wage increase for each year of the contract.

The arbitrator issued a 76-page Opinion and Award. He awarded a contract with a term of three years from January 1, 2012 through December 31, 2014. He found that maintaining the current salary guide would have exceeded the lawful maximum by \$6,245. Therefore, he awarded 0% increases and made temporary reductions to step movement and longevity payments during the term of the contract to comply with the statutorily mandated base salary cap. He also eliminated longevity for newly hired officers and Senior Officer Level pay.

The PBA appeals asserting that the arbitrator erroneously calculated base salary for 2011 which affected the remainder of the calculations used for his wage increase analysis. It also contends that the arbitrator did not provide adequate support for

the elimination of longevity pay for newly hired officers. The Borough in its response admits that the scattergram it submitted to the arbitrator did not contain accurate information reflecting step movement for two of the seven officers moving through the salary guide. It also asserts that the arbitrator adequately supported his decision to eliminate longevity for new employees.

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

(1) The interests and welfare of the public. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by P.L. 1976, c. 68 (C.40A:4-45.1 et seq.).

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

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

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

(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).

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

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

Super. 298, 299 (App. Div. 2002), aff'd o.b. 177 N.J. 560 (2003), citing Cherry Hill Tp., P.E.R.C. No. 97-119, 23 NJPER 287 (¶28131 1997). An arbitrator must provide a reasoned explanation for an award and state what statutory factors he or she considered most important, explain why they were given significant weight, and explain how other evidence or factors were weighed and considered in arriving at the final award. N.J.S.A. 34:13A-16g; N.J.A.C. 19:16-5.9; Lodi. Within the parameters of our review standard, we will defer to the arbitrator's judgment, discretion and labor relations expertise. City of Newark, P.E.R.C. No. 99-97, 26 NJPER 242 (¶30103 1999).

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

a. As used in this section:

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

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

b. An arbitrator shall not render any award pursuant to section 3 of P.L. 1977, c. 85

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

In New Milford, P.E.R.C. No. 2012-53, ____ NJPER ____

(¶ ____ 2012), we amended our review standard to include that we must determine whether the arbitrator established that the award will not exceed the statutorily mandated base salary cap of 2% per year or 6% in the aggregate for a three-year award.

Computation of Base Salary

The PBA contends that the arbitrator made errors in computing base salary for 2011. Specifically, it asserts that the arbitrator relied on the figures provided by the Borough and assumed that each officer on the salary guide was on the same step for the entire year instead of only moving onto the step after the officer's anniversary date.

The Borough responds by providing the certification of its Chairman of Finance and Administration in which he certifies that step increments are provided on an officers' first anniversary

date, but all successive increment movement occurs on January 1. The certification further provides that out of the seven officers on step movement, five of the officers' step movement was accurately portrayed in the Borough's scattergrams submitted to the interest arbitrator. However, the scattergrams did not accurately reflect step movement for the officer hired on February 12, 2010 and the officer hired on August 15, 2011. For the officer hired on February 12, 2010, he moved from Patrolman 1st to Patrolman 2nd on February 13, 2011. He progressed from Patrolman 2nd to Patrolman 3rd on January 1, 2012. However, the scattergram placed this officer at Patrolman 2nd in 2011 and Patrolman 3rd in 2012. For the officer hired on August 15, 2011, he earned \$12,260 at the Patrolman 1st salary from August 15 through December 31, 2011. He will progress from Patrolman 1st to Patrolman 2nd on August 16, 2012. However, the scattergram placed this officer at Patrolman 1st in 2011 and Patrolman 2nd in 2012. The Borough asserts that using figures based on actual salary paid for 2011 causes the wages increase set out in the Award to exceed the 2% base salary cap.

Using precise figures for the two officers whose salaries/step movement were not accurately reflected on the scattergram submitted to the arbitrator is necessary to establish the baseline for the Borough's total base salary expenditures for 2011, as required by N.J.S.A. 34:13a-16.7 (b). Therefore, the

award must be remanded to the arbitrator on this issue so that he can make recalculations to accurately reflect the figures certified by the Borough and to assure that any change in wage increases awarded will not exceed the 2% base salary cap.

The PBA also contends that the arbitrator should have taken into account the retirement of a Lieutenant and two promotions in projecting salary costs for 2012. In New Milford, we determined that reductions in costs resulting from retirements or otherwise, or increases in costs stemming from promotions or additional new hires, should not affect the costing out of the award. N.J.S.A. 34:13a-16.7 (b) speaks only to establishing a baseline for the aggregate amount expended by the public employer on base salary items for the twelve months immediately preceding the expiration of the collective negotiation agreement subject to arbitration. The statute does not provide for a majority representative to be credited with savings that a public employer receives from any reduction in costs, nor does it provide for the majority representative to be debited for any increased costs the public employer assumes for promotions or other costs associated with maintaining its workforce.

Elimination of Longevity for New Hires

The PBA asserts that the arbitrator did not adequately explain why he eliminated longevity for newly hired officers. However, the arbitrator's decision was based on substantial credible evidence in the record. He found longevity to be a

"slowly-shrinking" factor in municipal compensation schemes. He placed significant weight on internal and external comparables. He found that 10 out of the 67 municipalities submitted by the Borough as comparables on longevity either do not have longevity, or have restrictions denying the benefit to new hires. He also placed weight on the Borough's un rebutted argument that Local 155 is the only unit out of the six units in the Borough who has not agreed to eliminate longevity for new hires. (Award at 60 - 61).

We remand the Award for the arbitrator to provide a revised analysis for the Borough's 2011 expenditure for base salary which reflects accurate figures for the salary/step movement for the officer hired on February 12, 2010 and the officer hired on August 15, 2011. The arbitrator may make any changes he deems appropriate as a result of his revised analysis.

ORDER

The Award is remanded to the arbitrator for a new award within 45 days of this decision. Any additional appeal by the parties must be filed within seven calendar days of service of the new award.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Eskilson, Krengel and Voos voted in favor of this decision. None opposed. Commissioners Jones and Wall recused themselves.

ISSUED: May 24, 2012

Trenton, New Jersey

P.E.R.C. NO. 2012-61

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BURLINGTON COUNTY PROSECUTOR'S OFFICE,

Appellant,

-and-

Docket No. IA-2012-016

BURLINGTON COUNTY PROSECUTOR'S
DETECTIVES, PBA LOCAL 320,

Respondent.

SYNOPSIS

The Public Employment Relations Commission affirms in part and reverses in part an interest arbitration award. The Burlington County Prosecutor appeals the award involving a unit of detectives represented by the Burlington County Prosecutor's Detectives, PBA Local 320. The Prosecutor asserts the award is subject to the 2% salary cap; it was unreasonable to permit the detectives to receive salary increments; and the arbitration erred in awarding a seniority provision. The Commission affirms the majority of the award and remands to the arbitrator for clarification of the seniority language.

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. 2012-61

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BURLINGTON COUNTY PROSECUTOR'S OFFICE,

Appellant,

-and-

Docket No. IA-2012-016

BURLINGTON COUNTY PROSECUTOR'S
DETECTIVES, PBA LOCAL 320,

Respondent.

Appearances:

For the Appellant, Capehart & Scatchard, attorneys
(Alan R. Schmoll, of counsel and Kelly E. Adler on the
brief)

For the Respondent, Klatsky Sciarabone & De Fillipo,
attorneys (David J. De Fillipo, on the brief)

DECISION

The Burlington County Prosecutor's Office ("Prosecutor") appeals from an interest arbitration award involving a unit of Detectives employed by the Prosecutor. The arbitrator awarded a contract commencing on January 1, 2011 and terminating on December 31, 2013. The arbitrator issued a conventional award as he was required to do pursuant to P.L. 2010, c. 105.

While the parties each submitted multiple proposals to the arbitrator, this appeal raises three points for discussion. The first point raised by the Prosecutor is a claim that this award was subject to the 2% salary cap which was enacted as N.J.S.A. 34:13A-16.7. The second point asserts that it was unreasonable

for the arbitrator to provide both salary increases and advancement on the incremental steps provided under the expired contract. Finally the third point raised by the Prosecutor asserts that the arbitrator should not have awarded new language regarding the use of seniority in cases of layoffs, recalls, and time-off disputes. These issues will be dealt with seriatim in this decision.

The arbitrator issued a 23 page Opinion and Award. He noted the record consisted of witness testimony and documentary evidence in support of the parties' last offers. After summarizing the parties' arguments on their respective proposals, the arbitrator analyzed the proposal within the statutory factors and awarded a three-year agreement effective January 1, 2011 through December 31, 2013 with the following terms pertinent to the issues raised on appeal:

2. Salary /Salary Guides:

0.5% salary increase as of January 1,2011, 1.25% as of January 1, 2012, and 2.0% as of January 1,2013. "The raises shall be placed on the pre-existing salary guide previously established in the 2007-2010 agreement...."

7. Seniority

Add three paragraphs:

Paragraph A: "Seniority is defined as being the actual date the employee began work as an investigator at the Burlington County Prosecutor's Office."

Paragraph B: "Senior employees will be given preference (inverse seniority) with regard to layoffs, recalls, and time-off disputes when the job relevant qualifications of employees are equal. Laid-off investigators shall be placed on a recall list for two (2) years. Placement on the recall list shall provide preference to the laid-off Investigator over any other applicant in the event a vacant investigative position in the Burlington County Prosecutor's Office becomes available."

Paragraph C: "Upon written request from the Union, the employer shall furnish a complete seniority list ranked by the actual date that the employee began work as an investigator at the Prosecutor's Office. The list will also include the original date of hire."

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

- (1) The interests and welfare of the public. . . ;
- (2) Comparison of the wages, salaries, hours, and conditions of employment of the employees with the wages, hours and conditions of employment of other employees performing the same or similar services and with other employees generally:
 - (a) in private employment in general . . . ;
 - (b) in public employment in general . . . ;
 - (c) in public employment in the same or comparable jurisdictions;
- (3) the overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays,

excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received;

(4) Stipulations of the parties;

(5) The lawful authority of the employer. . . ;

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

(7) The cost of living;

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

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

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

The standard for reviewing interest arbitration awards is well established. We will not vacate an award unless the appellant demonstrates that: (1) the arbitrator failed to give "due weight" to the subsection 16g factors judged relevant to the resolution of the specific dispute; (2) the arbitrator violated the standards in N.J.S.A. 2A:24-8 and -9; or (3) the award is not supported by substantial credible evidence in the record as a whole. Teaneck Tp. v. Teaneck FMBA, Local No. 42, 353 N.J. Super. 298, 299 (App. Div. 2002), *aff'd o.b.* 177 N.J. 560 (2003), citing Cherry Hill Tp., P.E.R.C. No. 97-119, 23 NJPER 287 (¶28131 1997). 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.

An arbitrator's award is not necessarily flawed because some pieces of evidence, standing alone, might point to a different result. Borough of Lodi, P.E.R.C. No. 99-28, 24 NJPER 466 (¶29214 1998). Therefore, within the parameters of our review standard, we will defer to the arbitrator's judgment, discretion and labor relations expertise. City of Newark. However, an arbitrator must provide a reasoned explanation for an award and state what statutory factors he or she considered most important, explain why they were given significant weight, and explain how other evidence or factors were weighed and considered in arriving at the final award. N.J.S.A. 34:13A-16g; N.J.A.C. 19:16-5.9; Lodi.

The first determination appealed from is that the arbitrator ruled that the hard cap on salary increases contained in P.L. 2010, c. 105 does not apply to this arbitration proceeding. It is undisputed that the prior contract expired on December 31, 2010. The Appellant argues that because the agreement continues until midnight of that date, it actually expires on January 1, 2011. The Commission, in Borough of Bloomingdale, P.E.R.C. No. 2011-70, 37 NJPER 143 (¶43 2011) held that:

"N.J.S.A. 34:13A-16.9 sets forth that the 2% base salary cap applies to contracts expiring on or after January 1, 2011 only. The arbitrator's ruling that the contract, which expired December 31, 2010, was not subject to the 2% base salary cap is in conformance with

the clear terms of the new law. The Borough's argument that the contract expired on January 1, 2011 is contrary to the plain meaning of the contract language."

Therefore, the Appellants arguments must be rejected. This portion of the arbitrator's award is affirmed.

The Prosecutor's contention is that the salary increases awarded by the arbitrator were unreasonable because they were predicated upon across the board increases and step movements. We have not been pointed to evidence showing that this was a reversible error within the review standards set forth above. The arbitrator discussed at length the economic condition of the County, and the impact of the tax levy cap which is incorporated by reference into N.J.S.A. 34:13A-16(g). As noted above, we give deference to the arbitrator's judgement and discretion. Here, he found that the award which he rendered would not cause the County to exceed its tax levy cap, and that the County had the ability to pay the salary award. We will deny the Prosecutor's application to reverse the Arbitrator's award on this ground.

The final basis for the appeal set forth by the Prosecutor was the award of new seniority provisions. The arbitrator analyzed the positions of the parties, and determined that the language which he awarded reflected an appropriate compromise between their positions. Indeed, the Commission, in examining the use of seniority has repeatedly held that a proposal which provides for seniority as a determining factor in such matters as

layoffs, recalls, and time-off disputes is negotiable provided that the employer retains the managerial prerogative to deviate from strict application of seniority where it determines that special skills are involved. Union County Prosecutors Office, P.E.R.C. No. 2011-74, 37 NJPER 166 (¶53 2011). The Prosecutor argues that the term "qualifications" in the language formulated by the arbitrator is ambiguous, and therefore undermines the validity of the award. While the arbitrator's discussion of this proposal and his awarded language is somewhat ambiguous as to the meaning to be attached to the word "qualifications", nonetheless it is appropriate to remand this issue to the arbitrator so that he may clarify the meaning of his award regarding the new seniority provision which he awarded in light of the multiple positions and job functions within the Prosecutor's Office.

We find that the arbitrator adequately evaluated all the statutory criteria; explained why he gave more weight to some factors and less to others; and issued a comprehensive award that reasonably determined the issues and is supported by substantial credible evidence as to the salary award. We do not perform a de novo review of the evidence and defer to the arbitrator's judgment, discretion and labor relations expertise where he weighed all the statutory criteria and his award is supported by evidence in the record as a whole. City of Newark.

ORDER

The interest arbitration award is affirmed, in part, and remanded for clarification as to the seniority language which was awarded. The clarified award shall be submitted to the parties and filed with the Commission not more than 45 days from this decision.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Eskilson, Jones, Krengel and Voos voted in favor of this decision. None opposed. Commissioner Wall recused himself.

ISSUED: May 30, 2012

Trenton, New Jersey

P.E.R.C. NO. 2012-66

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PBA LOCAL NO. 396 AND
PBA LOCAL NO. 396A,
Petitioners,

-and-

Docket No. SN-2012-055

COUNTY OF CUMBERLAND AND
CUMBERLAND COUNTY PROSECUTOR,
Respondents.

COUNTY OF CUMBERLAND AND
CUMBERLAND COUNTY PROSECUTOR,
Petitioners,

-and-

Docket No. SN-2012-061

PBA LOCAL NO. 396 AND
PBA LOCAL NO. 396A,
Respondents.

COUNTY OF CUMBERLAND AND
CUMBERLAND COUNTY PROSECUTOR,
Appellants,

-and-

Docket No. IA-2012-028

PBA LOCAL NO. 396 AND
PBA LOCAL NO. 396A,
Respondents.

Docket No. IA-2012-029

SYNOPSIS

The Public Employment Relations Commission considers appeals filed by the Cumberland County Prosecutor and Cumberland County from interest arbitration awards setting the terms of collective negotiations agreements for superior officers represented by PBA Local 396A and detectives and investigators represented by PBA Local 396. The Commission also issues negotiability rulings on contract proposals and contract language identified in scope of negotiations petitions filed by both parties as to those issues

that were not rendered moot because the arbitrator declined to award the proposals or language in dispute.

The Commission affirms the interest arbitration award covering the Superior Officers represented by PBA Local 396A. It remands the award covering officers represented by PBA Local 396 to have the arbitrator explain and clarify the financial impact of the salary award, taking into account both the percentage increases awarded for the term of the successor agreement and the raises resulting from advancement on the salary guide. The Commission affirms the award covering PBA Local 396 in all other respects.

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. 2012-66

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PBA LOCAL NO. 396 AND
PBA LOCAL NO. 396A,

Petitioners,

-and-

Docket No. SN-2012-055

COUNTY OF CUMBERLAND AND
CUMBERLAND COUNTY PROSECUTOR

Respondents.

COUNTY OF CUMBERLAND AND
CUMBERLAND COUNTY PROSECUTOR

Petitioners,

-and-

Docket No. SN-2012-061

PBA LOCAL NO. 396 AND
PBA LOCAL NO. 396A,

Respondents.

COUNTY OF CUMBERLAND AND
CUMBERLAND COUNTY PROSECUTOR

Appellants,

-and-

Docket No. IA-2012-028

Docket No. IA-2012-029

PBA LOCAL NO. 396 AND
PBA LOCAL NO. 396A,

Respondents.

Appearances:

For the Petitioners in SN-2012-061, the Respondents in SN-2012-051, and Appellants in IA-2012-028 and IA-2012-029, Genova, Burns, Giantomasi & Webster, attorneys (Brian W. Kronick, of counsel; Brian W. Kronick and Phillip M. Rofsky, on the briefs)

For the Petitioners in SN-2012-055, the Respondents in SN-2012-061, IA-2012-028 and IA-2012-029 SN-2012-061, Alterman & Associates, LLC, attorneys (Christopher A. Gray, of counsel)

DECISION

In this decision we rule upon an appeal from an interest arbitration award covering two collective negotiations units of law enforcement officers employed by the Cumberland County Prosecutor and represented for purposes of collective negotiations by PBA Local 396 (Detectives/Investigators) and PBA Local 396A (Superior Officers).^{1/} We also determine if proposals submitted to interest arbitration, raised in related scope of negotiations petitions, are mandatorily negotiable, but only as to issues that did not become moot after the award issued.

On March 15, 2012, petitions to initiate compulsory interest arbitration were filed with the Public Employment Relations

^{1/} The Prosecutor is the public employer of both units of employees. See Mercer Cty. and Mercer Cty. Pros'r, 172 N.J. Super. 411 (App. Div. 1980). However, as Cumberland County funds the Prosecutor's office, it is also listed as an employer in the captions of the cases. See In re Application of Bigley, 55 N.J. 53 (1969). References to the "County" will mean both the County and the Prosecutor unless otherwise indicated. References to the "PBA" will signify both law enforcement units unless otherwise indicated.

Commission by PBA Local 396 (IA-2012-028) and PBA Local 396A (IA-2012-029).

On May 17, 2012, the arbitrator issued a conventional interest arbitration award setting the terms of successor collective negotiations agreements for both units. N.J.S.A. 34:13A-16d, as amended by P.L. 2010, c. 105, requires that the impasse be resolved by the issuance of a conventional award, crafted by an arbitrator after considering the parties' final offers in light of statutory factors.

On May 25, 2012 the County filed a Notice of Appeal with the Commission, together with a supporting brief. On June 1, the PBA filed a brief urging that the award be affirmed.

In addition, on March 23 and April 16, 2012, respectively, the PBA (SN-2012-055) and the County (SN-2012-061) filed scope of negotiations petitions seeking rulings on contract proposals and language listed as issues in the interest arbitration. We rule only upon the negotiability of those issues that remain in dispute after the interest arbitration award.^{2/}

2/ N.J.A.C. 19:13-3.2 provides in pertinent part:

(a) When a petition to initiate compulsory interest arbitration . . . has been filed, the Commission will suspend the processing of any scope of negotiations petition involving issue(s) in dispute in the interest arbitration proceeding.

Scope of negotiations issues

In its Notice of Appeal, the County asserts that, given the Commission's exclusive jurisdiction, the arbitrator lacked authority to make rulings on the following issues identified in the scope petitions that the County contends are not negotiable: Minor Discipline; Vehicle specifications; and Health Insurance Opt-out.^{3/}

Initially, we note that before considering the merits of an issue where a negotiability objection had been raised, the arbitrator declared:

I do not address the negotiability of this proposal. That statutory authority rests with PERC who has not delegated that authority to interest arbitrators to render such decisions. However, PERC has suspended its rule that had prohibited arbitrators from

2/ (...continued)

(c) The Commission will resume processing of a scope of negotiations petition:

1. As part of an appeal from an interest arbitration award, provided that the award includes issue(s) that were asserted to be non-negotiable in the scope of negotiations petition;

* * *

(d) Unless the conditions described in (c)1 . . . are present, after the issuance of an interest arbitration award . . . the Commission will not, . . . determine the negotiability of any issue.

3/ The parties disputed the negotiability of proposals concerning "layoffs by seniority" and "sick time buy back." The arbitrator did not award those proposals. Accordingly, these negotiability disputes are moot.

issuing an award on an issue that is subject to a scope of negotiations petition. Following this suspension, no new rule has yet been adopted. Accordingly, I will decide this issue on its merits and not as a substitute for an agency scope of negotiations determination.

The arbitrator is correct that, as of the date of his award, we had not adopted a rule expressly allowing arbitrators to issue scope rulings as part of an interest arbitration award. However, that may soon change as we have proposed to readopt, with amendments, our rules governing interest arbitration proceedings.^{4/} A proposed amendment would alter N.J.A.C. 19:16-5.7(i) to read:

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 decision on the issue. Any further negotiability argument may be made to the Commission post-award if appealed and provided the negotiability objection has not been waived by a party's failure to file a timely petition for scope of negotiations determination.

In accordance with the intent of the rule proposal, the arbitrator analyzed the negotiability of the disputed language,

^{4/} This proposal appeared in the New Jersey Register (NJR) at 44 N.J.R. 562(a). And, the Commission has received comments from interested parties and the public in accordance with the mandates of the Administrative Procedure Act. The Commission has the authority to vote on the proposed readoption with amendments at an upcoming regular meeting. If the rule proposal is approved, the amendments would take effect when an adoption notice is published in NJR.

clarified the issues, discussed and applied precedent. His opinion provides context to decide the negotiability issues.

The standard for determining the negotiability of proposals involving police officers and fire fighters is set forth in City of Paterson and Paterson Police PBA, 87 N.J. 78, 87 (1981).

Because the negotiability dispute arose during collective negotiations and interest arbitration, only mandatorily negotiable subjects can be part of the interest arbitration award. Where a proposal is alleged to be non-negotiable because it is "expressly, specifically and comprehensively" preempted by a state statute or regulation, the test set forth in Bethlehem Tp. Bd. of Ed. and Bethlehem Tp. Ed. Ass'n, 91 N.J. 38 (1982) is applied. We now review the negotiability rulings that are challenged in this appeal.

Minor Discipline

The arbitrator awarded a modified version of the PBA's minor discipline proposal by directing that the successor agreements provide for binding arbitration to review suspensions of one day or more up to five days. We adopt the arbitrator's analysis that the minor discipline proposal concerned a mandatorily negotiable term and condition of employment. It is well settled that allowing law enforcement personnel to contest minor disciplinary sanctions (suspensions or fines of five days or less) through binding grievance arbitration is mandatorily negotiable and is

not preempted by any statute or regulation. See N.J.S.A. 34:13A-5.3; County of Monmouth v. Communications Workers of America, 300 N.J. Super. 272 (App. Div. 1997).^{5/}

Vehicle Specifications

The interest arbitration award recognizes that, in general, a public employer has the authority to unilaterally decide what vehicles to purchase, and how they shall be equipped, except as to particular specifications or vehicle features that may directly relate to the safety of law enforcement personnel as well as proper maintenance of vehicles. The latter issues are

^{5/} N.J.S.A. 2A:157-10 et. seq. does not preempt a contract provision allowing an investigator to contest suspensions of one to five days through binding arbitration. N.J.S.A. 2A:157-10.1 provides that a county investigator shall not be suspended, removed, fined or reduced in rank except for just cause and then only upon a written complaint setting forth the charge or charges. While N.J.S.A. 2A:157-10.7 permits judicial review of any sanction imposed, an investigator may use an alternative method of review as N.J.S.A. 2A:157-10.1 also provides:

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

[emphasis supplied]

As review of minor discipline imposed on a police officer through a contractual grievance procedure is a legally negotiable issue, the arbitrator's award is "permitted by law."

mandatorily negotiable. Middlesex Cty. and PBA Local 152 Correction Officers of Middlesex Cty. Workhouse, 6 NJPER 338, 339 (¶11169 App. Div. 1980).

The County sought removal of Article XXIII "Vehicles" from the most recent agreements covering these units. The PBA noted that the contractual vehicle requirements were, in part, the product of a report issued by an expert hired by the Board of Freeholders.

The arbitrator directed that Article XXIII be partially modified.^{6/} His award states:

6/ The article specifies that:

1. Vehicles be 4-door, mid to full size with AM/FM radios and air conditioning;
2. Vehicles for investigators have adequate emergency lighting and audible devices to conform with the minimum standards of the Attorney General Guidelines on Motor Vehicle Pursuits;
3. Vehicles will be kept on a routine maintenance schedule;
4. Any vehicle that exceeds 100,000 miles by December 31st of a calendar year will be replaced;
5. Vehicles deemed unsafe to operate will be removed from service and immediately repaired, or, if necessary, replaced;
6. The assigned operator of a vehicle will maintain it in accordance with maintenance guidelines and policies;
7. All damage or other issues will be immediately reported to the investigator's supervisor;
8. Each assigned vehicle will be maintained by that officer 24 hours per day, can be used in Cumberland and adjacent

(continued...)

To the extent that Article XXIII requires vehicles to conform to specific standards, I award a modification that would remove vehicle specifications from the existing provision. I do not redraft or rephrase Article XXIII because the PBAs have indicated a willingness to cooperate with the Prosecutor concerning vehicle replacement and other such issues. It is appropriate to require such discussion to ensue through a joint committee whose function shall be to modify Article XXIII solely with respect to issues such as vehicle specification and replacement.

The County asserts that the arbitrator's award allows the committee to determine issues involving vehicles that are not mandatorily negotiable.

We find that the County's concern is premature. We adopt the arbitrator's negotiability determination and agree with his opinion that portions of Article XXIII involving vehicle features unrelated to the comfort and safety of law enforcement officers are not mandatorily negotiable.^{7/}

Health Insurance Opt-Out

The PBA proposed to modify Article XXIV of the prior agreement allowing an employee to waive health insurance in

^{6/} (...continued)
counties while on-duty or on-call, except for authorized out of area law enforcement duties.

^{7/} In the event the PBA files a grievance alleging a violation of Article XXIII, that seeks adherence to specifications unrelated to comfort and safety, the County may seek to restrain binding grievance arbitration at that time by filing a scope of negotiations petition.

exchange for a stipend. The proposal would cap opt-out payments at 25% of the applicable premium up to a maximum of \$5,000.

The County argued that the opt-out proposal was preempted by N.J.S.A. 40A:10-17.1.

The arbitrator concurred that the statute precluded negotiations over the program and, in the event a public employer decided to implement a program, vested the employer with sole discretion as to the amount of the payments for a waiver of coverage, subject to the statute's terms which caps compensation at the lower of 25% of the applicable premium or \$5,000.00

The arbitrator made the following ruling:

However, there is nothing that precludes the County from setting the amount of consideration in the form of notice to the PBA within the context of the collective negotiations agreement. Accordingly, I award the language of the PBAs' proposal in the form of a recommendation to the Prosecutor to be considered for adoption and, if adopted, to include an opt out provision in the form of a notice to the unit employees as follows:

The Prosecutor has exercised the authority of that office to allow employees to opt out of the County's sponsored health benefits plan in the amounts allowable by N.J.S.A. 40A:10-17.1, namely, in an amount equivalent to 25% of the premium for the type of coverage waived not to exceed \$5,000. Any change to this program can be made with thirty (30) days written notice. The Prosecutor shall notify the PBA, within thirty (30) days of the Award as to whether the recommendation is accepted.

Following receipt of the award, the Prosecutor, on May 29, 2012, advised the presidents of Local 396 and Local 396A that an

opt-out program would not be implemented. In its response to the County's appeal, the PBA says that the Prosecutor's decision moots the scope of negotiations dispute over this proposal.

The PBA is correct and we will dismiss the negotiability challenge to this proposal as moot.

The Appeal from the Interest Arbitration Award

The standard for reviewing interest arbitration awards is well established. We will not vacate an award unless the appellant demonstrates that: (1) the arbitrator failed to give "due weight" to the subsection 16g factors judged relevant to the resolution of the specific dispute; (2) the arbitrator violated the standards in N.J.S.A. 2A:24-8 and -9; or (3) the award is not supported by substantial credible evidence in the record as a whole. Teaneck Tp. v. Teaneck FMBA, Local No. 42, 353 N.J. Super. 298, 299 (App. Div. 2002), *aff'd o.b.* 177 N.J. 560 (2003), citing Cherry Hill Tp., P.E.R.C. No. 97-119, 23 NJPER 287 (¶28131 1997). Because the Legislature entrusted arbitrators with weighing the evidence, we will not disturb an arbitrator's exercise of discretion unless an appellant demonstrates that the arbitrator did not adhere to these standards. Teaneck, 353 N.J. Super. at 308-309; Cherry Hill.

An arbitrator's award is not necessarily flawed because some pieces of evidence, standing alone, might point to a different result. Borough of Lodi, P.E.R.C. No. 99-28, 24 NJPER 466

(¶29214 1998). Therefore, within the parameters of our review standard, we will defer to the arbitrator's judgment, discretion and labor relations expertise. City of Newark. However, an arbitrator must provide a reasoned explanation for an award and state what statutory factors were most important, explain why they were given significant weight, and explain how other evidence or factors were weighed and considered in arriving at the final award. N.J.S.A. 34:13A-16g; N.J.A.C. 19:16-5.9; Lodi.

On May 17, 2012, the arbitrator issued a 70-page Opinion and Award. The record contains the testimony of seven witnesses and more than 300 exhibits. After summarizing the parties' proposals and respective arguments on those proposals in detail, the arbitrator awarded a four-year agreement with a term of January 1, 2011 through December 31, 2014.

Salary increases for PBA Local 396

The award provides for these increases:

- 0% effective January 1, 2011
- 1.0% effective on January 1, 2012,
- 1.25% on July 1, 2012,
- 1.0% on January 1, 2013,
- 1.25% on July 1, 2013
- 1.5% effective January 1, 2014.^{8/}

^{8/} The award contains a new salary schedule for both collective negotiations units that reflect these percentage increases.

In addition, the arbitrator rejected the County's proposal that there be no step movement during 2012 and 2013.^{9/}

The County argues that (1) the arbitrator should not have awarded both step movement and percentage increases;^{10/} and (2) the arbitration award is deficient because it does not discuss and analyze the total cost of both the percentage increases and step increases.^{11/}

The PBA responds that the interest arbitrator "was under no obligation to fully cost out wage increases with step movements." It contends that the testimony of two witnesses, Dr. Raphael Caprio, and County Administrator Ken Mecouch, deal directly with the financial issues raised by the County's appeal and support the arbitrator's award.

The arbitrator did construct a new salary guide that reflects the salary increases that he awarded. However, the award does not set out the total dollar cost of the step

^{9/} The County's appeal does not challenge the salary increases awarded for PBA Local 396A as there is no salary guide with step increases for superior officers. A scattergram submitted by the County (Exhibit E4) shows that 10 of the 28 officers represented by Local 396 were already at the top step of the salary guide for that unit.

^{10/} The County had proposed percentage increases of 1.75% effective July 1, 2012 and 2.00% effective July 1, 2013. However, those percentage increases would only be received by officers on the top step of the salary guide.

^{11/} The County asserts that the cost out totals 4.4% in 2011; 4.8% in 2012; 5.9% in 2013 and 4.8% in 2014.

movements over the term of the agreement. Interest arbitration awards filed with this agency must now include this information in a standard summary format to facilitate comparisons.

Moreover, the Police and Fire Public Interest Arbitration Task Force is charged with studying the relative growth in total compensation rates for all interest arbitration awards. N.J.S.A. 34:13A-16.8e(2). 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.^{12/} We expect that in future cases, interest arbitration awards will detail the dollar cost of awards, where the same or similar issues are present.

The County also appeals the arbitrator's decision not to add contract language it proposed that would provide that step movement would be frozen upon the expiration of the agreement

^{12/} The hard cap on salary increases in P.L. 2010, c. 105 does not apply to this arbitration proceeding as the prior contract expired on December 31, 2010. See Borough of Bloomingdale, P.E.R.C. No. 2011-70, 37 NJPER 143 (¶43 2011).

until a successor agreement is reached through collective negotiations or interest arbitration. In rejecting the County's proposal, the arbitrator observed:

The failure to award this proposal is not intended to serve as a waiver of any arguments the County may raise in the future with regard to the automatic payment of future increments upon contract expiration which, as the parties have referenced, has been the subject of recent case law. In the event that any such dispute arises in the future on this issue, they may be resolved through the grievance procedure and/or unfair labor practice proceedings.

We deny this aspect of the County's appeal as the award does not affect the ability of the County to maintain that it is not obligated to pay step increases on contract expiration.

Duration of Agreement

The County also appeals the award of a four-year agreement, rather than a three year contract as it had proposed. Other than to refer to its poor financial condition, the County provides no grounds to set aside the arbitrator's award concerning contract term. The County argues that the uncertainty of fiscal forecasting made its proposed three-year agreement more reliable.^{13/} Uncertainty is not evidence and, by definition, cannot be determined. See City of Asbury Park, P.E.R.C. No.

^{13/} We note that, as the award issued in mid-May, 2012, the first 17 months of the new contract have already passed.

2011-17, 36 NJPER 323 (¶126 2010). We affirm the awarding of a four year term.

ORDER

A. The "Minor Discipline" proposal awarded by the arbitrator is mandatorily negotiable and shall be incorporated into the successor agreements between the County and PBA Local 396 and PBA Local 396A, respectively.

B. The arbitrator's directive that a joint committee be formed to recommend changes in Article XXIII "Vehicles" is adopted as the award appropriately notes that vehicle specifications and features that are unrelated to employee safety are not mandatorily negotiable. The portion of SN-2012-061 is dismissed without prejudice to the County's right to refile its scope of negotiations petition, after receipt of the report of the joint committee.

C. The challenges to the negotiability of proposals on "layoffs by seniority," "sick time buy back," and "health insurance opt-out" are dismissed as moot.

D. The interest arbitration award issued in IA-2012-029 establishing the terms of a successor agreement between the County and Local 396A is affirmed.

E. The interest arbitration award issued in IA-2012-028 is remanded for an explanation and clarification of the financial impact of the salary award. Such clarification shall take into

account both the percentage increases awarded for the term of the successor agreement and the raises resulting from advancement on the salary guide. The award is otherwise affirmed.

F. The interest arbitrator shall provide the explanation and clarification described in Section E. of this order within 45 days of receipt of this decision. The arbitrator has the discretion to issue his explanation and clarification based upon the record created during interest arbitration, or, in his sole discretion, may solicit additional comment or argument from the parties based on matters already in the record.

BY ORDER OF THE COMMISSION

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

ISSUED: June 25, 2012

Trenton, New Jersey

P.E.R.C. NO. 2013-1

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF MORRIS,

Respondent,

-and-

Docket No. IA-2012-032

PBA LOCAL 327,

Appellant.

SYNOPSIS

The Public Employment Relations Commission affirms an interest arbitration award establishing the terms and conditions of employment for a successor contract between the Morris County Prosecutor's Office and PBA Local 327. The PBA appealed the elimination of the wrap-around medical insurance plan and the elimination of employer funding for health insurance coverage for retirees.

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. 2013-1

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF MORRIS,

Respondent,

-and-

Docket No. IA-2012-032

PBA LOCAL 327,

Appellant,

Appearances:

For the Respondent, Knapp, Trimboli & Prusinowski, LLC,
attorneys (Fredric M. Knapp, of counsel)

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

DECISION

PBA Local 327 appeals from an interest arbitration award involving a unit of approximately forty-seven police officers.

The arbitrator issued a conventional award as she was required to do pursuant to P.L. 2010, c. 105 effective January 1, 2011. The award addresses a variety of issues including salary increases, amendments to health, medical and prescription insurance programs, work hours and changes to the grievance procedure. However, the PBA's appeal is limited to two proposals made by the County that the arbitrator granted - - the elimination of the Wrap-Around medical insurance plan effective July 1, 2012, and the elimination of employer funding for health

insurance coverage for retirees' dependents for employees hired after the date of the award.^{1/}

The PBA appeals arguing that the elimination of these benefits was in violation of applicable standards and of this agency's case law. The County responds that the elimination of these benefits was based on substantial credible evidence in the record.

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

(1) The interests and welfare of the public. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by P.L. 1976, c. 68 (C.40A:4-45.1 et seq.).

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

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

^{1/} We deny the PBA's request for oral argument. The matter has been fully briefed.

(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).

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

The standard for reviewing interest arbitration awards is well established. We will not vacate an award unless the appellant demonstrates that: (1) the arbitrator failed to give "due weight" to the subsection 16g factors judged relevant to the resolution of the specific dispute; (2) the arbitrator violated

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

The Elimination of the Wrap-Around Medical Plan

We reject the PBA's assertion that the elimination of the Wrap-Around plan was "in violation of applicable standards and of this agency's case law." The arbitrator eliminated the Wrap-Around plan as of July 1, 2012, and directed that employees currently enrolled in the Wrap-Around plan be given the opportunity to opt for coverage in either the PPO plan or the HMO

^{2/} The section of our review standard addressing whether the arbitrator established that the award will not exceed the statutorily mandated base salary cap of 2% per year or 6% in the aggregate for a three-year award is not applicable in this case.

plan. The arbitrator gave the most weight to the statutory factor addressing the interest and welfare of the public. The County produced evidence as to the premium costs of each medical plan it offered and each category of coverage, as well as a breakdown of enrollment in each plan for bargaining unit members and the category of coverage they selected. From this evidence, the arbitrator set forth a detailed review of the employers health care costs in the various medical plans it offers, as well as the cost to employees. Specifically with regard to the Wrap-Around plan, she stated that "[b]y moving the employees in the Wrap-Around to the PPO plan, the employer would save \$34,711 ($\$21,531 \times 3$ family coverage members + $\$13,180 \times 5$ single coverage members = \$34,711.)" The arbitrator concluded that the elimination of the Wrap-Around plan would give the County some relief in escaping the high costs of traditional style plans and moving in the direction of PPO plans. Relying on New Milford, P.E.R.C No. 2012-53, ___ NJPER ___ (¶ ___ 2012), the PBA asserts that the cost savings calculated by the arbitrator from eliminating the Wrap-Around plan was too speculative to be calculated at the time of the award. However, our discussion in New Milford was with regard to an arbitrator's calculations of the 2% base salary cap required by N.J.S.A. 34:13A-16.7 (b). We found that arbitrators should not factor in projected retirements or hiring during the term of a new contract as such projections

were not consistent with the precise mathematical calculations required to determine the 2% base salary cap.

The arbitrator also gave significant weight to the factor of internal comparability and the evolving settlement pattern among Morris County employees. She emphasized that consistency of benefits among employees of the same employer contributes to the stability of labor relations and the public good. Six County bargaining units encompassing 545 to 670 employees agreed to eliminate the Wrap-Around plan.^{3/} She also noted that the Wrap-Around plan is a traditional health plan being offered to public or private sector employees with increasing rarity. Indeed, only eight of the 47 unit employees are enrolled in this plan. While she found that the PPO plan being offered to the employees was not equal to the Wrap-Around plan, she found it comparable in many areas. The arbitrator's elimination of the Wrap-Around plan was based on substantial credible evidence in the record.

Elimination of Health Benefits for Dependents of Retirees

Here, too, we reject the PBA's assertion that the arbitrator's elimination of this benefit was "in violation of applicable standards and of this agency's case law." The

^{3/} The arbitrator noted that no evidence had been presented which indicated whether the employees in the rest of the County's 22 bargaining units continue to be offered the Wrap-Around plan.

arbitrator eliminated County-paid health care benefits for dependents of retirees for employees hired after the date of her award. Such retirees would be permitted to add their eligible dependents to the plan at the retiree's expense. As she did with medical benefits, the arbitrator placed substantial weight on internal comparability and noted that the elimination of this benefit had been accepted by six County bargaining units encompassing 545 to 670 employees. She also noted that no current retiree or employee would be impacted by this decision. While the PBA asserts that the arbitrator failed to consider the present or past cost of this benefit, the PBA fails to pinpoint any relevant evidence in the record that the arbitrator failed to consider. Indeed, the arbitrator noted that the PBA made no specific argument regarding this proposal. Arbitrators are confined to making determinations based on the evidence presented to them. Thus, the arbitrator's reliance on internal comparability was appropriate. See Somerset Cty. Sheriff's Office and Somerset Cty. Sheriff FOP, Lodge No. 39, P.E.R.C. No. 2007-33, 32 NJPER 372 (¶156 2006), aff'd 34 NJPER 21(¶8 App. Div. 2008).

ORDER

The PBA's appeal of the award is denied.

BY ORDER OF THE COMMISSION

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

ISSUED: July 2, 2012

Trenton, New Jersey

P.E.R.C. NO. 2013-2

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF NEW MILFORD,

Appellant,

-and-

Docket No. IA-2012-008

PBA LOCAL 83,

Respondent.

SYNOPSIS

The Public Employment Relations Commission remands an interest arbitration award to a new arbitrator determining that the award on remand did not comply with the Commission's directives in P.E.R.C. No. 2012-53, 38 NJPER 340 (¶116 2012).

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. 2013-2

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF NEW MILFORD,

Appellant,

-and-

Docket No. IA-2012-008

PBA LOCAL 83,

Respondent.

Appearances:

For the Appellant, DeCotiis, Fitzpatrick & Cole,
attorneys (Avis Bishop-Thompson, of counsel)

For the Respondent, Loccke, Correia, Limsy & Bukosky,
attorneys (Leon B. Savetsky, of counsel)

DECISION

The Borough of New Milford appeals an interest arbitration award involving a unit of police officers in the ranks of patrol officer, sergeant, and lieutenant who are represented by PBA Local 83.^{1/} We had vacated the arbitrator's initial award in this matter and remanded to the arbitrator for reconsideration and issuance of a new award. P.E.R.C. No. 2012-53, __ NJPER __ (¶__ 2012). We instructed the arbitrator that the new award had to apply the salary cap imposed by P.L. 2010, c. 105^{2/} by determining: 1) the total base salary for the last year of the

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

2/ N.J.S.A. 34:13a-16.7.

parties' expired agreement; 2) explain what items were included in the base salary calculation; and 3) determine that the award will not increase base salary by more than 2% per contract year or 6% in the aggregate for a three-year contract award. We also instructed the arbitrator to address the Borough's internal settlement pattern as required by N.J.S.A. 34:13A-16g(2) as well as any other proposals of the parties for which argument and evidence were introduced.

On May 24, 2012, the arbitrator issued his opinion and award on remand. His initial award ordered a three-year agreement effective January 1, 2012 through December 31, 2014 with a 1% salary increase effective July 1, 2012; 2% effective January 1, 2013; and 2.5% effective January 1, 2014. He also modified the parties' terminal leave procedure.

The remand award reduced the contract duration from a three to a one-year agreement effective January 1, 2012 through December 31, 2012. It also awards a new health benefits provision permitting payment for waiver of health benefits and premium sharing per State law; retiree health benefits per State law; minor stipulations of the parties regarding language changes and clothing allowance; out-of-title pay when a member is required to work in a higher rank; removal of accumulation of a maximum of six personal days; establish a separate longevity

schedule for officers hired after January 1, 2012; modifies terminal leave payments; and provides the following 2012 salary:

Lieutenant \$117,950
Sergeant \$110,260
Patrolman 7 \$102,760

All other proposals were denied.

The Borough argues that the remand award should be vacated because the arbitrator imperfectly executed his duties so that a mutual, final and definite award was not made; the arbitrator did not consider the financial impact of the terminal leave award; and the matter should be submitted to a new arbitrator. The PBA responds that the arbitrator's award was reasonable.

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

(1) The interests and welfare of the public. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by P.L. 1976, c. 68 (C.40A:4-45.1 et seq.).

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

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

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

(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).

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

The standard for reviewing interest arbitration awards is well established. We will not vacate an award unless the appellant demonstrates that: (1) the arbitrator failed to give "due weight" to the subsection 16g factors judged relevant to the resolution of the specific dispute; (2) the arbitrator violated the standards in N.J.S.A. 2A:24-8 and -9; or (3) the award is not supported by substantial credible evidence in the record as a whole. Teaneck Tp. v. Teaneck FMBA, Local No. 42, 353 N.J. Super. 298, 299 (App. Div. 2002), *aff'd* o.b. 177 N.J. 560 (2003), citing Cherry Hill Tp., P.E.R.C. No. 97-119, 23 NJPER 287 (¶28131 1997). Because the Legislature entrusted arbitrators with weighing the evidence, we will not disturb an arbitrator's exercise of discretion unless an appellant demonstrates that the arbitrator did not adhere to these standards. Teaneck, 353 N.J. Super. at 308-309; Cherry Hill.

Arriving at an economic award is not a precise mathematical process. Given that the statute sets forth general criteria rather than a formula, except as set forth below by P.L. 2010 c. 105, the treatment of the parties' proposals involves judgment and discretion and an arbitrator will rarely be able to demonstrate that an award is the only "correct" one. *See* Borough of Lodi, P.E.R.C. No. 99-28, 24 NJPER 466 (¶29214 1998). Some of the evidence may be conflicting and an arbitrator's award is not necessarily flawed because some pieces of evidence, standing

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

In cases where the 2% salary cap imposed by P.L. 2010, c. 105^{3/} applies, we must also determine whether the arbitrator

^{3/} P.L. 2010, c. 105 provides:

a. As used in this section:

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

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

(continued...)

established that the award will not increase base salary by more than 2% per contract year or 6% in the aggregate for a three-year contract award.

The Borough's main argument is in opposition to the arbitrator's awarding of a one-year contract. It asserts that the arbitrator failed to adequately consider either the Borough's or the PBA's proposal regarding contract duration.^{4/} The arbitrator's original award provided for a three-year agreement. On remand, he modified the award to a one-year contract. In modifying the contract duration, the Borough alleges the arbitrator violated N.J.S.A. 2A:24-8(d) as the parties never modified their final offers on duration; presented their

3/ (...continued)

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

4/ The Borough proposed a three-year contract and the PBA proposed a four-year contract.

financial evidence based on three and four-year terms; and that financial evidence was not analyzed by the arbitrator under the statutory criteria to support his duration award. It further asserts that the award of a one-year contract term is a blatant attempt to avoid the 2% salary cap as the reforms to the law apply to only one negotiations period.

The PBA responds that the award of a one-year agreement was within the arbitrator's conventional arbitration authority and that the arbitrator set forth fully and comprehensively his reasons for denying the PBA's and Borough's duration proposals.

In awarding a one-year contract, the arbitrator stated:

The rate of change in New Jersey's public sector militates against the three-year term (proposed by the Borough), and the four-year term (proposed by PBA Local 83). Legal and regulatory evolution, economic fluctuations, the housing market, and myriad other forces make this a risky time for being locked into long-term agreements. The future is less predictable than ever. . . . A shorter contract would allow the parties greater flexibility to adapt. It would also afford a new opportunity to [negotiate] in good faith over the numerous issues that apparently were not fully addressed during their abbreviated 2011 negotiations.

The limited time at the [negotiations] table and the number of issues submitted to arbitration, lead me to conclude that this arbitration was premature. The parties need more time to talk. While I cannot undo the past, I can afford them an opportunity to meet and confer as soon as reasonable possible.

Conventional arbitration permits neutrals to set durations other than those proposed by labor and management. In this instance, I have chosen a 12-month term even though each party -for its own reasons-sought a longer contract. They had the freedom to stipulate to a mutually acceptable term, but did not do so. Finally, they were asked at the February 2nd and May 3rd hearings if they had any stipulations.

[Award at 48-49]

The arbitrator continued to explain that a 12-month term was in line with New Jersey's public policy that it is in the best interest of the people to have prompt settlement of labor disputes.

We vacate the award and remand it to a new arbitrator. In our prior remand, we advised the arbitrator to provide the calculations he made to reach his total base salary; 2) explain why other economic figures presented by the Borough, if any, were not included in base salary; and 3) provide a cost analysis of each year of the award that includes at a minimum step increments and longevity. The arbitrator has not complied with our directive on remand.

An interest arbitrator retains the conventional authority to make determinations outside the parties' final offers. See Hudson Cty. Pros., P.E.R.C. No. 98-88, 24 NJPER 78 (¶29043 1997) (conventional arbitration allows the arbitrator considerable discretion to fashion an award, although the arbitrator may not

reach out and decide issues not presented by the parties).^{5/} However, those determinations must be based on substantial credible evidence in the record as a whole. Teaneck. Here, the arbitrator did not make the calculations for year two and three. Had the calculations been made and supported changing the duration, then the arbitrator had the conventional authority to make the change with the accompanying explanation as to how the record supports it. The sole reliance on outside evidence and policy considerations is not credible evidence to support the award. We recognize that the record in each case is unique and may lead an arbitrator to fashion an award outside the parties' proposals. However, the record on remand in this case is not supportive of the arbitrator's change.

Having vacated on the duration issue, we do not need to reach the Borough's terminal leave argument as it will be reviewed by the new arbitrator.

ORDER

The remand award is vacated and the case is remanded to the Director of Arbitration for the appointment of a new arbitrator who shall issue a new award within 45-days of appointment. The

^{5/} We reject the Borough's argument that the Appellate Division's decision in Township of Montclair v. Montclair PBA, Local 53, 2012 NJ Super. Unpub. LEXIS 1122, is applicable to this case as that case involved a grievance arbitration award. In grievance arbitration, the arbitrator does not have conventional authority.

new arbitrator retains the discretion to hold new hearings or
utilize the current record.

BY ORDER OF THE COMMISSION

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

ISSUED: July 2, 2012

Trenton, New Jersey

P.E.R.C. NO. 2013-3

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF MORRIS,
MORRIS COUNTY SHERIFF'S OFFICE,

Appellant,

-and-

Docket No. IA-2012-035

PBA LOCAL NO. 298,

Respondent.

PBA LOCAL NO. 298,

Appellant,

-and-

Docket No. IA-2012-035

COUNTY OF MORRIS,
MORRIS COUNTY SHERIFF'S OFFICE.

SYNOPSIS

The Public Employment Relations Commission remands an interest arbitration award to the arbitrator. The County of Morris, Morris County Sheriff's Office and PBA Local No. 298 cross-appealed from the award. On remand, the arbitrator shall more thoroughly address the statutory factors he considered in rendering his 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. 2013-3

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF MORRIS,
MORRIS COUNTY SHERIFF'S OFFICE,

Appellant,

-and-

Docket No. IA-2012-035

PBA LOCAL NO. 298,

Respondent.

PBA LOCAL NO. 298,

Appellant,

-and-

Docket No. IA-2012-035

COUNTY OF MORRIS,
MORRIS COUNTY SHERIFF'S OFFICE,

Respondent.

Appearances:

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

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

DECISION

This is an appeal by the County of Morris, Morris County
Sheriff's office and a cross-appeal by PBA Local 298 from an
interest arbitration award.

The PBA is the majority representative of all Corrections Officers employed at the Morris County jail. The arbitrator issued a conventional award as he was required to do pursuant to P.L. 2010, c. 105, effective January 1, 2011. A conventional award is crafted by an arbitrator after considering the parties' final offers in light of statutory factors.

The parties proposals were as follows:

-The County proposed a term of 3 years while the PBA proposed a term of 4 years;

-The PBA proposed salary increases of 2.5% across the board retroactive to January 1, 2011 and the payment of step movement pursuant to expired contract. The County proposed no step movement for the duration of the contract, 0% increase in 2011 and a 2% increase in 2012 and 2013;

-The County proposed the discontinuance of County-paid dependent health coverage for new employees upon retirement;

-The County proposed that all employees currently enrolled in the Medallion medical plan shall have the option to transfer to the PPO plan and the elimination of the Wrap-Around plan. The County proposed changes to the premium structure for the Medallion Plan and to co-payments for prescriptions. The PBA proposed that all officers enrolled in the Medallion or the Wrap-Around Plan would be required to enroll in the PPO plan, and

officers enrolled in the HMO plan would be permitted to change to the PPO plan, provided that these officers pay 30% of the difference between the HMO and PPO premium; and

-The PBA proposed that if an officer is working on a holiday and is required to work mandatory overtime on that day, the officer would be paid double time and one-half.

On June 18, 2012, the arbitrator issued a six page opinion and award in which he awarded the following:

-A three-year contract with a term of January 1, 2011 through December 31, 2013.

-0% salary increase for 2011, but step movement as per the expired contract, 2% increase for 2012 with no step movement, and a 2% increase for 2013 with no step movement.

-All employees enrolled in the Medallion or Wrap-Around plan will be required to enroll in the PPO plan. Other officers enrolled in the HMO plan shall be permitted to change to the PPO plan, provided these officers pay 30% of the difference between the premium of the HMO and PPO plan.

-The County's proposal regarding prescription co-payments.

-The County's proposal to discontinue County-paid dependent coverage for new employees upon retirement.

The PBA raises a generalized appeal to the award, asserting that it was not based on substantial credible evidence in the record and does not comply with the analysis required by the

statutory factors. The County's appeal is limited to the arbitrator's award of step movement from the expired contract, which it contends is not based on substantial evidence in the record. On all other issues, the County asserts the Award is based on substantial credible evidence in the record and appropriate application of the statutory factors.

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

(1) The interests and welfare of the public. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by P.L. 1976, c. 68 (C.40A:4-45.1 et seq.).

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

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

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

(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).

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

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

Super. 298, 299 (App. Div. 2002), aff'd o.b. 177 N.J. 560 (2003), citing Cherry Hill Tp., P.E.R.C. No. 97-119, 23 NJPER 287 (¶28131 1997). An arbitrator must provide a reasoned explanation for an award and state what statutory factors he or she considered most important, explain why they were given significant weight, and explain how other evidence or factors were weighed and considered in arriving at the final award. N.J.S.A. 34:13A-16g; N.J.A.C. 19:16-5.9; Lodi. Within the parameters of our review standard, we will defer to the arbitrator's judgment, discretion and labor relations expertise. City of Newark, P.E.R.C. No. 99-97, 26 NJPER 242 (¶30103 1999).^{1/}

The arbitrator states that he relied primarily on the statutory factors addressing internal comparability and the interests and welfare of the public, however the Award does not contain adequate consideration of either of these factors. With regard to internal comparability, the arbitrator states that he was severely constrained by the agreements reached by the County with its other units, but the award provides no detail about the other units or agreements. The interests and welfare of the public is a factor which is directly related to several of the other statutory factors which were not addressed by the

^{1/} The section of our review standard addressing whether the arbitrator established that the award will not exceed the statutorily mandated base salary cap of 2% per year or 6% in the aggregate for a three-year award is not applicable in this case.

arbitrator. The award does not contain any discussion of the arbitrator's analysis of the evidence regarding comparison of wages, salaries, hours and conditions of employment; overall compensation presently received; stipulations of the parties; lawful authority of the County; financial impact on the County, its residents and taxpayers; cost of living; and the statutory restrictions imposed on the County. N.J.S.A. 34:13A-16(g). The testimony and reports of the experts retained by the PBA and the County are not discussed in the Award and we do not know which information the arbitrator relied upon. The arbitrator stated that because he was constrained by the agreements reached by the County with other units, it was futile to discuss the other statutory factors. We do not agree. This award must be remanded to the arbitrator to provide an independent analysis of each of the statutory factors and to explain how the evidence and each relevant factor was considered in arriving at his award.

N.J.S.A. 34:13A-16(g); Borough of Paramus, P.E.R.C. No. 2010-35, 35 NJPER 431 (¶149 2009); County of Passaic, P.E.R.C. No. 2010-42, 35 NJPER 451 (¶141 2009). If a particular factor is found to be irrelevant, rationale should be provided as to why that factor was irrelevant. If the parties failed to submit relevant evidence on a factor that also needs to be stated in the Award. The statutory factors should provide the analytical framework for the arbitrator's Award on remand.

Additionally, the Award contains detailed discussion of the County's refusal to accept the PBA's offer to eliminate the Medallion and Wrap-Around plans to generate savings which could be directed to base salary demands and the County's refusal to implement step movement from the expired contract. It appears that the arbitrator supports his award of step movement from the expired contract based on his opinion on these issues. However, the Award is unclear as to which of the statutory factors are implicated by his discussion on these issues. Therefore, on remand, the arbitrator should identify and explain how the statutory factors are relevant to his discussion on these issues.

Finally, we recently issued Cumberland Cty., P.E.R.C. No. 2012-66, ___ NJPER ___ (¶___ 2012). In that case, we found that because the terms and spirit of the 2010 amendments to the interest arbitration law are aimed at transparency and consistency, all interest arbitration awards should cost out both step movement and percentage increases for each year of the contract. Thus, on remand, the arbitrator should include this information as part of the Award.

ORDER

The award is remanded to the arbitrator for a supplemental award within 45 days of this decision. Any additional appeal by the parties must be filed within seven calendar days of service of the supplemental award.

BY ORDER OF THE COMMISSION

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

ISSUED: July 19, 2012

Trenton, New Jersey

P.E.R.C. NO. 2013-4

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF UNION,

Appellant,

-and-

Docket Nos. IA-2012-037
SN-2012-065

PBA LOCAL NO. 108,

Respondent.

SYNOPSIS

The Public Employment Relations Commission affirms an interest arbitration award setting the terms of a collective negotiations agreement between the County of Union and PBA Local No. 108 for a unit of Sheriff's Officers. The Commission holds that the arbitrator evaluated all of the statutory criteria, explained why she gave more weight to some factors and less to others, and issued a comprehensive award that reasonably determined the issues and is supported by substantial credible evidence in the record.

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. 2013-4

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF UNION,

Appellant,

-and-

Docket Nos. IA-2012-037
SN-2012-065

PBA LOCAL NO. 108,

Respondent.

Appearances:

For the Appellant, Bauch Zucker Hatfield, attorneys
(Richard H. Bauch and Kathryn V. Hatfield, of counsel;
Elizabeth Farley Murphy, on the brief)

For the Respondent, Mets, Schiro & McGovern, attorneys
(James M. Mets, of counsel; Ryan Carlson, on the brief)

DECISION

On June 19, 2012, the County of Union appealed from an interest arbitration award involving a unit of approximately 113 sheriff's officers employed by the Union County Sheriff and represented by PBA Local No. 108. The arbitrator issued a conventional award as she was required to do pursuant to P.L. 2010, c. 105. A conventional award is crafted by an arbitrator after considering the parties' final offers in light of statutory factors. We affirm the award.^{1/}

^{1/} We deny the County's request for oral argument. The issues have been fully briefed.

County's Final Offer:

The County proposed a three-year agreement covering January 1, 2010 through December 31, 2012 with: a 0% wage increase on base pay for 2010; a 2.25% wage increase for 2011; a 0% wage increase for 2012; and a new salary guide for employees hired after the issuance of the award. The County also proposed:

Eliminate senior officer pay (longevity) for all employees hired after the date of the award; a new pay schedule as follows:

In order to maintain a bi-weekly basis for paycheck distribution, effective on the date of the award, a rotating bi-weekly pay day schedule shall be implemented whereby the pay day will be changed in each successive year as follows:

2010:	Friday
2011:	Monday
2012:	Tuesday
2013:	Wednesday
2014:	Thursday

This cycle will continue every five years. When payday occurs on a holiday, paychecks or direct deposits will be issued on the day prior to the holiday.

The PBA will not object to or challenge the County's decision to change to a bi-monthly paycheck distribution from a bi-weekly paycheck distribution.

Eliminate Training Officer stipend.
Management Rights (Article 2(c)):

Replace existing contract language with:

"Notwithstanding any other provision in this Agreement, the Sheriff shall have the right to (1) determine the duties, responsibilities and assignment of all employees, and (2) vary

the daily or weekly work schedules, including, but not limited to, the implementation of shift work and/or weekend duty, consistent with the needs of the Department."

The County further proposed changes to prescription drug coverage; increased premium sharing for health benefits; increased hours of work; overtime eligibility after 42 hours; elimination of minimum overtime guarantee; deletion of "beeper pay"; and a modified holiday schedule.

PBA Final Offer:

The PBA proposed a five-year agreement from January 1, 2010 through December 31, 2014 with 3% across-the-board salary increases effective in 2010, 2011, and 2012 and 2% salary increases effective 2013 and 2014. The PBA further proposed an increase in each longevity step by \$210; elimination of references to senior officer; acting pay; payment and release time for EMT certification and recertification; replace contract provisions for premium sharing with health care contributions as provided by statute; vacation selection by seniority; revised work hours; shift bidding by department seniority; cash out of compensatory time and payment for overtime in cash only; revised overtime assignment rotation; increase call-in time from three to four hours; increase PBA delegate release time to 30 days excluding conventions; PBA local president to be off one day per month in addition to current contractual allotment; revised Honor

Guard release time; release for PBA president to attend law enforcement funerals; locker room and lockers for each unit member; employer to pay for changes in clothing and equipment; increase injury leave from 180 days to up to 1 year; sick leave to be charged in one-hour increments with a quarterly bonus for perfect attendance; conversion of five sick days to personal days for use within two years if the officer retains 45 days accumulated after the conversion; and the posting and filling of vacant court and door security posts by seniority.

The PBA further proposed modification to the Employee Rights article including the following language:

PBA and Employee Rights (Article XXVII):

Newly issued or amended orders, rules and regulations to be provided to the PBA president within five working days. Employers ability to determine qualifications and conditions for continued employment, dismissal, demotion, promotion, transfer and discipline to be limited to NJ Statutes, the County Administrative Code and departmental investigations.

Add: In an effort to ensure the departmental investigations are conducted in a manner which is fair and promotes good order and discipline, all in person and questionnaire interviews shall be conducted in accordance with current Attorney General Guidelines on internal affairs and procedures.

Add: When an officer is involved in a critical incident, such as a shooting, motor vehicle accident or physical altercation, he shall be immediately removed from the area or as soon thereafter as possible if he requests medical attention or evaluation. Said officer shall not be required to respond to

any questions or supply any statement or written reports until he is released by the evaluating physician or other medical professional. Such delay shall not exceed two business days unless the officer is physically or mentally incapacitated.

Award:

On June 11, 2012, the arbitrator issued a 124-page Opinion and award. She summarized the parties' offers and reviewed in detail their respective supporting arguments and awarded a five-year contract covering January 1, 2010 through December 31, 2014 with a wage freeze in 2010; a 2.25% increase effective January 1, 2011; a 2.5% increase for 2012 effective July 1^{2/}; a 2% increase effective January 1, 2013; and a 2% increase effective January 1, 2014.

The arbitrator also awarded: a new salary guide for employees hired after January 1, 2012; increased senior officer pay by \$210^{3/}; modified the health benefits contract language to conform with the required contributions set forth in P.L. 2011,

2/ In the summary of the award section on page 117, the arbitrator states that the 2012 wage increase is effective on January 1, 2012. In her decision on page 61, the arbitrator explains that the 2.5% increase is effective on July 1, 2012. We modify page 117 of the arbitrator's award to conform with her analysis that the 2012 increase is effective July 1, 2012.

3/ The parties' expired agreement provides for "senior officer pay" commonly termed "longevity" in the following increments: completion of 10 years of service - \$1365; 15 years of service - \$2365; and 20 years of service - \$2865.

c. 78^{4/}; increased prescription co-pays; the County's Pay Check Distribution proposal; release time for the PBA President or his designee to attend the funeral of any New Jersey officer killed in the line of duty; sick leave bonus payments to be paid in the second pay period in January after the year in which they were earned; up to one year of sick leave for on-the-job injuries; and increase minimum call out pay to four hours.

The arbitrator also awarded the following additions and modifications:

Changes in Orders:

Article XXXII shall be modified to add:

The County shall provide the PBA President with a copy of any newly issued or amended Orders, Rules or regulations at least five working days prior to their effective date.

Critical Incidents:

Article XXXII shall be modified to add:

When an officer is involved in a critical incident, such as a shooting, motor vehicle accident or physical altercation, said officer shall not be required to respond to any questions or supply any statement or written reports until he is released by the evaluating physician or other medical professional. Such delay shall not exceed two business days unless the officer is physically or mentally incapacitated.

^{4/} This statute mandates a schedule of increases in the minimum health care and pension contributions by public employees.

Honor Guard:

Article XX shall be modified to add the following language:

The County shall maintain the right to deploy the Honor Guard as the Sheriff deems appropriate. The County shall provide a one-time stipend for each member of the Honor Guard who has served continuously for the last six months on the guard in the amount of \$250 to cover the cost of uniform upkeep and maintenance. An employee performing with the Honor Guard will be given release time from work or, if off duty, will be given equal comp time for their time in such service.

Post/Shift Bidding:

Article X shall be modified to add the following:

The parties recognize that certain posts may require special skills. The Sheriff or his designee shall have sole discretion in deciding which posts require special skills. All posts not requiring special skills shall be annually posted for bid in November for the subsequent calendar year. Employees shall be permitted to bid on positions and work shifts based upon departmental seniority. The Sheriff or his designee shall retain the authority to reassign employees from their bidded position for training purposes or to cover a vacant shift.

Holiday Pay:

Article XIII shall be modified to add the following:

All unit employees will be given either Lincoln's birthday or the day after Thanksgiving as a paid holiday, but not both. One-half of the employees covered by this agreement shall receive Lincoln's birthday off as a paid holiday and the other half shall receive the day after Thanksgiving off as a paid holiday. In the event that such a scheme does not produce sufficient staffing, then the employer may require employees to

work on their designated holiday. Employees who work on their designated holiday off will be compensated with holiday pay for the hours actually worked.

Vacations:

Article VI shall be modified to add the following:

Vacation selections shall be by departmental seniority. The employer retains the right to decide how many employees may be on vacation in any work unit at any time. Employees shall first select vacations in increments of five days or more before floating days are selected.

Overtime Payments:

The contract language in Article XI is reformed to provide that the employee has the right to opt for overtime compensation to be paid in cash or compensatory time off.

All other proposals were denied and dismissed and the expired agreement was carried forward except for those terms that were modified by the award. The arbitrator also certified that she had taken the statutory limitation imposed on the local tax levy cap into account and that the award explained how the statutory criteria factored into her final award.

The County appeals contending that the arbitrator's award of a five-year agreement instead of a three-year agreement is not supported by the record; the 2.5% increase for 2012 should be vacated and a 0% raise awarded; public policy was violated in the awarding of the critical incident and seniority shift selection

proposals; and the denial of the County's Management Rights/Schedule changes proposals were erroneous.

The PBA responds that the arbitrator adequately evaluated all the statutory criteria; explained why she gave more weight to some factors and less to others; and issued a comprehensive award that reasonably determined the issues and is supported by substantial credible evidence in the record. The PBA further asserts that the arbitrator issued a final and definite award that does not violate any clear mandate of public policy.

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

- (1) The interests and welfare of the public
 . . . ;
- (2) Comparison of the wages, salaries, hours, and conditions of employment of the employees with the wages, hours and conditions of employment of other employees performing the same or similar services and with other employees generally:
 - (a) in private employment in general .
 . . . ;
 - (b) in public employment in general . .
 . . ;
 - (c) in public employment in the same or comparable jurisdictions;
- (3) the overall compensation presently received by the employees, inclusive of

direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received;

- (4) Stipulations of the parties;
- (5) The lawful authority of the employer . . .;
- (6) The financial impact on the governing unit, its residents and taxpayers . . .;
- (7) The cost of living;
- (8) The continuity and stability of employment including seniority rights . . .; and
- (9) Statutory restrictions imposed on the employer. . . .

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

The standard for reviewing interest arbitration awards is well established. We will not vacate an award unless the appellant demonstrates that: (1) the arbitrator failed to give "due weight" to the subsection 16g factors judged relevant to the resolution of the specific dispute; (2) the arbitrator violated the standards in N.J.S.A. 2A:24-8 and -9; or (3) the award is not supported by substantial credible evidence in the record as a whole. Teaneck Tp. v. Teaneck FMBA, Local No. 42, 353 N.J. Super. 298, 299 (App. Div. 2002), *aff'd o.b.* 177 N.J. 560 (2003), citing Cherry Hill Tp., P.E.R.C. No. 97-119, 23 NJPER 287 (¶28131 1997). Because the Legislature entrusted arbitrators with

weighing the evidence, we will not disturb an arbitrator's exercise of discretion unless an appellant demonstrates that the arbitrator did not adhere to these standards. Teaneck, 353 N.J. Super. at 308-309; Cherry Hill.

Arriving at an economic award is not a precise mathematical process. Given that the statute sets forth general criteria rather than a formula, the treatment of the parties' proposals involves judgment and discretion and an arbitrator will rarely be able to demonstrate that an award is the only "correct" one. See Borough of Lodi, P.E.R.C. No. 99-28, 24 NJPER 466 (¶29214 1998). Some of the evidence may be conflicting and an arbitrator's award is not necessarily flawed because some pieces of evidence, standing alone, might point to a different result. Lodi. Therefore, within the parameters of our review standard, we will defer to the arbitrator's judgment, discretion and labor relations expertise. City of Newark, P.E.R.C. No. 99-97, 26 NJPER 242 (¶30103 1999). However, an arbitrator must provide a reasoned explanation for an award and state what statutory factors he or she considered most important, explain why they were given significant weight, and explain how other evidence or factors were weighed and considered in arriving at the final award. N.J.S.A. 34:13A-16g; N.J.A.C. 19:16-5.9; Lodi.

In cases where the 2% salary cap imposed by P.L. 2010, c. 105 applies, we must also determine whether the arbitrator

established that the award will not increase base salary by more than 2% per contract year or 6% in the aggregate for a three-year contract award. The 2% salary cap does not apply to this award as the parties' prior agreement expired on December 31, 2009.

The County objects to two economic aspects of the award - wages and duration. It asserts the arbitrator should have awarded its proposal of a three-year agreement with a 0% increase in 2010; a 2.5% increase in 2011; and 0% increase in 2012 as the record does not support the wage increases awarded for 2012, 2013 or 2014 in light of the economic crisis the County is experiencing. It points to its evidence that the County had to layoff employees to balance the 2012 budget. It opposes the arbitrator's alleged reliance on the fact that this unit was not targeted in the layoff and that the increased health benefit contributions of the employees, the offset of increases in the prescription plan co-pay, and the lower salary guide will assist the County to fund the award.

The PBA responds that the County is requesting a de novo review of the evidence and for this Commission to substitute its judgment for that of the arbitrator. It further opposes the appeal stating the arbitrator: properly relied on the interest and welfare of the public in awarding a five-year contract to promote the public interest and labor stability; carefully considered and gave due weight to the statutory criteria in

awarding a 2.5% wage increase for 2012; and appropriately recognized cost savings to the County from additional health and prescription contributions by the employees to conclude the 2% salary increases in 2013 and 2014 would not frustrate the County's ability to fund the award.

In determining that a five-year duration was appropriate. The arbitrator stated:

There are several competing concerns to be considered in deciding the contract term. It is true that the economic future of the State and Union County is filled with uncertainty and lack of predictability. Whether the County's budget woes will improve over the next few years or further deteriorate, is beyond speculation. While several of the recently settled contracts will expire in 2012, some other contracts expired in 2011. These successor contracts will likely have a termination date sometime beyond 2012. Therefore, while the County might prefer to have all its law enforcement contracts expiring simultaneously, this is already not the case.

The parties have been in negotiations for this agreement for two and half years. If I award the County's proposal, the parties will be returning to the bargaining table almost immediately for a successor agreement. Labor negotiations are costly, time consuming and stressful to the parties' relationship. I believe that labor stability will be enhanced by providing a contract with a longer term. Therefore, I intend to award a 5-year agreement covering 2010 through 2014. I have kept my salary increases for the final two years low in recognition of the uncertain future in the County's budget.

[Award at 58-59].

We affirm the five-year duration of the award. The arbitrator considered the County's concerns regarding a five-year agreement and provided substantial analysis on the issue. The County's re-argument of its case to this Commission reflects disagreement and disappointment that its proposal was not awarded. Interest arbitration is an extension of the negotiations process. We have consistently held that in the context of multi-year awards, it is anticipated that not all budgetary information will be available. See Borough of Englewood Cliffs, P.E.R.C. No. 2012-35, __ NJPER __ (¶ 2011); City of Asbury Park, P.E.R.C. No. 2011-17, 36 NJPER 323 (¶126 2010). We disagree with the County's contention that the arbitrator inappropriately used the savings from health benefits to fund the salary increases for 2012-2014. The arbitrator did not equate or credit the unit with higher salaries to defray the officer's increased health benefit contributions. She used what information is certain for those years to justify what she found to be low salary increases that would not put pressure on the County's ability to fund the award within its lawful authority.

As to the awarded salary increases, the County does not contest the 0% awarded in 2010 or the 2.25% in 2011. It requests that we vacate the 2.5% in 2012 and award a 0% increase as the County has instituted layoffs to balance the 2012 budget and is not replacing employees lost through attrition.

The PBA responds that the arbitrator adequately considered the arguments of the County and delayed the 2.5% wage increase until July 1. It further requests that we take notice that the County did not appeal an interest arbitration award for the FOP which provided a 2.5% increase for 2012 effective January 1.

In determining the wage award, the arbitrator stated:

In 2012, I intend to award an across-the-board salary increase of 2.5%, effective July 1, 2012. I am very aware that the County budget is again very tight in 2012. In fact, the County was preparing to lay off an additional 278 employees in June 2012. It must be noted though that the County is not laying off any employee in this bargaining unit, although 7 positions are unfilled. The Sheriff's Department hired an additional employee in 2012. However, the County will have some additional flexibility in its budget by virtue of Chapter 78: in July, employees contributions will double as they enter tier 2. Contributions for the first half of 2012 netted a \$2 million savings County-wide. In addition, the prescription plan increases I am awarding today will save the County additional money. Further, I note that at least 4 unit members are retirement eligible. If all 4 employees, who are at top pay retired, and assuming the County replaces them with entry level officers, the savings would net about \$188,000. Additionally, the two-tier wage guide being awarded will mean that the County will be better able to afford these new hires at lower entry rates, saving additional money.

The total cost of the 2.5% across-the board increases, effective July 1, 2012, is \$104,318. Additionally, the cost of paying the 2012 increments, pro-rated to either January 1 or July 1, pursuant to the requirements of the contract, is \$154,694. Additionally, the cost of providing senior pay to those

employees who reached their tenth anniversary but are still in the step guide, is \$2,041. Further, the cost of increasing senior officer pay by \$210 effective January 1, 2012, is \$12,810 ($\210×61 employees) = \$12,810. Thus, the total cost to the County of the award for 2012 is \$271,863.

The arbitrator then addressed the internal settlement pattern of the County finding that factor to fall within the "interest and welfare of the public" and the "continuity and stability of employment." Recognizing that both parties sought to place heavy emphasis on the County settlement pattern with regard to some issues and distinguish it with regard to others, the arbitrator followed the settlement pattern in 2010 and 2011, but modified it for 2012. Recognizing that the 2.5% wage increase ordered by another interest arbitrator for the FOP was issued prior to the County having the financial data it has now, the arbitrator delayed the 2.5% increase for six months finding:

While I believe it is important to the morale of the employees to follow the County pattern, and award 2.5% increases as was done in the other bargaining units, I am somewhat constrained by the financial difficulties posed by the County's 2012 budget. While the PBA asserts that the County will have no difficulty in paying salary increases for 2012 because it has funds left in surpluses and revenues from other than tax resources, I note that the County's surpluses are rapidly dwindling. Therefore, my award of 2.5% salary increases for 2012 will be effective July 1. This delay in implementing the raises by 6 months will save the County half of the dollar value of the increases in its 2012 budget and still allow the unit employees to keep pace with other county

bargaining units. I note that in comparing the maximum 2012 pay of other Union County law enforcement groups; this award puts sheriff's officers at \$82,974 - still somewhat below top pay for county police and correction officers. However, it puts them slightly above the average top pay for sheriff's officers State-wide.

[Award at 60-61].

We affirm the 2012 salary increase. The County has not met its burden on appeal. Our interest arbitration review standard vests the arbitrator with the responsibility to weigh the evidence and arrive at an award. We will not disturb the arbitrator's exercise of discretion in weighing the evidence unless an appellant demonstrates that the arbitrator did not adhere to the Interest Arbitration Act or the Arbitration Act. N.J.S.A. 2A:24-1 et seq., or shows that the award is not supported by substantial credible evidence. Teaneck. The arbitrator specifically addressed the County's financial data and recognized the budgetary constraints in awarding the 2.5% delayed increase and delayed it to contain the cost to 1.25% for 2012. We do not perform a de novo review of the evidence and defer to the arbitrator's judgment, discretion and labor relations expertise where she weighed all of the statutory criteria and her award is supported by substantial evidence in the record as a whole. Newark.

Further, the arbitrator's reliance on the internal settlement pattern is satisfactory. N.J.S.A. 34:13A-16g(2)

requires an arbitrator to consider the internal settlement pattern of the County with other units. Interest arbitrators have traditionally found internal settlement patterns to be a significant factor. See Somerset Cty. Sheriff's Office and Somerset Cty. Sheriff FOP, Lodge No. 39, P.E.R.C. No. 2007-33, 32 NJPER 372 (¶156 2006), aff'd 34 NJPER 21(¶8 App. Div. 2008). When an arbitrator deviates from a settlement pattern, the reasoning must be explained. Here, the arbitrator carefully considered this factor and determined to delay the 2.5% raise by six months. While this may not be the only potential result from the record before her, it is supported by substantial credible evidence and we will not disturb her conclusion. Lodi; Newark.

The County appeals the award of 2% salary increases for 2013 and 2014 asserting that it anticipates a deficit in 2013 even after layoffs are completed; the economic evidence weighed in favor of a three-year agreement; the arbitrator failed to adequately evaluate the interest and welfare of the public, the financial impact on the employer, comparison with private sector employment, internal comparability and the County's lawful authority. It asserts the award is against the weight of the evidence as only two other County contracts expire in 2013 and the unrepresented employees have not had a salary increase in five years.

Citing Hillsdale PBA Local 207 v. Borough of Hillsdale. 137 N.J. 71, 84-85 (1994), the PBA responds that the arbitrator is not required to find facts on each factor, even those deemed irrelevant, as the courts have stated that would undermine the purpose of arbitration as an expeditious means of resolving contract negotiations. The PBA asserts that the arbitrator gave significant consideration to the statutory factors and made a reasoned determination in awarding a five-year contract.

In awarding these increases, the arbitrator stated:

In 2013 and 2014, my award of 2% across-the-board increases does not exceed the 2% levy cap or the appropriations cap, although I acknowledge that the County will have the added costs of increment payments and a slight increase in the senior officer pay. However, of course, in 2013, and again in July, 2014, the County will experience additional savings from rising employee health care contributions. Therefore, the financial impact on the budget and the taxpayers of Union County will be minimal for 2013 and 2014.

[Award at 51].

There is no per se bar to awarding terms and conditions of employment for future years based on the record evidence and current economic trends. See County of Hunterdon, P.E.R.C. No. 2011-80, 37 NJPER 205 (¶65 2011), aff'd 2012 NJ Super. Unpub. LEXIS 1240 (App. Div. 6/5/12). In City of Asbury Park, we stated:

The collective negotiations process contemplates labor and management sitting down and negotiating terms and conditions of employment for one, two, three or more future years. Parties enter into collective negotiations agreements even though no one can predict with any assurance the exact budget circumstances a public employer will face in future years. For police and fire departments, when the parties cannot reach a voluntary agreement, either party may invoke the interest arbitration process by which a neutral third party sets terms and conditions of employment based on the evidence presented and in light of the nine statutory factors. N.J.S.A. 34:13A-16b(2). As an extension of the collective negotiations process, an arbitrator will also award multi-year contracts. And because of the delays in the interest arbitration process, arbitration awards will often also set terms and conditions of employment retroactively thereby requiring adjustments to the public employer's budgets. Retroactive salary adjustments and future salary increases are inherent in both the collective negotiations process and interest arbitration.

The arbitrator's analysis of the costs of the award and its impact on the taxpayers is exhaustive. The County disagrees with the weight that she gave to the comparison with the private sector, but that does not permit us to hold she is wrong. The arbitrator considered all of the statutory criteria and evidence - including the County's financial evidence. As set forth above, we do not substitute our judgment on the weight given to a factor. Newark. The arbitrator found that the impact on the budget and taxpayers will be minimal for 2013 and 2014. We accept that finding.

As to the County's argument that it will be forced to layoff employees in response to the award, it is not the obligation of an interest arbitrator to direct an employer as to how to fund an award. The interest arbitrator credited many of the PBA's financial documents as a more accurate picture of the County's financial condition. The County has not established these findings were erroneous. An interest arbitration award is not unreasonable even though an employer may be forced to make economies in order to implement the award. Kearny; Irvington PBA v. Town of Irvington, 80 N.J. 271, 296 (1979). We always recognize that any salary increase places pressure on a public employer's cap limitations. However, the County has not provided any specific evidence or argument for us to conclude that the arbitrator erred in finding that the award would not present a cap problem.

The County also appeals the arbitrator's award concerning the "critical incident" investigations. Specifically, the County asserts this language violates public policy because it will unnecessarily impede the investigation of crimes and the arbitrator did not apply the statutory criteria in reaching her conclusion resulting in an award that was procured through undue means pursuant to N.J.S.A. 2A:24-8a.

The PBA responds that the arbitrator recognized that the PBA's initial proposal would promote morale of the department by

affording officers the time to recover physically and/or mentally before answering questions. However, she realized that the language should be limited so as to not impede the County from investigating incidents. To balance the interests, the arbitrator included the additional language that such a delay shall not exceed two business days unless the officer is physically or mentally incapacitated.

We affirm this aspect of the award. The arbitrator provided an exhaustive discussion of the statutory criteria and the weight she assigned to each factor. She is not required nor could she possibly provide an analysis of each factor for each issue under the 45-day time frame set forth in P.L. 2010, c. 105.^{5/} The award of the language regarding critical incidents is not in violation of public policy. We have found that contract clauses providing protection to policemen's rights are mandatorily negotiable. See Tp. of Galloway, P.E.R.C. No. 98-133, 24 NJPER 261 (¶29125 1998) (Two sections of a Policemen's Rights provision concerning "advice of rights" and "civilian complaints" found to be mandatorily negotiable). In affirming this aspect of the award, we are mindful that the employer always maintains its managerial prerogative to administer justice and

^{5/} This law requires an arbitrator to issue an award within 45 days of appointment.

investigate crimes if a scenario arises where this contract language would impede such policy.

The County also appeals the seniority post selection asserting that it is vague as it does not define "special skills"; there is no evidence in the record to support it; a mutual, final, and definite award was not made as every post requires special skills.

We affirm this aspect of the award. The arbitrator did not award the PBA's seniority proposal. Rather, she added the requirement that the employer retain the sole discretion to determine which posts require special skills. She balanced the interest and welfare of the public, continuity and stability of employment; and the impact on the governing unit to craft her award. Further, the record indicates that there is an informal shift bidding in place when officer's present their top choices for assignment to the sheriff.

In City of Camden, P.E.R.C. No. 2000-25, 25 NJPER 431 (¶30190 1999), recon. den. P.E.R.C. No. 2000-72, 26 NJPER 172 (¶31069 2000), aff'd 27 NJPER 357 (¶32128 App. Div. 2001), we discussed the interplay between shift bidding and assignments. The PBA had proposed shift and post bidding for correction officers that would affect both work hours and assignments. The proposal therefore implicated two principles articulated in our case law. The first principle is that public employers and

majority representatives may agree that seniority can be a factor in shift selection where all qualifications are equal and managerial prerogatives are not otherwise compromised. See, e.g., City of Hoboken, P.E.R.C. No. 95-23, 20 NJPER 391 (¶25197 1994); City of Asbury Park, P.E.R.C. No. 90-11, 15 NJPER 509 (¶20211 1989), aff'd NJPER Supp.2d 245 (¶204 App. Div. 1990); contrast Borough of Highland Park, P.E.R.C. No. 95-22, 20 NJPER 390 (¶25196 1994) (clauses that base shift selection solely on seniority are not mandatorily negotiable). The second principle is that public employers have a non-negotiable prerogative to assign employees to particular jobs to meet the governmental policy goal of matching the best qualified employees to particular jobs. See, e.g., Local 195, IFPTE v. State, 88 N.J. 393 (1982); Ridgefield Park. Cf. New Jersey Transit Corp., P.E.R.C. No. 96-78, 22 NJPER 199 (¶27106 1996).

Here, the scenarios presented by the County in objection to the awarded language are exercises of its managerial prerogatives which our precedent protects in shift bidding disputes. If the Sheriff determines that a particular officer is required and qualified for any assignment, that is within his sole discretion.

Finally, the County appeals the arbitrator's denial of its management rights proposal. In its brief, the County asserts it reserves its right in a pending scope of negotiations petition to argue that its management rights proposal confirms its managerial

prerogative to vary the daily or weekly work schedules of officers, including, but not limited to, the implementation of shift work and/or weekend duty, consistent with the needs of the Department.^{6/} On the merits, the County argues that the arbitrator erred in not awarding its management rights proposal as the evidence established it was critical to avoid overtime costs and the PBA did not present evidence that it will have an adverse impact other than its members might lose overtime opportunities. The County further asserts that the arbitrator did not apply the statutory criteria to this proposal.

The PBA responds that it also proposed a change in the work schedule article requesting the arbitrator require the Sheriff to provide an officer with five work days notice of any change in their hours or days of work which was rejected by the arbitrator.

After reviewing the parties argument and evidence with regard to their respective proposals^{7/}, the arbitrator determined the evidence did not support either change. She wrote:

^{6/} The County filed a scope of negotiations petition, Docket No. SN-2012-65 on April 30, 2012 seeking a negotiability determination on the PBA's seniority shift bidding and hours of work proposal. On May 31, counsel for the County requested that this petition be placed on hold pending the outcome of the interest arbitration proceedings. If the scope petition was required, the County would file its brief within five days of receipt of the award. A brief was never filed and we therefore dismiss the scope petition.

^{7/} Award at 94-99

I have considered both sides of this issue. On the one hand, the Sheriff's officers' desire for a stable work schedule which brings predictability to their lives is understandable. Frequent swings in shift times, especially from day shift to an evening shift, have all of the potential to wreak havoc with officers' personal lives and impacts such issues as family time, child care issues, and other pursuits. However, it is evident that, to the extent that short-notice schedule changes must be made, either for operational needs or to cover the shifts of an employee who took leave time, Cryan does his best to minimize the impact on employees. The record does not contain any specifics with regard to the frequency of these occurrences: do they happen weekly? Sporadically? A few times a year? Additionally, the record does not speak to the financial impact of imposing such a change.

The Sheriff, of course, must meet its operational needs. If a crime scene needs the investigations unit on a Sunday, obviously the Employer will require the officer to work. Nothing in the PBA's proposal would prevent the employer from making staffing assignments to fill its operational needs. Rather, the issue is purely economic: if the PBA's proposal for a five-day workweek were granted, all weekend work would be overtime. If the employer were constrained by contract provisions from changing shifts to avoid overtime liability and/or changing shifts without five-days' notice, the assignment could still be made, but overtime costs would result. Because the record does not address the frequency of sheriff's officers working weekends or having their shifts changed with short notice, I am at a loss to predict the possible cost impact of the PBA's proposal.

The County's proposed change to the Management Rights clause is broad and comprehensive. It would give the Employer

the right to change shifts anytime for any reason or no reason. It appears that Cryan has developed a good working relationship, based upon mutual respect, with the Sheriff's officers and tries to accommodate officers' needs while satisfying the Department's staffing needs. The County's proposal is overkill, and unnecessary. Therefore, both the PBA's proposal covering schedule changes and the County's proposal concerning revisions to the Management Rights clause are denied.

[Award at 99-100].

We affirm this aspect of the award. The arbitrator thoroughly analyzed both proposals together and determined that neither party had provided her with the evidence required to grant the proposal. If the County is experiencing crippling overtime costs, it did not provide the evidence to establish it. The PBA did not establish the frequency which shift changes are required on short notice. A party proposing a change bears the burden of justifying it. Prior to awarding a major work schedule change, an arbitrator must consider the fiscal, operational, supervision and managerial implications of such a proposal, as well as its impact on employee morale and working conditions. Teaneck. That rationale applies here. Here, both parties had polar opposite proposals. Our review of the record confirms the arbitrator's finding that neither party met its burden on these proposals.^{8/}

^{8/} We have restrained arbitration over work schedule changes
(continued...)

Our review of the record confirms that the arbitrator evaluated all the statutory criteria, explained why she gave more weight to some factors and less to others, and issued a comprehensive award that reasonably determined the issues and is supported by substantial credible evidence in the record.

ORDER

The interest arbitration award is affirmed. The County's scope of negotiations petition, Docket No. SN-2012-65, is dismissed.

BY ORDER OF THE COMMISSION

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

ISSUED: July 19, 2012

Trenton, New Jersey

8/ (...continued)
effected to address supervision or operational problems or to adjust officers' schedules to conform to the employer's judgment about when services should be delivered. See, e.g., Atlantic Cty. Pros., P.E.R.C. No. 2008-24, 33 NJPER 262 (¶99 2007); Springfield Tp., P.E.R.C. No. 2006-27, 31 NJPER 328 (¶131 2005); City of Trenton, P.E.R.C. No. 2005-60, 31 NJPER 59 (¶28 2005).

P.E.R.C. NO. 2013-5

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF MADISON,

Appellant,

-and-

Docket Nos. IA-2010-109
IA-2010-110

PBA LOCAL 92,

Respondent.

Appearances:

For the Appellant, Cleary Giacobbe Alfieri Jacobs, LLC,
attorneys (Matthew J. Giacobbe, of counsel)

For the Respondent, Lindabury, McCormick, Estabrook &
Cooper, attorneys (Donald B. Ross, of counsel)

DECISION

The Borough of Madison ("Borough") appeals from an interest arbitration award involving two units of approximately 26 police officers and police superior officers who are represented by PBA Local 92 and PBA Local 92 SOA (both units referred to as "PBA").

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

The Borough appeals arguing that: The Interest Arbitrator failed to properly apply the criteria specified in N.J.S.A.

34:13A-16g in that he deviated from the established pattern of bargaining by failing to explain and/or sufficiently analyze the effect of his salary increases in contravention of the long standing pattern bargaining; and that the Opinion and Award violates the standards set forth in N.J.S.A. 2A:24-8 by not permitting the Borough to submit an "amended final offer", apparently reflecting the settlement with the FMBA Local 74 which it urged as the basis for the pattern it was asserting.

The arbitrator issued an 87-page Opinion and Award. After summarizing the parties' arguments on their respective proposals, the arbitrator awarded, in material regard to this appeal, a four year agreement from January 1, 2010 to December 31, 2013 with salary increases of:

- (a) Effective July 1, 2010, the maximum step on the Wage Schedule (Over 5 Years), Sergeant and Lieutenant shall be increased by 1.5%. All other steps on the Wage Schedule shall be frozen. Police Officers shall move to the next step on the salary schedule on their respective anniversary dates.
- (b) Effective January 1, 2011, the maximum step on the Wage Schedule (Over 5 Years), Sergeant and Lieutenant shall be increased by 2.0%. All other steps on the Wage Schedule shall be frozen. Police Officers shall move to the next step on the salary schedule on their respective anniversary dates.
- (c) Effective January 1, 2012, the maximum step on the Wage Schedule (Over 5 Years), Sergeant and Lieutenant shall be increased by 2.0%. All other steps on

the Wage Schedule shall be frozen. Police Officers shall move to the next step on the salary schedule on their respective anniversary dates.

- (d) Effective January 1, 2013, the maximum step on the Wage Schedule (Over 5 Years), Sergeant and Lieutenant shall be increased by 2.0%. All other steps on the Wage Schedule shall be frozen. Police Officers shall move to the next step on the salary schedule on their respective anniversary dates.
- (e) Effective July 15, 2012, all new hires will be hired pursuant to a new Wage Schedule (Wage Schedule A-1) which will include three additional steps. All steps will be full-year steps. The new Step 1 shall be \$46,000. All other steps shall be equalized between Step 1 and Step 9, the maximum step of \$99,190. The five-year longevity step shall be eliminated.
- (f) All salary increases are fully retroactive.

While the two issues raised for appeal by the Borough are intertwined, the second issue related to the alleged failure of the Arbitrator to permit the Borough to amend its final offer, is contrary to N.J.A.C. 19:16-5.7(f), and must therefor be rejected by this Commission. That section of our Rules provides in pertinent part: "At least 10 days before the hearing, the parties shall submit to the arbitrator . . . their final offers on each economic and non economic issue in dispute . . . 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." In the instant matter, the Borough submitted its final offer at the initial arbitration hearing on March 30, 2011. By that time the record demonstrates that the collective negotiations agreements with the FMBA were both signed, providing raises of 0% for 2010, 0% for 2011, and 1.5% for 2012. Nonetheless, the Borough's final offer to the arbitrator dated March 30 offered salary increases to the PBA of 0% for 2010, 2% for 2011, and 2% for 2012. When, on May 15, 2012 the Borough requested the arbitrator to permit it to revise its final offer, presumptively to match the increases settled with the FMBA, the arbitrator, in reliance upon N.J.A.C. 19:16-5.7(f) denied the request, but did permit the Borough to file a supplemental brief to make additional argument regarding its "pattern of settlements" argument.

Under the circumstances set forth above, the refusal of the arbitrator to permit the Borough to revise its final offer does not constitute a violation of the standards set forth in N.J.S.A. 2A:24-8 and does not constitute grounds for reversal or remand of the Award.

As to the argument seeking to repeal the award based upon the arbitrator's award of salary increases different from those contained in the FMBA contracts, here too, we do not find a violation of the standards set forth in N.J.S.A. 34:13A-16(g)

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

(1) The interests and welfare of the public. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by P.L. 1976, c. 68 (C.40A:4-45.1 et seq.).

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

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

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

(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).

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

The standard for reviewing interest arbitration awards is well established. We will not vacate an award unless the appellant demonstrates that: (1) the arbitrator failed to give "due weight" to the subsection 16g factors judged relevant to the resolution of the specific dispute; (2) the arbitrator violated the standards in N.J.S.A. 2A:24-8 and -9; or (3) the award is not supported by substantial credible evidence in the record as a whole. Teaneck Tp. v. Teaneck FMBA, Local No. 42, 353 N.J. Super. 298, 299 (App. Div. 2002), *aff'd* o.b. 177 N.J. 560 (2003), citing Cherry Hill Tp., P.E.R.C. No. 97-119, 23 NJPER 287 (¶28131 1997). Because the Legislature entrusted arbitrators with weighing the evidence, we will not disturb an arbitrator's exercise of discretion unless an appellant demonstrates that the arbitrator did not adhere to these standards. Teaneck, 353 N.J. Super. at 308-309; Cherry Hill.

Arriving at an economic award is not a precise mathematical process. Given that the statute sets forth general criteria rather than a formula, except as set forth by P.L. 2010 c. 105 the treatment of the parties' proposals involves judgment and discretion and an arbitrator will rarely be able to demonstrate that an award is the only "correct" one. See Borough of Lodi, P.E.R.C. No. 99-28, 24 NJPER 466 (¶29214 1998). Some of the evidence may be conflicting and an arbitrator's award is not necessarily flawed because some pieces of evidence, standing alone, might point to a different result. Lodi. Therefore, within the parameters of our review standard, we will defer to the arbitrator's judgment, discretion and labor relations expertise. City of Newark, P.E.R.C. No. 99-97, 26 NJPER 242 (¶30103 1999). However, an arbitrator must provide a reasoned explanation for an award and state what statutory factors he or she considered most important, explain why they were given significant weight, and explain how other evidence or factors were weighed and considered in arriving at the final award. N.J.S.A. 34:13A-16g; N.J.A.C. 19:16-5.9; Lodi.

N.J.S.A. 34:13A-16g(2)(c) requires arbitrators to compare the wages, salaries, hours and conditions of employment of the employees in the proceeding with those of employees performing similar services in the same jurisdiction and with "other employees generally" in the same jurisdiction. Thus, this

subfactor requires the arbitrator to consider evidence of settlements between the employer and other of its negotiations units, as well as evidence that those settlements constitute a pattern. See N.J.A.C. 19:16-5.14(c)(5) (identifying a "pattern of salary and benefit changes" as a consideration in comparing employees within the same jurisdiction). Pattern is an important labor relations concept that is relied on by both labor and management.

In addition, a settlement pattern is encompassed in 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. In that vein, interest arbitrators have traditionally recognized that deviation from a settlement pattern can affect the continuity and stability of employment by discouraging future settlements and undermining employee morale in other units. Fox v. Morris Cty., 266 N.J. Super. 501, 519 (App. Div. 1993), certif. denied, 137 N.J. 311 (1994) (in applying N.J.S.A. 34:13A-16g(8), arbitrator should have considered effect of award on employees in other units); see also Anderson, Krause and Denaco, Public Sector Interest Arbitration and Fact Finding: Standards and Procedures, 48.05[6], contained in Bornstein and Gosline Ed., Labor and Employment Arbitration (Matthew Bender 1999) (citing arbitrators' statement that their award, which took pattern into account, would prevent

disruption of future employer-wide negotiations and also commenting that arbitrators are generally hesitant to award increases that would disturb a pre-arbitration settlement pattern absent a showing that a break in the pattern is required to address a specific problem).

However, it is also improper for an arbitrator to only focus on the internal settlement pattern of the Borough with other units. PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71, 85-86; Washington Tp. v. New Jersey PBA Local 206, 137 N.J. 88 (1994); Fox v. Morris Cty., 266 N.J. Super. at 516-517; Cherry Hill. While an arbitrator must be careful to avoid whipsawing when analyzing the wages of other employer units, interest arbitrators have traditionally found that internal settlements are a significant factor. See Somerset Cty. Sheriff's Office and Somerset Cty. Sheriff FOP, Lodge No. 39, P.E.R.C. No. 2007-33, 32 NJPER 372 (¶156 2006), aff'd 34 NJPER 21(¶8 App. Div. 2008).

We find, however, in this matter, the arbitrator thoroughly considered the 16g(2) criteria and determined that the internal settlement pattern between the PBA and FMBA was not entitled to substantial weight. In pertinent part, he stated:

"I shall now address the third sub-factor which includes several elements. The first element is internal comparability with other Borough employees. The Borough's position is clearly stated in its brief:

Although the Borough of Madison maintains its original final offer submission, the Borough

asserts that the PBA should not be awarded any salary increases above the Borough's March 30, 2011 final offer. It is important for the Arbitrator to take judicial notice of FMBA Local No. 74's salary increases between the period of 2010-2012. The salary increases are demonstrated within the CNAs between the Borough and the FMBA, which were submitted at the Interest Arbitration hearing. See exhibits B-139 and B-140. B-139 shows that the FMBA received a 0% salary increase in 2010 and a 0% salary increase in 2011. B-140 shows that the FMBA received a 1.5% salary increase in 2012. Thus, the Borough's final offer of 0% in 2010, 2% in 2011 (upon enrollment in the SHBP), and 2% in 2012 is far more reasonable in comparison to the Union's requested salary increase of 1.5% in 2010, 2.5% in 2011, 2.6% in 2012, and 2.7% in 2013. (Borough Supplemental Brief at page 5, May 15, 2012)."

We note that the Borough cited Union Cty. P.E.R.C. No. 2004-58, 30 NJPER 97 (¶38 2004), Union Cty. P.E.R.C. No. 2003-87, 29 NJPER 250 (¶75 2003) and Union Cty. P.E.R.C. No. 2003-33, 28 NJPER 459 (¶33169 2002) for the proposition that the arbitrator erred by not considering the potential undermining of employee morale in the FMBA. However, the cited cases all dealt with the internal settlement patterns with multiple units and not just one, as in this case. More importantly, it was the Borough itself that deviated from the internal settlement pattern between the PBA and FMBA, by recommending a higher salary increase for the PBA when it submitted its final offer on March 30, 2011 after it knew what the FMBA had settled for in the second CNA.

For all of the above reasons, the interest arbitration award is affirmed.

ORDER

The interest arbitration award is affirmed.

BY ORDER OF THE COMMISSION

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

ISSUED: August 17, 2012

Trenton, New Jersey

P.E.R.C. NO. 2013-6

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF RAMSEY,

Respondent,

-and-

Docket No. IA-2012-015

RAMSEY PBA LOCAL NO. 155,

Appellant.

SYNOPSIS

The Public Employment Relations Commission affirms an interest arbitration award. After remanding the initial award to the arbitrator and the issuance of a supplemental award, the PBA appeals two issues that are identical to the issues it raised in its initial appeal. The first issue is whether the arbitrator was correct in declining to include the cost savings from the retirement of a lieutenant when projecting salary costs for 2012. The second issue is whether the arbitrator adequately explained why he eliminated longevity for newly hired officers. Having directly addressed those issues in our initial decision, we deny the PBA's appeal.

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. 2013-6

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF RAMSEY,

Respondent,

-and-

Docket No. IA-2012-015

RAMSEY PBA LOCAL NO. 155,

Appellant.

Appearances:

For the Respondent, Ruderman & Glickman, attorneys
(Mark Ruderman, of counsel)

For the Appellant, Loccke, Correia, Limsky & Bukosky,
attorneys (Merick H. Limsky, of counsel)

DECISION

The Ramsey PBA Local No. 155 has filed an appeal of a supplemental interest arbitration award. The initial interest arbitration award was issued on April 17, 2012. The PBA appealed the initial award, asserting that the arbitrator computed base salary for 2011 in error by miscalculating when step movements occurred; the arbitrator should have taken into account the retirement of a lieutenant in projecting salary costs for 2012; and that the arbitrator did not adequately explain why he eliminated longevity for newly hired officers. In its opposition to the appeal, the Borough certified that the PBA's contention as to when step movement occurred was in error, however, it also admitted that the scattergram it submitted to the arbitrator

contained inaccurate salary/step movement with regard to two officers. On May 24, we issued a decision finding that the arbitrator was correct in declining to include the cost savings from the retirement of a lieutenant when projecting salary costs for 2012, and that he did adequately explain why he eliminated longevity for newly hired officers. However, we remanded the initial award to the arbitrator to provide a revised analysis for the Borough's 2011 expenditure for base salary. P.E.R.C. No. 2012-60, ___ NJPER ___ (§___ 2012).

The arbitrator issued a supplemental award on July 9, 2012 and revised his calculations with the now accurate figures provided by the Borough. He reduced step movements and longevity payments to insure that the award would not exceed the statutorily mandated base salary cap of 2% per year. N.J.S.A. 34:13a-16.7 (b). The PBA's appeal of the supplemental award raises two issues that are identical to the issues it raised in its initial appeal - - 1) whether the arbitrator was correct in declining to include the cost savings from the retirement of a lieutenant when projecting salary costs for 2012; and 2) whether the arbitrator adequately explained why he eliminated longevity for newly hired officers. We directly addressed those issues in our initial decision. The PBA's appeal is denied.

ORDER

The PBA's appeal is denied.

BY ORDER OF THE COMMISSION

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

ISSUED: August 17, 2012

Trenton, New Jersey

P.E.R.C. NO. 2013-6

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF RAMSEY,

Respondent,

-and-

Docket No. IA-2012-015

RAMSEY PBA LOCAL NO. 155,

Appellant.

SYNOPSIS

The Public Employment Relations Commission affirms an interest arbitration award. After remanding the initial award to the arbitrator and the issuance of a supplemental award, the PBA appeals two issues that are identical to the issues it raised in its initial appeal. The first issue is whether the arbitrator was correct in declining to include the cost savings from the retirement of a lieutenant when projecting salary costs for 2012. The second issue is whether the arbitrator adequately explained why he eliminated longevity for newly hired officers. Having directly addressed those issues in our initial decision, we deny the PBA's appeal.

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. 2013-6

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF RAMSEY,

Respondent,

-and-

Docket No. IA-2012-015

RAMSEY PBA LOCAL NO. 155,

Appellant.

Appearances:

For the Respondent, Ruderman & Glickman, attorneys
(Mark Ruderman, of counsel)

For the Appellant, Loccke, Correia, Limsky & Bukosky,
attorneys (Merick H. Limsky, of counsel)

DECISION

The Ramsey PBA Local No. 155 has filed an appeal of a supplemental interest arbitration award. The initial interest arbitration award was issued on April 17, 2012. The PBA appealed the initial award, asserting that the arbitrator computed base salary for 2011 in error by miscalculating when step movements occurred; the arbitrator should have taken into account the retirement of a lieutenant in projecting salary costs for 2012; and that the arbitrator did not adequately explain why he eliminated longevity for newly hired officers. In its opposition to the appeal, the Borough certified that the PBA's contention as to when step movement occurred was in error, however, it also admitted that the scattergram it submitted to the arbitrator

contained inaccurate salary/step movement with regard to two officers. On May 24, we issued a decision finding that the arbitrator was correct in declining to include the cost savings from the retirement of a lieutenant when projecting salary costs for 2012, and that he did adequately explain why he eliminated longevity for newly hired officers. However, we remanded the initial award to the arbitrator to provide a revised analysis for the Borough's 2011 expenditure for base salary. P.E.R.C. No. 2012-60, ___ NJPER ___ (¶ ___ 2012).

The arbitrator issued a supplemental award on July 9, 2012 and revised his calculations with the now accurate figures provided by the Borough. He reduced step movements and longevity payments to insure that the award would not exceed the statutorily mandated base salary cap of 2% per year. N.J.S.A. 34:13a-16.7 (b). The PBA's appeal of the supplemental award raises two issues that are identical to the issues it raised in its initial appeal - - 1) whether the arbitrator was correct in declining to include the cost savings from the retirement of a lieutenant when projecting salary costs for 2012; and 2) whether the arbitrator adequately explained why he eliminated longevity for newly hired officers. We directly addressed those issues in our initial decision. The PBA's appeal is denied.

ORDER

The PBA's appeal is denied.

BY ORDER OF THE COMMISSION

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

ISSUED: August 17, 2012

Trenton, New Jersey

P.E.R.C. NO. 2013-7

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF HUDSON,

Respondent,

-and-

Docket No. IA-2012-046

POLICEMEN'S BENEVOLENT ASSOCIATION
LOCAL 109,

Appellant.

SYNOPSIS

The Public Employment Relations Commission denies a partial appeal, filed by Policemen's Benevolent Association Local 109, of an interest arbitration award setting the terms of an agreement between the County of Hudson and County Corrections Officers represented by the PBA for the period January 1, 2010 through December 31, 2012. The PBA appealed from the arbitrator's award of an agreement terminating at the end of 2012, asserting that the arbitrator erred by not accepting the PBA's proposal for an agreement that would continue until December 31, 2014. The PBA also challenges the arbitrator's award of language providing that, unless otherwise agreed by the parties, when the agreement expires, there will be no automatic advancement on the salary step guide for corrections officers not yet at the top step. Neither the PBA nor the County challenged any other portions of the interest arbitration 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. 2013-7

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF HUDSON,

Respondent,

-and-

Docket No. IA-2012-046

POLICEMEN'S BENEVOLENT ASSOCIATION
LOCAL 109,

Appellant.

Appearances:

For Appellant, Mets, Schiro & McGovern, attorneys,
(James M. Mets of counsel and on the brief; Brian J.
Manetta, on the brief)

For Respondent, Scarinci Hollenbeck, attorneys, (Sean
D. Dias, of counsel)

DECISION

On July 23, 2012, the arbitrator issued an interest arbitration award to resolve a negotiations impasse between the County of Hudson and Policemen's Benevolent Association Local 109, the representative of the County's correction officers ranked below sergeant, over the terms of a collective negotiations agreement to succeed the one that had expired on December 31, 2009.^{1/}

On August 1, 2012, the PBA filed a Notice of Appeal and supporting brief seeking to overturn two aspects of the Award:

^{1/} As the petition was filed on May 30, 2012, the procedures and time limits mandated by P.L. 2010, c. 105 apply.

That the successor agreement would terminate on December 31, 2012;

That the successor agreement would contain language specifically stating that the obligation to pay any step increments would not go beyond December 31, 2012, absent an agreement to the contrary.

On August 8, 2012, the County filed a response in opposition to the PBA's appeal. We affirm the award.

The arbitrator issued a 139-page Opinion and Award. N.J.S.A. 34:13A-16g requires that an arbitrator shall state in the award which of the factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor. The statutory factors are as follows:

- (1) The interests and welfare of the public . . . ;
- (2) Comparison of the wages, salaries, hours, and conditions of employment of the employees with the wages, hours and conditions of employment of other employees performing the same or similar services and with other employees generally:
 - (a) in private employment in general . . . ;
 - (b) in public employment in general . . . ;
 - (c) in public employment in the same or comparable jurisdictions;

- (3) the overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received;
- (4) Stipulations of the parties;
- (5) The lawful authority of the employer . . . ;
- (6) The financial impact on the governing unit, its residents and taxpayers . . . ;
- (7) The cost of living;
- (8) The continuity and stability of employment including seniority rights . . . ; and
- (9) Statutory restrictions imposed on the employer. . . .

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

The standard for reviewing interest arbitration awards is well established. We will not vacate an award unless the appellant demonstrates that: (1) the arbitrator failed to give "due weight" to the subsection 16g factors judged relevant to the resolution of the specific dispute; (2) the arbitrator violated the standards in N.J.S.A. 2A:24-8 and 9; or (3) the award is not supported by substantial credible evidence in the record as a whole. Teaneck Tp. v. Teaneck FMBA, Local No. 42, 353 N.J. Super. 298, 299 (App. Div. 2002), *aff'd o.b.* 177 N.J. 560 (2003), citing Cherry Hill Tp., P.E.R.C. No. 97-119, 23 NJPER 287 (¶28131 1997). 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. The PBA bears the burden of specifically showing how the arbitrator misapplied the statutory factors. City of Newark, P.E.R.C. No. 99-97, 25 NJPER 242, 243 (¶30103 1999) (appellant must demonstrate arbitrator failed to apply statutory factors).^{2/}

The PBA proposed a term of January 1, 2010 through December 31, 2014. It argues that a longer agreement is appropriate, because:

[T]he public interest is clearly fostered by awarding its proposal because it promotes labor stability and peace. Conversely, the public's interest is harmed by parties that are continually engaging in contentious and costly negotiations.

The County asserts that in awarding a three-year agreement, the arbitrator correctly awarded due weight to the statutory criteria and the interests and welfare of the public. The County argues that the standard for vacating an award contained in N.J.S.A. 2A:24-8 must be met and that the appellant must demonstrate that the arbitrator failed to give due weight to the relevant statutory factors.

^{2/} That portion of our review standard relating to 2% base salary cap is not applicable since the appeal does not challenge the economic aspects of the award.

The award expires on December 31, 2012 as urged by the County. The arbitrator reasoned:

There are several competing concerns to be considered in deciding the contract term. On the one hand, the parties have been in negotiations for this agreement for two and a half years. If I award the County's proposal for a three-year contract, the parties will be returning to the bargaining table almost immediately for a successor agreement. On the other hand, the economic future of the State and more particularly, the County's financial conditions, including its ability to fund future salary increases, is uncertain. I give greater weight to the County's goal of having all of its law enforcement units' contracts expire at the same time. The pattern is now firmly established that all law enforcement contracts in Hudson County will be expiring simultaneously at the end of 2012. This contract will not be the lead contract to set the standards going into 2013 and beyond. I believe it is in the interest of the public to award a contract for this unit that will expire concurrently with other County law enforcement units. This will provide the Employer with an opportunity to assess its financial resources and negotiate with most if not all units within the same time. All units will have a level playing field and the same opportunity to compete. I believe that this furthers public policy to a greater extent than the stability of a longer contract would provide.

[Award at 63-64]

The arbitrator's reasoning supports her award of an agreement that will expire at the same time as agreements covering other County law enforcement units.

The arbitrator awarded a modified restriction on salary guide advancement that had been proposed by the County. The language, challenged by the PBA's appeal, reads:

The salary schedule shall, unless agreed to otherwise, remain without change upon the expiration of the agreement. There will be no automatic step movement, beyond the expiration of this collective negotiations agreement on December 31, 2012.

[Award at 80]

The PBA argues that the above language nullifies a 2001 interest arbitration award that provided for salary step movement on contract expiration. It also asserts that, with the exception of one unit, all other Hudson County law enforcement units do not have agreements with the same or similar restrictive language.^{3/} It notes that Hunterdon Cty. and FOP Lodge No. 94, 2012 N.J. Super. Unpub. LEXIS 1240, aff'g P.E.R.C. No. 2011-75, 37 NJPER 169 (¶55 2011), and P.E.R.C. No. 2011-80, 37 NJPER 205 (¶65 2011) recently upheld our ruling approving interest arbitration awards that had restored annual step increments to two law enforcement units. Finally, the PBA contends that the arbitrator improperly based her award on conditions that will be present in 2013, even though the award does not extend into that year and is not

^{3/} The PBA asserts that the members of the other law enforcement unit, where step increments will not be paid on contract expiration, received better economic increases than those awarded in this arbitration. However, the PBA does not appeal the across-the-board raises awarded by the arbitrator.

subject to the 2% salary cap imposed by P.L. 2010, c. 105 for agreements expiring after December 31, 2010. It argues that, in considering the potential financial effects of the payment of increments after contract expiration, the arbitrator exceeded her authority, given that the award did not extend beyond December 31, 2012.

The County asserts that the award properly took into account the limitations contained in N.J.S.A. 34:13A-16.7. It maintains that the arbitrator's reasoning fully supports the award.

The arbitrator reasoned:

I am inclined to award this proposal that automatic step increases will not continue beyond the life of this contract.^{4/} I recognize the merits of the Union's argument that this was a recently awarded benefit and should not be taken away without substantial justification. However, following this award, the parties will be subject to the provisions of N.J.S.A. 34:13A-16 which limits an arbitration award to 2% of the aggregate salary costs of the prior year, inclusive of both salary increases and increments. It is readily conceivable going forward into 2013 and beyond, that the cost of the increments alone will approach the 2% cap and possibly exceed it, thus leaving little room to negotiate salary increases if increments have already been paid. Therefore, I find it necessary to suspend the automatic salary

^{4/} The arbitrator noted that increments had been paid at the end of calendar years 2009, 2010 and 2011 [Award at 7, n.1]. The arbitrator recited that many unit members were, or would be at the top step on December 31, 2012 [Award at 40].

increments upon the expiration of this 2010-2012 contract.^{5/}

[Award at 79-80]

We find the arbitrator's reasoning to be sound and her ruling to be within her statutory authority.^{6/} The PBA has not shown that it undermines the public interest and welfare or the stability and continuity of employment of the members of the negotiating unit.

ORDER

The interest arbitration award is affirmed.

BY ORDER OF THE COMMISSION

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

ISSUED: August 23, 2012

Trenton, New Jersey

^{5/} The salary guides awarded for both existing employees, and new hires each contain 12 steps. [Award at 133]. For current officers the Step 9 salary is \$57,536.16 and advances, at Step 12, to \$86,446.16. Each step contains double digit percentage raises. Accordingly, the arbitrator's reasoning that payment of salary increments at the expiration of the 2010-2012 agreement would likely exceed the statutory limitations is reasonable.

^{6/} Hunterdon County, cited by the PBA, does not deal with the precise issue challenged in this appeal. Hunterdon involved the re-establishment of a salary guide containing step increments, and does not address whether those increments must be paid when the agreement expires.

P.E.R.C. NO. 2013-10

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY,

Respondent,

-and-

Docket No. IA-2012-004

NEW JERSEY LAW ENFORCEMENT
COMMANDERS OFFICERS ASSOCIATION,

Petitioner.

SYNOPSIS

The Public Employment Relations Commission grants the State of New Jersey's motion to dismiss an interest arbitration petition filed by the New Jersey Law Enforcement Commanders Officers Association. The Commission holds that as of October 6, 2011, the unit description listed on the interest arbitration petition included titles that no longer exist as well as omitted titles it now represents. This change was the result of a change in Civil Service titles. A new unit was certified by the Director of Representation in December 2011 after the re-organization. The Association may re-file its interest arbitration petition reflecting the titles in the unit as described in the Certification of Unit issued in December 2011.

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. 2013-10

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY,

Respondent,

-and-

Docket No. IA-2012-004

NEW JERSEY LAW ENFORCEMENT
COMMANDERS OFFICERS ASSOCIATION,

Petitioner.

Appearances:

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

For the Petitioner, Mario A. Iavicoli, of counsel and on the brief

DECISION

On March 13, 2012, the State of New Jersey filed a motion to dismiss the interest arbitration petition filed by the New Jersey Law Enforcement Commanders Association. The State asserts that the unit for which the Association seeks interest arbitration no longer exists. On April 25, the Association filed a response that the Interest Arbitration Act requires processing of the petition and some titles included in the unit description still

exist.^{1/} On May 4, the State filed a reply. The following facts appear.

Prior to October 6, 2011, the Association represented two separate negotiations units. The first unit included: Corrections Captains; Corrections Captains, Juvenile Justice; Supervising Conservation Officers; and Supervising Parole Officers. The second unit included only Directors of Custody Operations ("DOCOs").

On October 6, 2011, the Civil Service Commission ("CSC") issued a decision approving the Department of Corrections' request to create the title of Corrections Major to consolidate comparable functions performed by existing custody supervisory staff in the titles Corrections Captain, DOCO I, and DOCO II.^{2/} On November 3, Petitioner filed a Representation Petition^{3/} seeking to represent a new unit including: Corrections Majors; Corrections Captains, Juvenile Justice; Supervising Conservation Officers; and Supervising Parole Officers. On December 19, the Director of Representation approved the parties Stipulation of Appropriate Unit and the unit was certified by card check on

1/ The Association's response was accompanied by a motion to accept the filing out of time. As the State has advised it will not oppose the late filing, we accept it.

2/ The Association has appealed this decision to the Superior Court, Appellate Division, Docket No. A-

3/ Docket No. RO-2012-31

December 28. The Association was certified as the exclusive representative of all regularly employed Correction Majors; Correction Captains, Juvenile Justice; Supervising Conservation Officers; and Supervising Parole Officers employed by the State of New Jersey.

On October 7, 2011, after the CSC had abolished the Correction Captain and DOCO titles, the Association filed for compulsory interest arbitration for a unit with these titles: Correction Captain; Correction Captain, Juvenile Justice; Supervising Conservation Officer; and Supervising Parole Officer. The petition was held in abeyance while the parties participated in mediation. When the parties remained at impasse, the Association sought further processing of its interest arbitration petition. The State filed the instant motion to dismiss.

We dismiss the petition without prejudice. As of October 6, 2011, the unit description listed on the interest arbitration petition included titles that no longer exist as well as omitted titles it now represents. Accordingly, the petition is not perfected.^{4/}

ORDER

^{4/} We note our disappointment that this matter had to be delayed by motion practice as the record indicates the State's willingness to proceed with negotiations and the Association's refusal to amend its petition to reflect the appropriate unit.

The State of New Jersey's motion to dismiss the interest arbitration petition filed by the New Jersey State Law Enforcement Commanding Officer's Association is granted. The Association may file a new petition that accurately reflects the unit description in the certification. The petition is dismissed.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson, Jones, Voos and Wall voted in favor of this decision. None opposed.

ISSUED: September 6, 2012

Trenton, New Jersey

P.E.R.C. NO. 2013-25

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NORTH HUDSON REGIONAL
FIRE AND RESCUE,

Appellant/Respondent,

-and-

Docket No. IA-2010-099

NORTH HUDSON FIREFIGHTERS
ASSOCIATION,

Appellant/Respondent.

SYNOPSIS

The Public Employment Relations Commission remands an interest arbitration award to the arbitrator for a supplemental award. The North Hudson Regional Fire and Rescue and North Hudson Firefighters Association cross-appealed from the award. The Commission remands the award to the arbitrator for clarification as to the base salary calculation; the retiree benefit change; the terminal leave proposal; and consideration of regulations related to vacation and terminal leave as set forth in the decision.

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. 2013-25

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NORTH HUDSON REGIONAL
FIRE AND RESCUE,

Appellant/Respondent,

-and-

Docket No. IA-2010-099

NORTH HUDSON FIREFIGHTERS
ASSOCIATION,

Appellant/Respondent.

Appearances:

For North Hudson Regional Fire and Rescue, Scarinci & Hollenbeck, LLC (Ramon E. Rivera, of counsel and on the brief; Christina Michelson, on the brief)

For North Hudson Firefighters Association, Cohen, Leder, Montalbano & Grossman, LLC (Bruce D. Leder, of counsel)

DECISION

This case comes to us by way of cross-appeals of the North Hudson Regional Fire and Rescue and North Hudson Firefighters Association from an interest arbitration award involving a unit of approximately 167 rank and file firefighters.

Background

The Regional was created in 1998, pursuant to the Consolidated Municipal Services Act, N.J.S.A. 40:48B-1 et seq. It was formed as a Joint Meeting, which is a political subdivision of the State. It replaced the paid fire departments in Weehawken, Union City, North Bergen, West New York and

Guttenburg and was created in order to consolidate the delivery of fire and rescue services for the participating municipalities. The Regional's annual operating costs are allocated among the five participating municipalities. While the participating municipalities comprising the Regional are subject to local government expenditure and tax levy cap laws, the Regional itself is not.

The Award

The parties made numerous economic and non-economic proposals to the arbitrator. Those proposals which are the subject of this appeal will be further detailed herein.

The arbitrator issued a 122-page Opinion and Award.^{1/} He awarded a contract with a term of July 1, 2009 though June 30, 2013. He awarded increases as follows: 2% for 2010 and 2011, 1.5% for 2012 and 1.0% for 2013. All increases have an effective date of January 1st. For health insurance, he awarded the Regional's proposal that all retirees shall receive the same level of health benefits as active employees and benefits in retirement are subject to change as the benefits of active employees change, effective June 30, 2013. For vacation leave, he reduced the number of firefighters that may be off on holidays

^{1/} The interest arbitration proceedings were not governed by the interest arbitration procedures implemented by P.L. 2010, c. 105. This Award was also not subject to the 2% base salary cap. N.J.S.A. 34:13A-16.7 (b).

and summer days, from 10 and 7 respectively, to 7 and 5 respectively, effective January 1, 2013.

The Parties' Arguments

The Regional appeals arguing that the arbitrator failed to consider the interest and welfare of the public when he denied its retroactive payment, terminal leave, health benefits, sick leave and vacation proposals.

The Association appeals asserting generally that the arbitrator failed to apply the statutory factors. The Association also asserts that the arbitrator miscalculated the base salary for the unit for the first year of the contract, and that his rulings on vacation slots and retiree health insurance must be vacated. It also asserts that he improperly denied its proposals on union release time, longevity, and compensation for acting out-of-title.

Statutory Factors

N.J.S.A. 34:13A-16g requires that an arbitrator shall state in the award which of the factors are deemed relevant, and provide an analysis of the evidence on each relevant factor. The statutory factors are as follows:

(1) The interests and welfare of the public. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by P.L. 1976, c. 68 (C. 40A:4-45.1 et seq.).

(2) Comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally: P.E.R.C. No. 2013-24.

(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 of 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 P.E.R.C. No. 2013-25. 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). [N.J.S.A. 34:13A-16g]. P.E.R.C. No. 2013-26.

Standard of Review

The standard for reviewing interest arbitration awards is well established. We will not vacate an award unless the appellant demonstrates that: (1) the arbitrator failed to give "due weight" to the subsection 16g factors judged relevant to the resolution of the specific dispute; (2) the arbitrator violated the standards in N.J.S.A. 2A:24-8 and -9; or (3) the award is not supported by substantial credible evidence in the record as a whole. Teaneck Tp. V. Teaneck FMBA, Local No. 42, 353 N.J. Super. 298, 299 (App. Div. 2002), aff'd o.b. 177 N.J. 560 (2003), citing Cherry Hill Tp., P.E.R.C. No. 97-119, 23 NJPER 287 (¶28131 1997). Because the Legislature entrusted arbitrators with weighing the evidence, we will not disturb an arbitrator's exercise of discretion unless an appellant demonstrates that the arbitrator did not adhere to these standards. Teaneck, 353 N.J. Super. At 308-309; Cherry Hill.

Arriving at an economic award is not a precise mathematical process. The treatment of the parties' proposals involves judgment and discretion and an arbitrator will rarely be able to demonstrate that an award is the only "correct" one. See Borough of Lodi, P.E.R.C. No. 99-28, 24 NJPER 466 (¶29214 1998). Some of the evidence may be conflicting and an arbitrator's award is not necessarily flawed because some pieces of evidence, standing alone, might point to a different result. Lodi. Therefore,

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

Analysis

Application of Statutory Factors Generally

The Association's general claim that the arbitrator failed to apply the statutory factors largely amounts to a dissatisfaction with the Award. The Association does not identify any evidence that the arbitrator failed to consider, but merely restates the same arguments it made to the arbitrator. The arbitrator directly addressed the Association's arguments in the Award. Nonetheless, we will briefly comment on the Association's arguments.

The Association asserts that the interest and welfare of the public does not support the salary award, and there is no balance between the employees' desires to have better wages and the public's desire to have reasonable costs. The arbitrator properly considered all of the Association's arguments on this

issue. The arbitrator placed substantial weight on the interests and welfare of the public. He recognized that due to retirements and current legal restraints on the Regional's hiring, there was a decline in the total amount of compensation paid between 2009 and 2011. However, he did not find that such a finding weighed in favor of higher salary increases than those awarded for numerous reasons. He found that some of the reduction in salary costs are balanced by the substantial terminal leave payments that have accompanied retirements, as well as by increased overtime necessitated by the reduction in the number of firefighters. He also found that it likely that recruitment will resume at some point.

The Association asserts that the Award does not have any adverse financial impact or would cause the Regional's member municipalities to exceed any statutory restrictions imposed on them. The Association's assertions are consistent with the arbitrator's findings, who provided a comprehensive analysis on this issue. He recognized that due to the composition of the Regional, it is indirectly subject to the same financial pressures as the local governments of which it is comprised. He found that the economy as a whole is still emerging from a deep recession and continues to be marked by high unemployment and a depressed housing market. He reviewed the Regional's operating revenue and found that it ended 2010 with an operating deficit

and acknowledged that it still owes \$800,000 in terminal leave payments. He considered the cost of increments which he approximated at \$157,505 for each year of the Agreement. However, he found that with an annual budget of over \$55,000,000, the Regional has sufficient budgetary flexibility to fund the modest salary increases that will cost \$77,448 more than what it proposed.

The Association also argues that the awarded increases are not supported by the comparables cited by the arbitrator. The arbitrator adequately explained his consideration of the comparables. Relying on the Regional's comparables, which he found provided a broader perspective, he found that the salaries in North Hudson are in the average range for firefighters. He found that this unit's compensation was enhanced by holiday pay, while other municipalities had terminated holiday pay and folded it into base salary, or given compensatory time in lieu of holidays worked. The Association again raises the issue that the fire officers and the police officers in three of the Regional's municipalities received salary increases of 4%, which the arbitrator directly addressed in the Award. He acknowledged that internal settlements patterns are ordinarily awarded great weight, but found that those agreements were negotiated before the Regional and the municipalities began to feel the full impact of the recession, State aid cuts, and the new CAP legislation.

He also found that the municipal agreements have a 2006 or 2008 start date, and the fire officer has a 2004 start date. Additionally, he found that this agency's salary analysis reflects a downward trend in the average increase and reflected deferred increases, zero increases, increases at the top step only, various adjustments to salary guides, and no retroactive increases.

The Association also argues that the cost of living factor supports a larger increase. The arbitrator explained that he gave this factor some weight, and acknowledged that this factor, standing alone, might point to higher across-the-board increases. But he ultimately placed greater weight on the factors pertaining to the public interest, comparisons with other employees, financial impact, and continuity and stability of employment. He also noted that the consumer price index included increases in medical costs which are still borne largely by the Regional.

Calculation of Base Salary

The Association asserts that the arbitrator miscalculated base salary at \$14,000,000 annually for the period June 30, 2009 through July 1, 2011. It asserts that the arbitrator relied only on an assertion made in the Regional's brief in making this calculation. It further contends that Exhibit J-6 sets out that base salary for July 2009 through June 2010 was \$15,087,267 and \$14,742.970 for July 2010 through June 2011 and that and R-18

establishes that base salary as of July 1, 2009 was \$16,655,669. The Regional asserts that the \$14,000,000 figure cited by the arbitrator was an approximation. In Cumberland County Prosecutor, P.E.R.C. No. 2012-66, ___ NJPER ___ (¶ ___ 2013), we found that all interest arbitration awards, even those not subject to the 2% base salary cap, should cost both step movement and salary increases for each year of the contract. The arbitrator did that here, but there is conflicting evidence in the record regarding base salary figures. Therefore, we remand this issue to the arbitrator to provide clarification on the source of the base salary figure that he relied on, and, if necessary, to recalculate the step movement and salary increase for each year of the contract. If there is not reliable evidence in the record with regard to the base salary calculation, the arbitrator should require that the Regional provide him with a scattergram.

Vacation Scheduling

The current provision in the Agreement pertaining to vacation scheduling provides that on all holidays and summer days, 10 firefighters may be off on vacation, and all other times 7 firefighters may be off on vacation. The Regional proposed to have the figures changed to seven and five, respectively, which the arbitrator awarded. The arbitrator found that the Regional justified its need for the change because with the current

complement of firefighters, it is five firefighters short on every shift and is in need of overtime almost every day, and that summer is a difficult time to ensure adequate staffing.

The Association asserts that the arbitrator's findings are undercut by Exhibit R-23 which shows that between 2009 and 2011, there was a slight reduction of firefighters off on any given day. The arbitrator directly addressed this argument and found that because unit size also declined during this period, it did not negate the Regional's concern that the current 10/7 figures can impede its ability to properly staff all companies and shifts. We find that the arbitrator justified this change based on substantial credible evidence in the record.

Health Benefits

The Regional proposed to provide health insurance coverage that mirrors the State Health Benefits Plan, and that new hires who retire will receive health benefits at the same level as active employees with no dependant coverage. The arbitrator declined the Regional's proposal, except with regard to future retirees, who he set out would receive health benefits at the same level as active employees. The arbitrator made this part of the Award effective for June 30, 2013.

The Regional argues that the arbitrator failed to provide due weight to the actual costs of health premiums, and that it is prejudiced by the effective date of June 30, 2013, since many

firefighters retired during the time of the contract. The Association argues that there is nothing in the record which supports this portion of the Award.

The arbitrator properly explained his reasoning for not switching to the SHBP. He acknowledged the testimony of the Regional's insurance broker which set forth that a plan modeled on the SHBP would cost less than the existing plan, but found that when considering the Award as whole, including the lower salary increases than would likely have been awarded in a more favorable climate, a change in health insurance coverage was not warranted.

With regard to the Regional's proposal that retiree coverage exclude dependents, the arbitrator found it was not supported since firefighters have physically rigorous jobs and are eligible to retire after 25 years of service, and thus have a strong interest in retiree health benefits that cover themselves and their dependents. Additionally, he found that this proposal would not result in tangible cost savings for 25 or more years and that retired firefighters in comparable jurisdictions receive retiree health benefits that includes eligible dependents.

With regard to awarding that future retirees shall receive the same health coverage as those provided to active employees and will change when the coverage for the active group changes, he found that in the evolving health care environment, it will

eliminate potential difficulties in securing coverage that tracks requirements that were negotiated many years in the past.

However, the arbitrator did not explain what evidence he relied on in making this determination, or why he made this change effective on June 29, 2013. We remand on this issue for the arbitrator to explain the rationale for this change and its effective date.

Union Release Time

Both parties made proposals with regard to the union leave provision of the contract. The provision as it is currently written provides up to three authorized Association representatives with reasonable time off with pay to attend Association business. The Regional proposes to reduce from four to two the number of elected officers who are entitled to paid time off to attend designated conventions, and to limit such leave time to 200 hours, at which point one employee would be allowed time off to attend some conventions, as long as the leave does not result on overtime. The Association sought to expand the definition of Association business and delete the reference to "three" Association representatives. The arbitrator declined to award either proposal.

The arbitrator's denial of the proposals was due in part to the contract sections at issue being the subject of pending unfair practice charges before this agency. In August 2009, the

Association filed an unfair practice charge that resulted in a settlement agreement that governed the type of union leave time provided for in the Agreement, and provided, among other things, for 400 hours per year of union release time. In August 2011, the Association failed another unfair practice charge that the Regional had filed to comply with the terms of the settlement agreement when it denied firefighter requests to attend a State convention and FMBA monthly meetings. This matter is still pending.

We do not agree with the arbitrator supporting his denial of the parties' proposals due to the pending litigation before this agency. However, he also denied the proposals due to a lack of information. He found the record did not include any particularized information about how often and for what purposes leave time has been sought. He also found that he could not evaluate the claim that the 400 hour cap on the settlement agreement should be abandoned in favor of more general language affording the Association "reasonable" time off. He found that there was no evidence in the record to support the assertion that union leave results on "outrageous" overtime, and noted that some of the overtime is due to the Regional's inability to hire and also found no evidence that the Association had abused union leave. We find that he adequately explained his rationale for denying the union leave proposals.

Longevity

The current contract provides for two longevity schedules. For firefighters employed by the former municipalities, a firefighter is eligible for longevity ranging from 4% beginning with a fifth year of service to 14% beginning with the twenty-fifth year of service. Firefighters employed on or after regionalization are eligible for longevity beginning at the fifth year of 2% and reaching a maximum at the twenty-third year of 9%. The Regional sought to lower longevity for new hires. The Association proposed to increase longevity after twenty years from 7% to 9% and from 9% to 11% commencing the twenty-third year for firefighters employed on or after regionalization. Both proposals were denied. The Regional asserts that the arbitrators's failure to award the Regional's longevity proposals for new hires will have a negative financial impact on the Regional's operational budget. The Association argues that the arbitrators decision to reject its proposal was not supported by substantial credible evidence in the record.

The arbitrator provides various reasons for denying the Regional's proposal. He found the longevity benefit to be an integral part of the unit's overall salary. He found that the proposal should be denied when it is considered in the context of the award as a whole, specifically the moderate across-the-board increases. He found that if he awarded the Regional's proposal

it would erode the unit's benefit structure for new hires and impair its ability to recruit new firefighters.

When considering the Regional's core comparison group of 12 municipalities, he found that all but one, whose top-step firefighter salary for 2011 was well above that in other jurisdictions, offered a longevity benefit to their firefighters. He also found that comparables showed that the initial and maximum longevity benefit for this unit was at the low end of the spectrum. He acknowledged that former municipal firefighters receive greater longevity than those hired after regionalization, but found that this alone did not provide a justification for decreasing the benefit for new hires to a level below that prevailing in comparable jurisdictions or increasing the benefit for firefighters hired after regionalization. He was reluctant to add costs to the existing benefit structure during the contract term, and found that uniformity across all benefit and salary items will not be achieved until this unit is comprised solely of firefighters hired on or after regionalization. We find that the arbitrator's decision not to award either parties' proposal on longevity was supported by substantial credible evidence in the record and there is no evidence that doing so would have a negative financial impact on the Regional.

Acting Pay

The Association sought to have acting pay changed from \$500 for each acting assignment to \$300 for each 24-hour period that a firefighter assumes the position of captain due to either a vacancy in the position or a medical leave of more than two days. The arbitrator denied its proposal, and it asserts that there is no justification for that denial. The arbitrator supported the denial based on his hesitance to add to the Regional's annual costs beyond the across-the-board increases he awarded. He also found that the Association did not meet its burden of justifying the proposal because there was no evidence in the record as to how often the average firefighter serves in an acting capacity, or how frequently firefighters serve in an acting capacity on a long term basis where the employee's interest in additional compensation is stronger. He also found that the Regional has promoted additional firefighters to the position of captain in an effort to reduce reliance on out-of-title assignments. The arbitrator adequately explained his rationale for denying the Association's proposal on acting pay.

Terminal Leave

The current terminal leave provision provides that all unused accumulated sick and vacation leave days shall be put into a terminal leave bank. It also specifies that an employee shall only be paid in accordance with the caps and rate systems. For

firefighters hired on or after regionalization, unused accumulated sick leave and vacation days are paid up to a maximum of \$120 per twenty-four hour day, up to a maximum benefit of \$15,000. For firefighters formerly employed by one of the constituent municipalities, they receive payment for eligible days as provided in the municipalities collective bargaining agreement which employed that employee at time of regionalization.

The Regional proposed to define terminal leave as consisting of unused sick leave only; to freeze existing accumulated terminal leave benefits over \$15,000 at the value fixed and calculated as of January 1, 2012; and to stagger the payment schedule for terminal leave payments over a period for up to five years after retirement, depending on the size of the terminal leave obligation. The arbitrator denied all of the Regional's proposals, and it argues that he did not consider the interest and welfare of the public in doing so.

Regarding the freeze on leave accumulations, the arbitrator found that the record does not indicate how many employees the proposed change would affect, nor does it include any projections as to how much the Regional would likely save by virtue of the proposal's implementation. He also found it was unclear how the proposed new "freeze" provision would mesh with the existing provision. The current contract language pertaining to the

firefighters who were formerly employed by one of the constituent municipalities has been in effect for over ten years and was one facet of the complex process of merging five fire departments into one during regionalization. While the Regional asserts that the arbitrator did not consider comparables or recent trends, the Award shows otherwise. The arbitrator found that the Regional failed to show a trend of freezing accumulated terminal leave benefits above \$15,000, and found four of the comparable jurisdictions cited by the Regional have terminal leave benefits that could generate substantial terminal leave payments. He also found the proposal was more restrictive than those that pertain to police officers in constituent municipalities. He found that while the benefits under the municipal agreements have led to large payments, those payments are already being phased out over time and continuation of the municipal schedule was one part of the merger process. There is one comparable cited by the Regional that the arbitrator did not address. The Regional asserts that the Fire Officers Association agreed to accept a terminal leave agreement that was identical to the one it proposed to the unit herein. On remand, the arbitrator should address this comparable and explain whether it changes his analysis.

With regard to eliminating vacation leave from the terminal leave bank, the arbitrator denied this proposal because he found

that a firefighter could be denied compensation for forfeited vacation time, even if operational constraints prevented him or her from using the time during the year in which it was earned, or the ensuing year. He found that the record did not contain enough information as to the ease with which firefighters are able to schedule vacation leave. The Regional also asserts that the arbitrator failed to recognize that allowing vacation time to be included in terminal leave is in violation of N.J.S.A. 11A:6-3(e). That statute states, in pertinent part, as follows:

Vacation not taken in a given year because of business demands shall accumulate and be granted during the next succeeding year only; except that vacation leave not taken in a given year because of duties directly related to a state of emergency declared by the Governor may accumulate at the discretion of the appointing authority until, pursuant to a plan established by the employee's appointing authority and approved by the commission, the leave is used or the employee is compensated for that leave, which shall not be subject to collective negotiation or collective bargaining.

The arbitrator addressed the relevance of this statute in response to an Association proposal regarding banking vacation leave. However, the arbitrator did not address this statute in relation to the Regional's proposal that vacation leave be excluded from terminal leave. Therefore, on remand, the arbitrator should consider this statute in relation to the Regional's proposal to exclude vacation leave from terminal leave.

With regard to the staggering of terminal leave payments, the arbitrator found that the Regional did not meet its burden of showing that its proposal was warranted because it did not submit any particularized information as to how many terminal leave payments would trigger the staggered schedule. He also noted that the Regional has exercised its authority under N.J.S.A. 40A:4-53(h) to stagger certain terminal leave payments over a five-year period, although the ability of the Regional to do so without negotiations is currently the source of pending litigation at this agency. Nonetheless, the arbitrator cannot consider evidence that is not in the record, and he adequately explained his reasoning for denying the proposal.

Retroactive Pay

The Regional's final offer included a retroactive payment schedule for payments due under the Agreement - - the first payment to be due in 60 days of the award, the second within 30 days of the one year anniversary of that date; and the third within 30 days of the two year anniversary of the first payment. The Regional argues that the arbitrator failed to consider the cost implications of not awarding its retroactive pay proposal. We disagree. The arbitrator considered the cost implications and found that the Regional should have reasonably planned for possible retroactive payments under the Award, especially given the modest increases that were awarded. An employer should plan

for potential retroactive salary payments due under an award, just as it must anticipate other potential expenses in the budget planning process. Essex Cty., P.E.R.C. No. 2005-52, 31 NJPER 86 (¶41 2005). He found that the amounts owed are not greater than the amounts that should have been anticipated. Moreover, most of the contract term has already elapsed weighed in favor of making all increases retroactive to their effective date. Under the employer's proposal, the final retroactive payments would not occur until September/October 2014, well after the expiration of the contract term. Most notably, he found that the awarded salary increases will not have a negative effect on the statutory restrictions of the Regional, the Regional's constituent municipalities or the residents and taxpayers served by the Regional.

The Award is remanded to the arbitrator to provide clarification and/or his findings with regard to the following issues:

- 1) the source of the base salary figure that he relied on, and, if necessary, recalculation of the step movement and salary increase for each year of the contract;
- 2) the evidence relied on in making the retiree health benefit change and the effective date for that change;
- 3) the Fire Officers Association agreement as a comparable with regard to the Regional's proposals on terminal leave; and
- 4) consideration of N.J.S.A. 11A:6-3(e) in conjunction with the Regional's proposal that vacation leave be excluded from terminal leave.

ORDER

The award is remanded to the arbitrator for a supplemental award within 45 days of this decision in accordance with the directives in this decision. Any additional appeal by the parties must be filed within seven calendar days of service of the supplemental award.

BY ORDER OF THE COMMISSION

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

ISSUED: October 1, 2012

Trenton, New Jersey

P.E.R.C. NO. 2013-27

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF MORRIS,
MORRIS COUNTY SHERIFF'S OFFICE,

Appellant,

-and-

Docket No. IA-2012-035

PBA LOCAL 298,

Respondent.

SYNOPSIS

The Public Employment Relations Commission affirms an interest arbitration award setting the terms and conditions of employment for a unit of correction officers represented by PBA Local 298 and employed by the Morris County Sheriff's Office. The County appealed the arbitrator's award of salary increments in the first year of the new agreement. The Commission holds that the arbitrator complied with the statutory requirements and adequately explained why he deviated from the County's internal settlement pattern.

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. 2013-27

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF MORRIS,
MORRIS COUNTY SHERIFF'S OFFICE,

Appellant,

-and-

Docket No. IA-2012-035

PBA LOCAL 298,

Respondent.

Appearances:

For the Appellant, Knapp, Trimboli & Prusinowski,
attorneys (Stephen Trimboli, of counsel)

For the Respondent, Lindabury, McCormick, Estabrook &
Cooper, attorneys (Donald B. Ross, of counsel)

DECISION

The County of Morris and Morris County Sheriff's Office appeal from a supplemental interest arbitration award involving a negotiations unit of correction officers represented by PBA Local 298. We had remanded the arbitrator's initial award, after both parties cross-appealed, for issuance of the supplemental award. P.E.R.C. No. 2013-3, 39 NJPER 81 (¶31 2012).

In its original appeal, the PBA raised a generalized argument asserting that the award was not based on substantial credible evidence in the record and did not comply with the analysis required by the interest arbitration statute. The County's cross-appeal was limited to the arbitrator's award of

step movement from the expired contract, which it contends was not based on substantial evidence in the record.

We remanded the award and instructed the arbitrator to provide an independent analysis of each of the statutory factors and to explain how the evidence and each relevant factor were considered in arriving at his award. We also observed that the arbitrator justified his award of increments in 2011 based upon the County's refusal to accept the PBA's offer to eliminate two health plans and his finding that the parties agreed to 2011 increments in their prior agreement. We opined that the award was unclear as to which of the statutory factors were implicated in the 2011 increment analysis and required the arbitrator to discuss these issues on remand. Finally, we directed the interest arbitrator to cost out both step movement and percentage increases for each year of the contract.

On September 28, 2012, the arbitrator issued his opinion and award on remand. He provided a more extensive analysis of the statutory factors, but did not change the terms of his award. The County appeals on the single issue of the arbitrator's award of step increments for 2011. The PBA did not cross-appeal.

The County argues that in awarding step increments for 2011, the award was procured by undue means and the arbitrator imperfectly exercised his powers that a mutual, final and

definite award on the matter submitted was not made. The points asserted by the County are as follows:

THE AWARDING OF STEP INCREMENTS FOR 2011 SHOULD BE VACATED UNDER N.J.S.A. 2a:24-8(a) AND (d). THE AWARD WAS PROCURED BY UNDUE MEANS, AND THE ARBITRATOR SO IMPERFECTLY EXERCISED HIS POWERS THAT A MUTUAL, FINAL AND DEFINITE AWARD ON THE MATTER SUBMITTED WAS NOT MADE.

THE AWARDING OF STEP INCREMENTS FOR 2011 SHOULD BE VACATED DUE TO THE ARBITRATOR'S FAILURE TO GIVE DUE WEIGHT - OR, INDEED, ANY WEIGHT - TO THE STATUTORY CRITERIA OF SECTION 16g.

THE AWARDING OF STEP INCREMENTS FOR 2011 SHOULD BE VACATED DUE TO THE ARBITRATOR'S FAILURE TO CONSIDER THE LOCAL TAX LEVY CAP.

THE ARBITRATOR'S DETERMINATION TO AWARD STEP INCREMENTS IN 2011 SHOULD BE SET ASIDE BECAUSE IT IS NOT BASED ON SUBSTANTIAL CREDIBLE EVIDENCE ON THE RECORD BELOW.

THE ARBITRATOR'S DETERMINATION TO AWARD STEP INCREMENTS IN 2011 SHOULD BE SET ASIDE BECAUSE OF HIS FAILURE TO GIVE SUFFICIENT WEIGHT TO THE INTERNAL PATTERN OF SETTLEMENT.

THE COMMISSION SHOULD MODIFY THE AWARD TO COMPLY WITH THE PROVEN INTERNAL PATTERN OF SETTLEMENT ON 2011 STEP INCREMENTS.

The PBA responds by pointing out that the County expresses dissatisfaction with only one aspect of the award - the 2011 increments. The PBA asserts that the award favored the County and not the PBA, but should be affirmed as the arbitrator substantially complied with the requirements of the interest arbitration statute.

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

- (1) The interests and welfare of the public . . . ;
- (2) Comparison of the wages, salaries, hours, and conditions of employment of the employees with the wages, hours and conditions of employment of other employees performing the same or similar services and with other employees generally:
 - (a) in private employment in general . . . ;
 - (b) in public employment in general . . . ;
 - (c) in public employment in the same or comparable jurisdictions;
- (3) the overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received;
- (4) Stipulations of the parties;
- (5) The lawful authority of the employer . . . ;
- (6) The financial impact on the governing unit, its residents and taxpayers . . . ;

- (7) The cost of living;
- (8) The continuity and stability of employment including seniority rights . . .; and
- (9) Statutory restrictions imposed on the employer. . . .

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

The standard for reviewing interest arbitration awards is well established. We will not vacate an award unless the appellant demonstrates that: (1) the arbitrator failed to give "due weight" to the subsection 16g factors judged relevant to the resolution of the specific dispute; (2) the arbitrator violated the standards in N.J.S.A. 2A:24-8 and -9; or (3) the award is not supported by substantial credible evidence in the record as a whole. Teaneck Tp. v. Teaneck FMBA, Local No. 42, 353 N.J. Super. 298, 299 (App. Div. 2002), *aff'd* o.b. 177 N.J. 560 (2003), citing Cherry Hill Tp., P.E.R.C. No. 97-119, 23 NJPER 287 (¶28131 1997). Because the Legislature entrusted arbitrators with weighing the evidence, we will not disturb an arbitrator's exercise of discretion unless an appellant demonstrates that the arbitrator did not adhere to these standards. Teaneck, 353 N.J. Super. at 308-309; Cherry Hill.

Arriving at an economic award is not a precise mathematical process. Given that the statute sets forth general criteria rather than a formula, the treatment of the parties' proposals involves judgment and discretion and an arbitrator will rarely be

able to demonstrate that an award is the only "correct" one. See Borough of Lodi, P.E.R.C. No. 99-28, 24 NJPER 466 (¶29214 1998). Some of the evidence may be conflicting and an arbitrator's award is not necessarily flawed because some pieces of evidence, standing alone, might point to a different result. Lodi. Therefore, within the parameters of our review standard, we will defer to the arbitrator's judgment, discretion and labor relations expertise. City of Newark, P.E.R.C. No. 99-97, 26 NJPER 242 (¶30103 1999). However, an arbitrator must provide a reasoned explanation for an award and state what statutory factors he or she considered most important, explain why they were given significant weight, and explain how other evidence or factors were weighed and considered in arriving at the final award. N.J.S.A. 34:13A-16g; N.J.A.C. 19:16-5.9; Lodi.

In cases where the 2% salary cap imposed by P.L. 2010, c. 105 applies, we must also determine whether the arbitrator established that the award will not increase base salary by more than 2% per contract year or 6% in the aggregate for a three-year contract award. The 2% salary cap does not apply to this award as the parties' prior agreement expired on December 31, 2010.

The County's sole issue on appeal is its objection to the arbitrator's awarding of step increments in 2011. Specifically, the County argues that the arbitrator erred in deviating from a universal internal settlement pattern it established for 2011

with all other bargaining units, both uniform and civilian. This pattern included not only a salary freeze, but a surrender of step increments that year. Here, the arbitrator awarded a 0% increase for 2011, but moved the officers one incremental step on the guide. For 2012 and 2013, the arbitrator awarded 2% wage increases, but froze increments. The arbitrator's reasoning in his initial award on the pattern of settlement began with the contract duration. He adopted the County's proposal of a three-year agreement based, in part, on pattern. He reasoned:

The County insists that its proposals should be granted and that those of the Union be rejected. In part this is predicated upon the fiscal conditions which have become key to the financial future of the County. The administration has taken many steps to eliminate excess or non-essential spending and to preclude the further pressure as to increasing need for raising taxes. In an effort to demonstrate that this policy was not directed exclusively at these negotiations the County presented a great deal of information showing how the same constraints were exercised in negotiations involving many employing units of the County. In fact the singular argument substantiating the several important dimensions of these negotiations which was constantly brought into focus was the asserted pattern of settlements principally focused on economic matters. In those negotiations there was particular success in the contracts including no wage increase and no step movement for the 2011 year followed by a continuation of the no increment posture for 2012 and 2013 but with 2% across-the-board pay increases effective as of January 1, 2012 and January 1, 2013.

This thesis, described as a pattern sufficiently universally achieved and recognized, should preclude the granting of any greater awards in proceedings which involved this employer and other units of its organized employees. There was also offered and pressed, the argument that general acceptance of such patterns is virtually mandated in the field of labor relations, in order that there be no disruption of the Employer's relationship with those employees and the representatives of same. In effect, the Employer's negotiator was avowing that I had no alternative course of action but to confirm the varied terms of other agreements made with its other employees and to award same. In general I support that thesis but am guided by its premises and a question of relevance to the issue at bar.

In the situation before me proposed I find that some elements of exception are worthy of consideration though I do not agree with most of the conclusions reached by the County and its varied units of employees. For instance I find there to be compelling reason to limit this Agreement to the three year period. Key to this conclusion is the combination of consideration as to the intent of the Legislature to provide a specific period during which fiscal limitations are placed on the parties. To extend the contract period purposely to avoid those sanctions would require an over-riding and compelling rationale which I do not find to exist here. Instead I find that the approval of an extended Agreement would be inconsistent with the normal term of contracts between this Employer and its employees and serve only to avoid the Legislature's directives. Therefore I shall limit the contract period to three years.

[6/18/12 award at 3-4]

The arbitrator further addressed pattern in the inverse. The arbitrator then explained that during the proceedings, the

PBA had proposed the elimination of two of the more expensive health plans - the Medallion and Wrap Around Plans. The County proposed the elimination of the Wrap Around Plan, but continuing the Medallion Plan with greater employee premium contributions. The arbitrator expressed disappointment in the County's proposal because the elimination of the plans for this unit could pave the way for the complete elimination of the costly plans in the future based on pattern and therefore awarded the elimination of the plans for this unit.

As to increments, the arbitrator deviated from the pattern for 2011, but followed it for 2012 and 2013. The arbitrator reasoned in his initial award that:

A further element in this thinking has to do with the claim of the PBA wherein they indicated the prior Agreement made provision for increments to be paid beyond the expiration date of the Agreement unless there would be a formal notification from the County as to a demand for discontinuing that plan. It is claimed that such a notification was never timely served on the union and thus the increments should have been paid in 2011. Instead, the County is said to have simply let it be known that there would be no increments paid to all County employees, paying no attention to its contractual obligation to the PBA. Thus I find the increment monies which would have been paid in the year 2011 should be paid from the savings realized in exchange for continued enrollment in the [less expensive] health benefit plans. It is noteworthy that the Medallion and Wraparound health benefit plans were admitted to having become a thing of the past except for Morris County, particularly as the County resisted the overture of the

PBA to eliminate them in this proceeding and especially so since there was a significant monetary advantage to be realized by accepting the PBA's overture.

[6/18/12 award at 5].

On remand, the arbitrator expanded his consideration of the statutory factors. He determined the interests and welfare of the public to be a factor requiring significant weight and noted that the County is fiscally well managed and so is the corrections facility. He noted that due to its unique nature, the corrections facility requires a full staff to meet its operational needs. Thus, the corrections staff were immune from the layoffs that affected virtually every other County department.^{1/} The arbitrator justified the awarding of the salary increments finding they were required by the prior agreement of the parties. He further noted that he deviated from the settlement pattern for 2011 because he did not find this unit to be on equal negotiations footing with the other County units. Other units were agreeing to wage freezes after suffering layoffs. This unit remained fully staffed and had members promoted. The arbitrator also noted that this unit agreed to major health care concessions that he awarded while the other

^{1/} The County reduced staffing by more than 400 positions which is equal to approximately 25% of staff while corrections remained fully staffed and the County promoted several officers.

units resisted. He further explained his deviation from the settlement pattern based upon this concession by the PBA.

We affirm the award. We do not agree with the County that the arbitrator exceeded his authority by awarding the 2011 increments or that he acted as a grievance arbitrator when he interpreted the prior contract language. The arbitrator's authority to set the terms and conditions of employment for 2011 far exceeded that of a grievance arbitrator. An interest arbitrator retains the conventional authority to make determinations outside the parties' final offers. See Hudson Cty. Pros., P.E.R.C. No. 98-88, 24 NJPER 78 (¶29043 1997) (conventional arbitration allows the arbitrator considerable discretion to fashion an award, although the arbitrator may not reach out and decide issues not presented by the parties). However, those determinations must be based on substantial credible evidence in the record as a whole. Teaneck. Here, the arbitrator relied upon the fact that the County must fully staff the jail; did not layoff any correction officers; and the health benefit concession to justify his awarding of an increment for 2011.

As to the County's insistence that the interest arbitrator must adopt its settlement pattern, we are not persuaded. Similar to how an arbitrator may not only focus on external comparisons under the 16g(2) criteria, it is also improper for an arbitrator

to only focus on the internal settlement pattern of the County with other units. PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71, 85-86; Washington Tp. v. New Jersey PBA Local 206, 137 N.J. 88 (1994); Fox v. Morris Cty., 266 N.J. Super. at 516-517; Cherry Hill. While an arbitrator must be careful to avoid whipsawing when analyzing the wages of other employer units, interest arbitrators have traditionally found that internal settlements are a significant factor. See Somerset Cty. Sheriff's Office and Somerset Cty. Sheriff FOP, Lodge No. 39, P.E.R.C. No. 2007-33, 32 NJPER 372 (¶156 2006), aff'd 34 NJPER 21(¶8 App. Div. 2008). Here, the arbitrator adequately recognized the settlement pattern and explained why he was deviating from it. While an internal settlement pattern is important, it is not determinative as no two units are exactly the same. Where an arbitrator has justified his deviation and the evidence supports it, we will defer to his expertise. Newark; See also Hudson Cty., P.E.R.C. No. 2013-7, ____ NJPER ____ (¶____ 2012) (Award affirmed where arbitrator deviated from settlement pattern and ordered a freeze on increments at contract expiration); Hunterdon Cty. and FOP Lodge No. 94, P.E.R.C. No 2011-75, 37 NJPER 169 (¶55 2011) and 37 and P.E.R.C. No. 2011-80, 37 NJPER 205 (¶65 2011) aff'd 2012 N.J. Super. Unpub. LEXIS 1240 (Award affirmed where arbitrator deviated from settlement pattern and restored annual step increments to police unit based on

record where County had eliminated them from all contracts years prior). We note that we are not persuaded by the arbitrator's finding that this unit was not on equal negotiations footing with the other units.

We find the instant appeal to be without merit as the County asserts that the arbitrator did an adequate job on remand addressing the statutory factors - with the exception of the 2011 increments. The County's appeal reflects its disappointment that its proposal was not awarded. Interest arbitration is an extension of the negotiations process and, within the context of the statutory criteria, an interest arbitrator should fashion an award that the parties, as reasonable negotiators, might have agreed to. Clifton, P.E.R.C. No. 2002-56, 28 NJPER 201 (¶33071 2002) stay pend. appeal denied P.E.R.C. No. 2002-74, 28 NJPER 254 (¶33097 2002). Dissatisfaction with one aspect of an award does not meet our review standard.

As to the remaining arguments of the County, we have independently reviewed the record - including the impact of the award on the local tax levy cap and find the award does not cause a cap problem for the County. We note that the County has not provided any specific argument to establish that the award will cause a cap problem. Our review of the record confirms that the arbitrator evaluated all of the statutory criteria, explained why he gave more weight to some factors and less to others, and

issued a comprehensive award that reasonably determined the issues and is supported by substantial credible evidence in the record.

ORDER

The interest arbitration award is affirmed.

BY ORDER OF THE COMMISSION

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

ISSUED: October 11, 2012

Trenton, New Jersey

P.E.R.C. NO. 2013-28

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF POINT PLEASANT,

Appellant,

-and-

Docket Nos. IA-2012-018
IA-2012-019

PBA LOCAL 158,

Respondent,

-and-

POINT PLEASANT SUPERIOR
OFFICERS ASSOCIATION,

Co-Respondent.

SYNOPSIS

The Public Employment Relations Commission vacates and remands an interest arbitration award to a new arbitrator. The Borough filed an appeal of the award outside the seven-day statute of limitations relying on an Order from the Superior Court permitting it to file a late appeal with the Commission. The Commission considers the appeal in accordance with the Court Order and finds that the award was not in compliance with the 2% salary cap.

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

P.E.R.C. NO. 2013-28

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF POINT PLEASANT,

Appellant,

-and-

Docket Nos. IA-2012-018
IA-2012-019

PBA LOCAL 158,

Respondent,

-and-

POINT PLEASANT SUPERIOR
OFFICERS ASSOCIATION,

Co-Respondent.

Appearances:

For the Appellant, Dasti, Murphy, McGuckin, Ulaky,
Cherkos & Connors, attorneys (Jerry J. Dasti, of
counsel)

For the Respondent, Loccke, Correia, Limsky & Bukosky,
attorneys (Leon B. Savetsky, of counsel and on the
brief)

DECISION

The Borough of Point Pleasant appeals from an interest arbitration award involving two units of law enforcement employees of the Borough. PBA Local 158 represents the patrolmen and sergeants employed by the Borough's Police Department, and the Point Pleasant Superior Officers Association represents the captains and lieutenants employed by the Borough. The parties engaged in joint negotiations for contracts that would commence

on January 1, 2012, and upon failure to reach agreements each filed a petition to initiate compulsory interest arbitration on or about February 16. The petitions were consolidated for interest arbitration proceedings, and a single arbitrator was appointed on or about March 12.

On May 1, 2012, the arbitrator issued his decision and award for an agreement with a duration of January 1, 2012 to December 31, 2015. The Borough appeals from two aspects of that award, both of which are at page 10 of the decision. First, they appeal from that portion of the decision which states:

"I have indicated the implementation of the 2% of salary or 10% of premiums for healthcare beginning on January 1, 2012 is awarded. I do not award further employee contributions."

And :a salary increase of 2% in 2012... 2% increase effective January 1, 2013, 2.5% to be effective on January 1, 2014... and another to be effective on January 1, 2015.

Before moving on to a discussion of the merits of the Borough's appeal, an analysis of the procedural history of this dispute must be undertaken. Under the Police and Fire Public Interest Arbitration Reform Act the Legislature has mandated that any appeal from an interest arbitrator's decision must be taken to the Commission within seven days of the parties' receipt of the award. N.J.S.A. 34:13A-16f(5)(a). In the instant matter, the appeal of the Borough was not filed with the Commission until September 18, 2012, some four months after an appeal was

statutorily mandated. Normally, the failure of the Borough to comply with the mandate of the Reform Act statutory time line would require dismissal of this appeal as untimely.

However, in this matter, based upon representations made in Superior Court, the Honorable Vincent J. Grasso, Assignment Judge of Ocean County, on September 12, 2012 entered an Order that in material part stated:

1. The Court grants the request of the Defendant Borough to permit the Borough to file an appeal of the decision of Arbitrator Frank Mason with seven (7) days of September 12, 2012 to the New Jersey Public Employees (sic) Relations Commission (PERC).
2. In conjunction therewith the Court tolls the seven (7) day statute of limitations time period within which the Borough is required to file an appeal of an arbitrator's decision with PERC.

As of the consideration of this appeal to the Commission, counsel for the PBA has represented in his brief that an appeal of this Order has been filed with the Appellate Division. It is also notable that the Commission was not advised of the proceeding in Superior Court, nor did it participate in that proceeding.

Thus, this is a case of first impression wherein the limitations period mandated by N.J.S.A. 34:13A-16f(5)(c) has been tolled on an equitable basis by a Superior Court Judge. In Kaczmarek v. N.J. Turnpike Authority, 77 N.J. 329 (1978), the Supreme Court considered the six month period of limitation for

filing an unfair practice charge before the Commission established by N.J.S.A. 34:13A-5.4c. In Kaczmarek, the Court held that because the language of the statute setting the six month limitation also stated "unless charging party... was prevented from filing said charge," the Legislature evinced a purpose to permit equitable considerations to be brought to bear." Kaczmarek at 340. To the contrary, here the limitations language in section 16f5(c) contains no such statement providing an exception to the absolute limitations period, and given that the period is but one part of a system of time constraints imposed by the Legislature to insure the stability of labor relations under the Police and Fire Public Interest Arbitration Reform Act, there is a strong reason to question the authority of the Superior Court to toll the limitations period. However, the Commission fully recognizes that only the Appellate Division has the legal authority to review a determination of the Superior court. Therefore, in accordance with that court order, we will consider the Borough's appeal.

Turning to the merits of the appeal, the Commission determines that the arguments of the Borough are well taken, and require the Commission to remand this case to a new arbitrator.

First, the arbitrator failed to comply with the requirements of the Reform Act as elucidated in our prior decision in Borough of New Milford and PBA Local 83, P.E.R.C. No. 2012-53, 38 NJPER

340 (¶116 2012). There was no detailed analysis of the costs of the base year, including increments and longevity. There was no analysis as to how these costs would be calculated in any of the years of the four years awarded, nor was there a calculation demonstrating how the award met the 2% salary cap requirements of N.J.S.A. 34:13A-16.7.

Second, the arbitrator's award of health care contributions of 2% of salary or 10% of the premium cost effective January 1, 2012 violates the mandatory contributions established by P.L. 2011 c. 78. That statute mandates employee contributions based upon varying percentages of premium contributions based upon base salary, and increases the percentage of premium over a four-year period. This failure to recognize the impact of Chapter 78 is specifically violative of N.J.S.A. 34:13A-16g(5) and (9) relating to the lawful authority of the employer, and statutory restrictions imposed upon the employer. Succinctly put, the arbitrator cannot simply issue an award that is contrary to the law.

For these reasons, the award should be vacated and remanded to a new arbitrator to consider the evidence, perform an analysis consistent with the Act, and issue an award.

ORDER

The interest arbitration award is vacated and the case is remanded to the Director of Arbitration for assignment of a new arbitrator.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson and Voos voted in favor of this decision. None opposed. Commissioners Jones and Wall recused themselves.

ISSUED: October 11, 2012

Trenton, New Jersey

P.E.R.C. NO. 2013-49

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF CAMDEN,

Respondent,

-and-

Docket No. IA-2013-007

CAMDEN ORGANIZATION OF
POLICE SUPERIORS,

Appellant.

SYNOPSIS

The Public Employment Relations Commission remands an interest arbitration award for clarification regarding the City of Camden's fiscal crisis, specifically whether recent arbitration awards involving other units have been unpaid due to lack of funds. Moreover, on remand, the arbitrator is directed to provide clarification and/or detailed explanation or response regarding the following: 1) the application of the \$15,000 limit for payment of accumulated vacation and holiday credits; 2) the union's proposal regarding appointment of officers to Civil Service titles only; 3) the union's assertion that he failed to consider evidence that the City recently volunteered to provide other employees with wage increases; and 4) and the union's assertion that he failed to address its severance proposal.

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

CITY OF CAMDEN,

Respondent,

-and-

Docket No. IA-2013-007

CAMDEN ORGANIZATION OF
POLICE SUPERIORS,

Appellant.

Appearances:

For the Respondent, Brown & Connery, LLP, attorneys
(William M. Tambussi, Michael J. DiPiero and Michael J.
Watson, of counsel)

For the Appellant, Alterman & Associates, LLC,
(Christopher A. Gray, of counsel)

DECISION

Camden Organization of Police Superiors (COPS) appeals from
an interest arbitration award involving a unit of approximately
31 police superior officers.^{1/ 2/} The arbitrator issued a

^{1/} We deny COPS request for oral argument. The matter has been
fully briefed.

^{2/} We note that the brief filed by COPS on December 27, 2012
included references to exhibits that were not included with
its brief. On January 8, 2013, we requested that COPS file
an amended brief to include the referenced exhibits that
were left out of its initial filing. On January 9, COPS
filed an amended brief. The amended brief included the
referenced exhibits that were left out of its initial
filing, but also included additional documents that were not
referenced as exhibits in its initial brief. Any additional
documents not referenced as exhibits in COPS initial brief
were struck from the record, as were additional arguments

(continued...)

conventional award as he was required to do pursuant to P.L. 2010, c. 105, effective January 1, 2011.^{3/} A conventional award is crafted by an arbitrator after considering the parties' final offers in light of statutory factors. We vacate and remand the award because the arbitrator failed to articulate the substantial, credible evidence on which he relied.

The issues in dispute during the interest arbitration proceedings involved various economic and non-economic subjects. On December 17, 2012, the arbitrator issued an 11-page Opinion and award. He awarded a contract with a term of January 1, 2009 to December 31, 2013. The issues on appeal center around the following issues:

1) Wages

COPS proposed: 3.75% in 2009, 2.50% in 2010, 2.00% in 2011, 2.00% in 2012, 0.25% in 2013 and 0% in 2014.

City proposed: Freezing of wages on the current salary schedule.

Arbitrator awarded: City's proposal

2) Pay outs for accumulated time:

City proposed: \$15,000 payout limit for accumulated vacation and holiday pay for retirees.

2/ (...continued)
included in its Amended Notice of Appeal.

3/ This award is not subject to the 2% base salary cap because the prior contract did not expire on January 1, 2011 or later.

Arbitrator awarded: City's proposal

3) Appointment process:

COPS proposed: addition of language that "all supervisory officers will be appointed based on established Civil Service Commission Standards and Promotional exams. No police Administration created ranks such as: Executive Officers, Commander or Team Leader will be utilized or recognized.

Arbitrator awarded: Unclear

COPS appeals asserting generally that the arbitrator did not adequately address the statutory factors and that the award is not based on substantial credible evidence in the record. More specifically, COPS argues that the arbitrator mistakenly believed that the City hasn't paid other awards which were paid in full, and that he failed to consider evidence that the City has recently agreed to provide other City employees with wage increases similar to those sought by COPS. COPS also asserts that the arbitrator failed to consider its proposals regarding severance and appointment to Civil Service titles only. It further argues that the arbitrator's award on the \$15,000 cap on accumulated vacation and holiday time was unclear. Moreover, it asserts that the arbitrator did not address his position regarding the City's failure to produce key witnesses requested by COPS.

The City responds that the arbitrator's award is supported by substantial credible evidence in the record and the arbitrator gave due weight to each of the statutory factors.

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

(1) The interests and welfare of the public. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by P.L. 1976, c. 68 (C.40A:4-45.1 et seq.).

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

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

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

(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).

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

The standard for reviewing interest arbitration awards is well established. We will not vacate an award unless the appellant demonstrates that: (1) the arbitrator failed to give "due weight" to the subsection 16g factors judged relevant to the resolution of the specific dispute; (2) the arbitrator violated the standards in N.J.S.A. 2A:24-8 and -9; or (3) the award is not supported by substantial credible evidence in the record as a whole. Teaneck Tp. v. Teaneck FMBA, Local No. 42, 353 N.J. Super. 298, 299 (App. Div. 2002), *aff'd* o.b. 177 N.J. 560 (2003), citing Cherry Hill Tp., P.E.R.C. No. 97-119, 23 NJPER 287 (¶28131 1997). An arbitrator must provide a reasoned explanation for an

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

The arbitrator refers throughout his award to the fiscal crisis in which the City finds itself, and points to recent arbitration awards involving other negotiating units which were unpaid due to lack of funds. Indeed, the prevalent theme throughout the award is the arbitrator's belief that the City did not have available funding to provide any increased costs that he might award. In its brief on appeal, COPS vehemently argues that all awards from previous arbitrators were in fact paid in full. During the hearings, the City denied that one of the awards had been paid, and asserted that the other was paid in part due to unexpected grants received by the City. Since the arbitrator's findings regarding the City's fiscal crisis in part relied upon its inability to fund these previous awards, clarification is needed regarding the payment status of these awards. On remand, the arbitrator should seek to verify if in fact these awards were paid, and the source of the funds utilized to make any payments

that have occurred. The arbitrator should also explain whether and how any new information or clarification coming to him during the remand affects his ultimate conclusion regarding the existence of the City's fiscal crisis and his ultimate award.

Also on remand the arbitrator must provide clarification and/or detailed explanation on the following issues:

- Whether the application of the \$15,000 limit for payment of accumulated vacation and holiday credits at retirement is prospective or retroactive. The arbitrator must identify and explain the "2006 freezes" he refers to in the award and elaborate on the interplay, if any, between the \$15,000 limit he awarded and the "2006 freezes."
- His finding that "the appointment of officers to alternate positions was ruled upon above." We infer that the arbitrator is referring to COPS proposed language for the appointment process to be limited to use of Civil Service titles only. However, it is unclear what was ruled upon above and the arbitrator must elaborate on what his finding is on this issue.

- COPS assertion that he failed to consider evidence that the City has recently voluntarily agreed to provide other employees with wage increases that were on par with those requested by COPS.
- COPS assertion that he failed to address its severance proposal.

ORDER

The award is vacated and remanded to the arbitrator for a new award within 45 days of this decision. Any additional appeal by the parties must be filed within seven calendar days of service of the new award.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson, Jones, Voos and Wall voted in favor of this decision. None opposed.

ISSUED: January 25, 2013

Trenton, New Jersey

P.E.R.C. NO. 2013-59

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NORTH HUDSON REGIONAL
FIRE AND RESCUE,

Appellant/Respondent,

-and-

Docket No. IA-2010-099

NORTH HUDSON FIREFIGHTERS
ASSOCIATION,

Appellant/Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the North Hudson Firefighters Association's motion for reconsideration of a decision by the Commission Chair dismissing its appeal of a supplemental interest arbitration award. The Commission finds that the Association filed its appeal outside the seven-day time frame required by N.J.S.A. 34:13A-16f(5)a. The Commission holds that the Association has not established unusual circumstances or good cause under N.J.A.C. 19:10-3.1(a) to justify relaxing the statutory appeal deadline.

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

NORTH HUDSON REGIONAL
FIRE AND RESCUE,

Appellant/Respondent,

-and-

Docket No. IA-2010-099

NORTH HUDSON FIREFIGHTERS
ASSOCIATION,

Appellant/Respondent.

Appearances:

For North Hudson Regional Fire and Rescue, Scarinci &
Hollenbeck, LLC (Ramon E. Rivera, of counsel and on the
brief; Christina Michelson, on the brief)

For North Hudson Firefighters Association, Cohen,
Leder, Montalbano & Grossman, LLC (Bruce D. Leder, of
counsel)

DECISION

On November 26, 2012, the North Hudson Firefighters
Association filed a motion for reconsideration of the dismissal
of its appeal of a supplemental interest arbitration award. The
supplemental interest arbitration award was received by the
parties on November 5, 2012. Parties have seven days to file an
appeal of an interest arbitration award. N.J.S.A. 34:13A-16f
(5)a.^{1/} Therefore, any appeal had to be filed by November 13.

1/ Moreover, the Commission's order in the decision remanding
the award to the arbitrator for clarification and the
issuance of a supplemental award advised that any appeal
(continued...)

The Association did not file its appeal until November 16. The Association argues that when computing the time period for appeal, intervening Saturdays, Sundays and holidays should not be included. However, N.J.A.C. 19:10-2.1(a) only allows for the exclusion of Saturdays, Sundays and legal holidays when the period of time prescribed is less than seven days.

Alternatively, the Association relies on N.J.A.C. 19:10-3.1(a) which provides that "when unusual circumstances or good cause exists and strict compliance with the terms of these rules will work an injustice or unfairness", we may construe the rules liberally. The Association first argues that there was a disruption of services at its attorney's office due to Hurricane Sandy, but provides no particularized circumstances regarding this assertion.^{2/} The Association also argues that the arbitrator made errors in calculating base salary in the supplemental award.^{3/} Neither assertion rises to the level of unusual circumstances or good cause envisioned by N.J.A.C. 19:10-

1/ (...continued)
must be made within seven days from receipt of the supplemental award.

2/ We note that the Association's attorney could have called prior to the appeal deadline and requested an extension of time due to any compelling circumstances resulting from Hurricane Sandy.

3/ We note that one of the grounds for remand of the initial Award was for the arbitrator to provide clarification on base salary figures due to the Association's assertion that it was calculated in error.

3.1(a). Moreover, the time frame for appeals of interest arbitration awards is set by the Legislature and is statutory, not regulatory. Only in the most exceptional and extraordinary of circumstances might we have the authority to relax the requirement that interest arbitration appeals must be filed within seven days. Surf City, P.E.R.C. No. 2004-80, 30 NJPER 214 (¶81 2004). The Association's motion for reconsideration is denied.

ORDER

The North Hudson Firefighters Association's motion for reconsideration of the dismissal of its appeal of a supplemental interest arbitration award is denied.

BY ORDER OF THIS COMMISSION

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

ISSUED: February 28, 2013

Trenton, New Jersey

P.E.R.C. NO. 2013-72

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF BYRAM,

Appellant,

-and-

Docket No. IA-2013-012

SUSSEX COUNTY PBA LOCAL NO. 138
(BYRAM TOWNSHIP UNIT),

Respondent.

In the Matter of

TOWNSHIP OF BYRAM,

Petitioner,

-and-

Docket No. SN-2013-045

SUSSEX COUNTY PBA LOCAL NO. 138
(BYRAM TOWNSHIP UNIT),

Respondent.

SYNOPSIS

The Public Employment Relations Commission affirms in part and vacates in part an interest arbitration award establishing the terms of an agreement between the Township of Byram and the Sussex County PBA Local No. 138 (Byram Township Unit). The Commission vacates the portion of the award allowing payments for unused sick leave for officers who remain employed, reasoning that it is not simply a different method of receiving benefits already earned, but is a new economic benefit not contained in the parties prior agreement, thus violating N.J.S.A. 34:13A-16.7. The prior agreement had allowed such payments only on retirement or separation from employment. The arbitration award is otherwise affirmed.

The Commission dismisses, as moot, a scope of negotiations petition related to the interest arbitration proceeding, as the one proposal identified in the petition and awarded by the arbitrator, was not part of the employer's appeal from the award.

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

P.E.R.C. NO. 2013-72

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF BYRAM,

Appellant,

-and-

Docket No. IA-2013-012

SUSSEX COUNTY PBA LOCAL NO. 138
(BYRAM TOWNSHIP UNIT),

Respondent.

In the Matter of

TOWNSHIP OF BYRAM,

Petitioner,

-and-

Docket No. SN-2013-045

SUSSEX COUNTY PBA LOCAL NO. 138
(BYRAM TOWNSHIP UNIT),

Respondent.

Appearances:

For the Appellant/Petitioner, Laddey, Clark & Ryan,
attorneys (Thomas N. Ryan and Jessica A. Jansyn, on
the brief)

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

DECISION

On March 11, 2013, a 90 page interest arbitration award was issued to resolve a negotiations impasse between the Township of Byram and the Sussex County PBA Local No. 138 (Byram Township Unit), the representative of the Township's police officers, over

the terms of a collective negotiations agreement to succeed the one that had expired on December 31, 2012.

On March 20, 2013, the Township filed a Notice of Appeal and supporting brief seeking to overturn four aspects of the Award:

- Annual salary increases awarded by the arbitrator;
- New language concerning the procedure for police to apply for approval of tuition reimbursement of college courses;
- Giving employees with large amounts of accumulated, but unused, sick leave, the option of receiving payment for some of the leave while still employed;
- The directive to the parties to study health insurance options for sixty days, after which the arbitrator would make an award if the parties had not reached agreement.^{1/}

On March 26, 2013, the PBA filed a response in opposition to the PBA's appeal.^{2/}

N.J.S.A. 34:13A-16g requires that an arbitrator state in the award which of the factors are deemed relevant, satisfactorily

1/ The Township also filed a petition for scope of negotiations determination (Docket No. SN-2013-045) asserting that several PBA proposals were not mandatorily negotiable. The petition was referred to the arbitrator for a decision. The arbitrator found two of the disputed proposals were not mandatorily negotiable; one issue was withdrawn and another was not awarded. The remaining proposal was awarded by the arbitrator, but the Township's appeal does not contest that ruling. As the PBA has not appealed the arbitrator's ruling that two of its proposals were not mandatorily negotiable, we need not rule on the issues raised by the scope of negotiations petition. See N.J.A.C. 19:16-5.7(i).

2/ The Township's request for oral argument is denied. The matter has been fully briefed.

explain why the others are not relevant, and provide analyze the evidence on each relevant factor. The statutory factors are:

- (1) The interests and welfare of the public
. . . ;
- (2) Comparison of the wages, salaries, hours, and conditions of employment of the employees with the wages, hours and conditions of employment of other employees performing the same or similar services and with other employees generally:
 - (a) in private employment in general . . . ;
 - (b) in public employment in general . . . ;
 - (c) in public employment in the same or comparable jurisdictions;
- (3) the overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received;
- (4) Stipulations of the parties;
- (5) The lawful authority of the employer
. . . ;
- (6) The financial impact on the governing unit, its residents and taxpayers
. . . ;
- (7) The cost of living;
- (8) The continuity and stability of employment including seniority rights
. . . ; and

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

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

We will not vacate an interest arbitration award unless the appellant demonstrates that: (1) the arbitrator failed to give "due weight" to the subsection 16g factors judged relevant to the resolution of the specific dispute; (2) the arbitrator violated the standards in N.J.S.A. 2A:24-8 and 9; or (3) the award is not supported by substantial credible evidence in the record as a whole. Teaneck Tp. v. Teaneck FMBA, Local No. 42, 353 N.J. Super. 298, 299 (App. Div. 2002), aff'd o.b. 177 N.J. 560 (2003), citing Cherry Hill Tp., P.E.R.C. No. 97-119, 23 NJPER 287 (¶28131 1997). Because the Legislature entrusted arbitrators with weighing the evidence, we will not disturb an arbitrator's judgment unless an appellant shows that the arbitrator did not adhere to the standards. Teaneck, 353 N.J. Super. at 308-309; Cherry Hill. The Appellant must show how the arbitrator misapplied the law. See City of Newark, P.E.R.C. No. 99-97, 25 NJPER 242, 243 (¶30103 1999).

Payment of accumulated sick leave during active employment

The most recent agreement provides that:

- At retirement, an officer will be paid for accumulated, unused sick leave at the rate of one hour of pay for every two hours in the officer's sick leave bank;
- An officer who terminates employment with the Township in good standing, at any time prior

to retirement, will be compensated for unused, accumulated sick leave at the rate of one hour of pay for every four hours in the officer's sick leave bank.

The PBA proposed a third method of payment for unused sick leave available only to officers with large balances (750 or more hours) of accumulated sick leave. The proposal would allow an officer to a "cash-out" of up to 240 hours of the accumulated leave at the end of a calendar year, provided that the payment, a maximum of 120 hours of compensation, would not reduce the officer's sick leave balance below 750 hours.^{3/} The subtraction of 240 hours from the officer's sick leave bank must keep the balance at no less than 750 hours, assuming no other use of sick time. The arbitrator awarded this proposal, but included language requiring that an officer submit a notice to the Township by July 1 listing how much leave was to be cashed in.

The Township argued to the arbitrator, as it now does to us, that the PBA proposal cannot be awarded, because it is a "new economic benefit," prohibited by N.J.S.A. 34:13A-16.7. This statute provides in pertinent part:

An award of an arbitrator shall not include
base salary items and non-salary economic

^{3/} Thus, under these conditions, an officer with 990 hours of unused sick leave could exchange 240 hours for a cash payment equivalent to 120 hours of compensation at the officer's rate of pay for that calendar year. The Interest Arbitrator's report [at 79-80] identifies three current officers who could meet these conditions and partially cash in their accumulated sick leave.

issues which were not included in the prior collective negotiations agreement.

The employer asserts that a cash payment for unused sick leave during employment, rather than on retirement or separation from employment, is an economic benefit not currently provided for in the agreement.

The arbitrator reasoned:

The contract already provides for payment of unused sick leave - currently upon retirement or termination of employment in good standing. The proposal simply advances the date on which an employee could cash in.

[Award at 78]

We find that the additional option awarded by the arbitrator is not simply a different method of receiving the benefits already earned under the previous contracts. The most recent agreement provides that an officer can only receive payments at the end of his/her service with the employer; either on retirement (1 day of pay for every 2 days of sick leave) or when the employee terminates "in good standing," (1 day of pay for every 4 days of sick leave). The additional language allows an officer to a partial payout of accumulated sick leave while remaining on active duty. Potentially, veteran officers with large amounts of unused accumulated sick leave, could receive such payments every year at the same compensation ratio that

applies to payment on retirement.^{4/} We conclude that the award of the sick leave payout "while still employed" option conflicts with and is therefore preempted by N.J.S.A. 34:13A-16.7. We will vacate this aspect of the award.^{5/}

Educational Incentive

The parties expired agreement (Article XVII) provides:

In addition to all other wages and benefits provided in this Agreement, each employee shall be entitled to an additional payment, if the Employee is qualified for same,

4/ Noting that two officers who retired in 2012 had received unused sick leave payments, the arbitrator posited that the PBA proposal could save the Township money as sick leave payments during active employment would be at lower rates.

That observation assumes that any remaining sick leave would only be paid out on retirement. But the benefit could be used by officers who later separate from employment in good standing rather than retire.

The arbitrator noted that there were two employees with 1500 hours or more of accumulated unused sick leave. [Award at 79-80]. They could take advantage of the benefit for three straight years by exchanging 240 hours of sick leave for a cash payment equivalent to 120 work hours in each year while maintaining at least 750 hours in their sick leave "banks". If they separated from Township employment in good standing, in the next year, they could receive one hour of pay for every four hours left in their sick leave banks. Under the most recent agreement, the 1 for 2 payment ratio only applies where the officer retires. Given the above example, the arbitrator's award of this option potentially makes the sick leave payment benefit more valuable to the officers and more costly to the Township than it was under the prior agreement.

5/ Given our ruling we need not discuss how this benefit would affect the availability of sick leave if needed in future years for long-term illnesses or injuries.

pursuant to the qualifications and limitations as set forth in Schedule B.^{6/}

The Township proposed these changes to Schedule B:

1. Addition to Section B

Approval for reimbursement of tuition and book costs is at the sole discretion and approval of the Township manager with recommendation from the Chief of Police. Approval must be obtained prior to start of classes for which reimbursement will be sought.

2. New Section D:

A single employee shall in one calendar year receive no more than \$1,500 in required tuition, fees, and textbooks. Reimbursement of tuition, books, and fees shall be made upon presentation of certificates

6/ Schedule B contains multiple paragraphs addressing:

- Compensation per credit hour (A);
- That, following exhaustion of outside sources of payment, the Township will reimburse for tuition and related expenses (B);
- Documentation required to show credits that were earned and when payments will be made (C);
- Reimbursement of tuition & book fees shall be made upon documentation of successful course completion and documentation that outside sources of payment are unavailable (D);
- To be eligible for reimbursement a grade of "C" or better must be earned (E);
- The maximum credit hours eligible for reimbursement is 175 (F);
- An officer employed prior of December 31, 1980 is eligible for reimbursement of all credit hours earned prior to the start off the agreement (G).

establishing that a course has been successfully completed as required in Section E and documentation that all other means of payments by outside agencies are unavailable. The total education payments to the police department shall not exceed \$15,000 in anyone calendar year.

The arbitrator declined to award the \$15,000 cap proposed by the employer.^{1/} She awarded a modified version of the Township's proposed supplement to Section B, reasoning that the Township should have advance notice in order to know how much it may have to allocate for tuition and related expenses in a given year. The language [Award at 87] reads:

Employees shall be required to obtain preliminary approval from the Chief of Police before taking any course for which reimbursement is expected. Preapproval will be based upon the criteria set forth in this paragraph and in paragraph C of this Article.

The Township argues that this language improperly shifts, from the Township Manager to the Chief of Police, the authority to approve educational reimbursement requests and conflicts with its "Council-Manager" government, N.J.S.A. 40:69A-81, et seq.

The PBA responds that the employer is misreading the award. It asserts that the new language appropriately provides that the chief is to be a "conduit" for requests and approvals as part of

^{1/} The Township makes no specific arguments concerning the arbitrator's denial of its proposed annual cap on reimbursements. Accordingly, that ruling is not part of its appeal. Cf. Gormley v. Wood-El, 422 N.J. Super. 426, 437, n.3 (issue not briefed on appeal is deemed abandoned).

the chain of command. The PBA maintains that the award makes no substantive change, emphasizing that there is no alteration of the criteria determining the types of courses and degrees that are eligible for reimbursement.

Given the terms of the additional language awarded (e.g. "Preliminary approval" and "Preapproval") we cannot agree that the award diminishes the authority of the Township Manager on this subject, assuming, for the sake of argument, that the Township Manager and/or the Township have the final say on courses that qualify for reimbursement.^{8/} The employer cites no statute or court decision that specifically speaks to this issue and supports its position. And, tuition reimbursement is normally mandatorily negotiable. See Board of Education of the City of Englewood v. Englewood Teachers Association, 64 N.J. 1, 8 (1973). We affirm this aspect of the award.

Health Insurance (Current and New Employees)

The Township proposed that police be moved from their current plan (Aetna Open Access) to the same health insurance plan that covers civilian employees (Aetna Patriot V Plan). In addition, the Township proposed that officers hired after January 1, 2013 be placed on one of three other plans, Preferred

^{8/} N.J.S.A. 40A:14-118 allocates the authority to conduct day-to-day operations of a police department to the chief, while reserving policy matters for the governing body.

Choice Plan, the HMO Plan, or the High Deductible Plan (HSA). Initially, the PBA sought to maintain the current health insurance plan for the employees it represents. But, near the conclusion of the interest arbitration, it proposed that a study committee, composed of labor and management, be formed to study plan alternatives for a period of 60 days. If the parties could not agree upon alternative plans, then the arbitrator would impose a plan from among those offered by the parties.

The arbitrator's award contains a thorough discussion and comparison of the current and alternative health insurance plans that were presented by the parties. [Award at 63 to 73]. She reviewed all cost factors for both current and new employees and for the Township, including the rising employee share of health insurance premiums (considering the impact of P.L. 2011, c.78), differences in coverages, and the increasing cost to the employer of providing health insurance, particularly under the Open Access Plan available to the negotiating unit which has lower co-pays and deductibles for using out-of-network providers than the plan covering the Township's civilian employees. She determined:

[I]t is in the interests of both the Township and the PBA to consider alternative health care plans. The current Open Access Plan, which has all the earmarks of traditional plan coverage, is a costly plan and for most employees - both public and private - an option which is no longer available. I am convinced that the parties need to get out of this plan.

However, I am not satisfied that the alternative plans proposed by the Township are the best alternatives that can be found. Quite candidly, the plan costs seem expensive compared to the quality of benefits offered, in comparison to other plans I have been presented with in other arbitrations.

[Award at 70]

Rather than award one or more of the proposed alternatives she agreed with the PBA proposal to have the parties explore and, hopefully, come to an agreement on, a change in health coverage:

The Township and the PBA (together with representatives of the Township's civilian employees, (if such participation is required) shall, within ten days of this award, form a joint labor management committee to study health care plan alternatives to the current Aetna Open Access Plan. The committee shall exercise due diligence to explore options with an objective of reaching an agreement upon alternative plans to be offered to current employees and alternatives to be offered to new employees. In the event that the parties fail to reach agreement upon mutually satisfactory plans, then I will retain jurisdiction to impose alternative plans upon the parties.^{9/}

The Township asserts that this directive violates N.J.S.A. 34:13A-16f(5) which it construes as requiring an arbitrator to render an award on all issues within 45 days of her assignment to

^{9/} The arbitrator also referred to a proposed, but not yet adopted, Department of Community Affairs regulation addressing the approval of health insurance plans for public employers that do not participate in the State Health Benefits Program. As the parties have not commented on this issue, we do not offer any opinion on the proposal.

the case. It argues that the arbitrator cited no authority that would allow her to issue this directive, nor did she set a deadline on when she would make her determination if the parties could not agree.

The PBA responds that the directive to form a study committee on health care was a "decision" by the arbitrator and does not violate the interest arbitration law.

The directive that the parties form a health insurance study committee does not violate the interest arbitration law. The Commission can remand an appealed award. A remand produces a final award issued past the 45-day window. See City of Camden, P.E.R.C. No. 2013-49, 39 NJPER 318 (¶109 2013), (vacating December 17, 2012 award; remanding for a new award within 45 days, i.e., March 11, 2013).

The parties must implement an award on receipt.^{10/} Thus, the health care study committee should already have been formed and be pursuing its assigned task. We do agree that the arbitrator should not have an unlimited amount of time to issue a

^{10/} N.J.S.A. 34:13A-16f(5)(b) provides, "An arbitrator's award shall be implemented immediately." P.L. 2010, c. 105, deleted language that had allowed a grace period where the award was appealed. The same statute previously read:

An award that is not appealed to the commission shall be implemented immediately. An award that is appealed and not set aside by the commission shall be implemented within 14 days of the receipt of the commission's decision absent a stay.

ruling on health care coverage in the event the parties do not reach an agreement. In accordance with our normal practice when we remand all or part of an interest arbitration award, we will direct that the arbitrator issue a ruling on health care plans, if necessary, within 45 days of receipt of this decision.^{11/}

Salary Increases

The arbitrator awarded these across-the-board base salary increases:

Effective and retroactive to 1/1/13: 1.25% to all employees;

Effective 1/1/14: 1.5% to all employees;

Effective 1/1/15: 2.0% to all employees;

The Township argues these increases are excessive asserting:

1. The award exceeds the two per cent salary cap established by N.J.S.A. 34:13A-16.7;
2. The arbitrator miscalculated the costs to the Township of the salary increases.

^{11/} As we have previously emphasized, because immediate implementation of an award is required by law, the parties should have formed their study committee 10 days after receipt of the March 11, 2013 award. Assuming they did so, the 60 day period will expire on May 20. This remand would require the arbitrator to issue her supplemental ruling on or before June 3. That date is approximately two weeks after the health insurance study committee should have finished its work or reached an agreement. We deem that a sufficient period for the interest arbitrator to receive any supplemental submissions and to make her determination.

With regard to its first contention, the Township argues that the arbitrator's calculation of the costs of her salary award improperly took into account longevity payment savings in 2013 resulting from the retirement of two veteran officers in 2012 who had been receiving such payments.

Borough of New Milford, P.E.R.C. No. 2012-53, 38 NJPER 340, 344 (¶116 2012) explains how an interest arbitrator must calculate and cost out base salary:

The statutory definition of base salary includes the costs of the salary increments of unit members as they move through the steps of the salary guide. Accordingly, the arbitrator must review the scattergram of the employees' placement on the guide to determine the incremental costs in addition to the across-the-board raises awarded. The arbitrator must then determine the costs of any other economic benefit to the employees that was included in base salary, but at a minimum this calculation must include a determination of the employer's cost of longevity. Once these calculations are made, the arbitrator must make a final calculation that the total economic award does not increase the employer's costs for base salary by more than 2% per contract year or 6% in the aggregate.^{12/}

^{12/} All of the officers employed by the Township in 2012 were at the top step of their salary guides. Accordingly, no base salary increases resulted from incremental steps. In addition, because the Byram employees received a split raise in 2012, the arbitrator appropriately factored that in to her base salary computations rather than rely on a scattergram showing salary placement at the end of 2012.

In New Milford, the PBA asserted that the base salary increase should factor in savings realized from the retirement of two officers. We responded [Id.]:

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

The arbitrator [Award at 41 to 42] discussed the issue.

[D]ue to retirements of two top-paid officers with maximum longevity, the Township will spend fewer dollars on police department salaries in 2013 and again in 2014 than it did in 2012. This is true, even if it hires two new recruits in 2013, as it anticipates doing. More specifically, the cost of base pay and longevity for all unit employees in 2012 was an aggregate of \$1,492,985. With the increases being awarded herein, the 2013 cost for unit employees' base pay and longevity will be \$1,311,146. In 2014, the cost will be \$1,319,649. In 2015, the cost will be \$1,379,223. The projected costs above do not include the costs of new hires as the salaries are speculative.

Her award contains a chart showing her computations of base salary increases:

Year	ATB Cost	Longevity	Total
2013	15,658.91	(7,059.54)	8,599.37
2014	19,091.35	4,621.59	23,712.94
2015	25,964.23	7,651.60	33,615.83
Totals	60,714.49	5,213.65	65,928.14

The arbitrator explained:

This amount is well below the 2% arbitration cap of \$29,859.72 per year. Further, as explained above, it will cost the Township less in 2013 and 2014 to fund its police salary and longevity payments than what was spent in 2012. Thus, this award will not exceed the Township's appropriation cap and tax levy cap.

Based upon New Milford, we conclude that the longevity savings resulting from the retirement of the two officers in 2012, should not have been included in the calculation of base salary increases for 2013. Accordingly, the above chart should be corrected as follows:

Year	ATB Cost	Longevity	Total
2013	15,658.91	0	15,658.91
2014	19,091.35	4,621.59	23,712.94
2015	25,964.23	7,651.60	33,615.83
Totals	60,714.49	12,273.19	72,987.68

Despite this error, the arbitrator's award did not exceed the 2% per year cap on salary increases mandated by N.J.S.A. 34:13A-16.7.

The arbitrator accepted the Township's position that base salary, as defined by N.J.S.A. 34:13A-16.7, could increase by no more than \$89,579.16 over the life of the new agreement. Thus both the figure reached by the arbitrator (\$65,928.14) by factoring in saved longevity payments attributable to the retired employees, and our revised total (\$72,987.68), omitting that deduction, are still well within the cap. Thus even though the arbitrator erred by deducting the saved longevity payments, that error was harmless.

The second aspect of the employer's appeal from the salary award lacks merit. The Township claims that the arbitrator did not take into account that the employees received a split raise in 2012. The award expressly shows that the arbitrator was aware of and took into account the split raise.

In accepting the Township's 2012 base salary figure, and rejecting the one proffered by the PBA, the arbitrator said:

The Township calculated total base paid at \$1,492,986. It used the correct methodology to arrive at its calculations of total base paid (T-9). The PBA used a scattergram approach and used the final 2012 salary on the step guide, times the number of employees at each step. It arrived at a total base paid of \$1,565,802. This is not accurate because it discounts the fact that employees did not earn this salary until July. The salaries, as well as longevity payments, for 2012 must be pro-rated.

[Award at 38, n.9, emphasis supplied]

We reject the Township's appeal that the arbitrator's award violated the statutory cap on base salary increases.

ORDER

A. The portion of the interest arbitration award allowing payments for unused sick leave to officers who remain on active duty is vacated. The arbitration award is otherwise affirmed, as modified. The arbitrator shall retain jurisdiction to issue a ruling on health insurance coverage in the event the parties have not been able to reach an agreement. The arbitrator shall issue a supplemental ruling on health care coverage, if necessary, on or before June 3, 2013.

B. The scope of negotiations petition, SN-2013-045 is dismissed.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson and Voos voted in favor of this decision. None opposed. Commissioners Jones and Wall recused themselves.

ISSUED: April 18, 2013

Trenton, New Jersey

P.E.R.C. NO. 2013-79

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF ATLANTIC CITY,

Appellant,

-and-

Docket No. IA-2013-011

ATLANTIC CITY POLICE SUPERIOR
OFFICERS ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission affirms an interest arbitration award establishing the terms of a successor agreement between the City of Atlantic City and the Atlantic City Superior Officers Association. The City appealed the award, arguing that the arbitrator failed to consider the statutory criteria when he did not award the City's proposal to freeze police captain salaries and reduce salary for newly hired officers. The Commission finds that the arbitrator considered all of the N.J.S.A. 34:13A-16g statutory factors, and that the award is supported by substantial credible evidence.

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

CITY OF ATLANTIC CITY,

Appellant,

-and-

Docket No. IA-2013-011

ATLANTIC CITY POLICE SUPERIOR
OFFICERS ASSOCIATION,

Respondent.

Appearances:

For the Appellant, Ruderman & Glickman, attorneys
(Steven S. Glickman, of counsel)

For the Respondent, O'Brien, Belland, & Bushinsky,
attorneys (Jeffrey R. Caccese, of counsel)

DECISION

On March 27, 2013, the City of Atlantic City ("City") appealed from an interest arbitration award involving a unit of approximately 9 police captains represented by the Atlantic City Police Superior Officers Association ("SOA").^{1/} The arbitrator issued a conventional award as he was required to do pursuant to P.L. 2010, c. 105. A conventional award is crafted by an arbitrator after considering the parties' final offers in light of statutory factors. We affirm the award.

^{1/} We deny the City's request for oral argument. The issues have been fully briefed.

The SOA proposed a three-year agreement with a duration commencing January 1, 2013 through December 31, 2015 with 2% across-the-board wage increases effective January 1 of each year. The SOA proposed no other changes to the parties' agreement.

The City proposed a three-year agreement with 0% across-the-board wage increases; a reduced salary and elimination of longevity for employees hired on or after January 1, 2013; freezing longevity for current employees; new education and training incentives; limiting terminal leave to \$15,000; deleting command differential; revising the overtime eligibility calculation; reduction in vacation time for new captains; eliminating personal days; and eliminating shift differential.

On March 14, 2013, the arbitrator issued a 106-page opinion and award. He summarized the parties' offers and reviewed in detail their respective arguments supporting their proposals. He awarded the following substantive changes:

1. Duration - January 1, 2013 through December 31, 2015;
2. Wages - 2013 - 2% retroactive to January 1, 2013;
2014 - 2% across-the-board
2015 - 1.88% across-the-board

The existing captains salary of \$129,741.04 shall be frozen for all new employees hired by Atlantic City Police Department after January 1, 2013; and subsequently promoted to the rank of captain.

All current employees hired prior to January 1, 2013 shall receive the pay rates established by

this Award. Furthermore, any employee hired by the Atlantic City Police Department prior to January 1, 2013 and subsequently promoted to the rank of Captain, shall be subject to the new pay rate in the instant award.

3. Article XIII, Special Leaves

Section B. Funeral leave shall be amended to include language reading "5 consecutive working days of paid leave in the event of the death of a member of the officer's immediate family."

The definition of "immediate family" will be modified to include *Domestic or Civil Union* partner.

The final sentence of Article XIII, Section B with respect to an additional two (2) working days of paid leave being granted for travel of more than two hundred and fifty (250) round trip miles for viewing and funeral, shall be changed so that the miles will be calculated based on vehicular travel using MapQuest.

4. Article XV Longevity shall be amended as follows:

Section B shall be modified to read- "For all *Employees promoted before January 1, 2013* ...the practice governing longevity shall be as follows:

New Section C to state:

The following longevity schedule shall apply to all employees newly hired after January 1, 2013, and subsequently promoted to the rank of Captain:

<u>Years</u>	<u>Payment</u>
5	\$2,595.00
10	\$5,190.00
15	\$7,784.00
20	\$12,974.00

All current employees hired before January 1, 2013 shall continue to receive longevity according to the existing schedule contained in the expired CNA.

All City employees hired before January 1, 2013, but promoted after January 1, 2013 will receive longevity pay in accordance with the previous percentage schedule based on years of service.

5. Article XVII Education and Training Incentives is amended to include:

A New paragraph shall be inserted stating:

All current employees hired prior to January 1, 2103, will continue to receive previous educational incentives existing under the terms set forth in the expired CNA. Furthermore, those employees hired prior to January 1, 2013 will remain eligible to receive the educational incentive under the previous schedule set forth in the expired CNA. All employees hired after January 1, 2013 [who] receive police science or related training and incentives as set forth below shall be acknowledged with special salary increments, based upon the following "new" schedule scale:

- A) Upon the completion of an Associate's Degree or sixty-four (64) credits, of which fifteen (15) credits must be in professionalism (job related) courses and/or job related training, the employee shall receive a \$2,600.00 additional increment ion base salary.
- B) Upon the completion of a Bachelor's Degree or one hundred and twenty-eight (128) credits, of which thirty (30) credits must be in professionalism (job related) courses and/or job related training, the employee shall receive a \$1,000.00 additional increment on his/her base salary.
- C) Upon the completion of a Master's Degree or one hundred and seventy-five (175) credits, of which thirty-six (36) credits must be in professionalism (job related) courses and/or job related training, the employee shall receive a \$1,000.00 additional increment on his/her base salary.

6. Article XIX Terminal leave With Pay, shall be amended to indicate:

Under section B "Plan B" -

The accumulated sick leave lump sum payment shall be capped at \$15,000.00 for all employees hired into the Atlantic City Police Department after January 1, 2013, and subsequently promoted to the rank of Captain.

All current Captains hired prior to January 1, 2013, will continue to receive the terminal leave pay outs contained in the expired CNA. Furthermore, all those employees hired into the ACPD prior to January 1, 2013, but subsequently promoted to the rank of captain shall receive the Terminal Leave payouts in the expired CNA.

7. Replace Article XXVII Personnel Officer with Personnel Committee
8. Article XXVII Sick and Injured shall be modified to include the following language at the end of paragraph 2:

A cap of \$15,000 shall apply to all payments for accumulated sick leave made to employees hired by the City of Atlantic City after January 2, 2013 and subsequently promoted. Any current employees hired before January 1, 2013 who are subsequently promoted will be covered by the language in the expired CNA.

9. Article XXIX Vacations, shall be modified to reflect:

New Paragraph B:

Any employees hired after January 1, 2013 will be subject to the "new" vacation schedule of 25 days.

All current employees hired prior to January 1, 2013 will continue to receive the previous vacation as set forth in the expired CNA. Furthermore, those employees hired after January 1, 2013, will receive vacation leave

in accordance with the previous vacation schedule set forth in the expired CNA.

All other proposals were denied and dismissed and the expired agreement was carried forward except for those terms that were modified by the award. The arbitrator also certified that he had taken the statutory limitation imposed on the local tax levy cap into account and that the award explained how the statutory criteria factored into his final award.

The City's appeal focuses on the arbitrator's salary award. It asserts the arbitrator failed to consider the statutory criteria when he did not award the City's proposal to freeze the salary of police captains and reduce the salary for officers hired after January 1, 2013.

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

- (1) The interests and welfare of the public
 . . . ;
- (2) Comparison of the wages, salaries,
 hours, and conditions of employment of
 the employees with the wages, hours and
 conditions of employment of other
 employees performing the same or similar
 services and with other employees
 generally:
 - (a) in private employment in general .
 . . . ;
 - (b) in public employment in general . .
 . ;

- (c) in public employment in the same or comparable jurisdictions;
- (3) the overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received;
- (4) Stipulations of the parties;
- (5) The lawful authority of the employer . . . ;
- (6) The financial impact on the governing unit, its residents and taxpayers . . . ;
- (7) The cost of living;
- (8) The continuity and stability of employment including seniority rights . . . ; and
- (9) Statutory restrictions imposed on the employer. . . .

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

The standard for reviewing interest arbitration awards is well established. We will not vacate an award unless the appellant demonstrates that: (1) the arbitrator failed to give "due weight" to the subsection 16g factors judged relevant to the resolution of the specific dispute; (2) the arbitrator violated the standards in N.J.S.A. 2A:24-8 and -9; or (3) the award is not supported by substantial credible evidence in the record as a whole. Teaneck Tp. v. Teaneck FMBA, Local No. 42, 353 N.J. Super. 298, 299 (App. Div. 2002), *aff'd* o.b. 177 N.J. 560 (2003),

citing Cherry Hill Tp., P.E.R.C. No. 97-119, 23 NJPER 287 (¶28131 1997). Because the Legislature entrusted arbitrators with weighing the evidence, we will not disturb an arbitrator's exercise of discretion unless an appellant demonstrates that the arbitrator did not adhere to these standards. Teaneck, 353 N.J. Super. at 308-309; Cherry Hill.

Arriving at an economic award is not a precise mathematical process. Given that the statute sets forth general criteria rather than a formula, the treatment of the parties' proposals involves judgment and discretion and an arbitrator will rarely be able to demonstrate that an award is the only "correct" one. See Borough of Lodi, P.E.R.C. No. 99-28, 24 NJPER 466 (¶29214 1998). Some of the evidence may be conflicting and an arbitrator's award is not necessarily flawed because some pieces of evidence, standing alone, might point to a different result. Lodi. Therefore, within the parameters of our review standard, we will defer to the arbitrator's judgment, discretion and labor relations expertise. City of Newark, P.E.R.C. No. 99-97, 26 NJPER 242 (¶30103 1999). However, an arbitrator must provide a reasoned explanation for an award and state what statutory factors he or she considered most important, explain why they were given significant weight, and explain how other evidence or factors were weighed and considered in arriving at the final award. N.J.S.A. 34:13A-16g; N.J.A.C. 19:16-5.9; Lodi.

In cases where the 2% salary cap imposed by P.L. 2010, c. 105 applies, we must also determine whether the arbitrator established that the award will not increase base salary by more than 2% per contract year or 6% in the aggregate for a three-year contract award.

The City objects only to the wage aspect of the award. It asserts the arbitrator should have awarded its proposal of no salary increases and a salary decrease for new captains. It asserts the record does not support the arbitrator's award in light of the economic pressure on the City. Specifically, the City lists each of the criteria and sets forth its general disappointment with the arbitrator's analysis of each factor. The only specific errors alleged that we can discern from the City's brief are that the award is not accurate as to the cost comparison the arbitrator made to the firefighters' unit and the arbitrator's finding that the City has significant financial flexibility to fund the award.

The SOA responds that the City is seeking a de novo review of the award; the arbitrator properly applied the statutory criteria; and the award is based on credible evidence in the record. The SOA further points to other aspects of the award it characterizes as favorable to the City, including capped terminal leave, reduced vacation leave, longevity increases, and education incentives for new hires.

The City has not met its burden on appeal. Our interest arbitration review standard vests the arbitrator with the responsibility to weigh the evidence and arrive at an award. We will not disturb the arbitrator's exercise of discretion in weighing the evidence unless an appellant demonstrates that the arbitrator did not adhere to the Interest Arbitration Act or the Arbitration Act, N.J.S.A. 2A:24-1 et seq., or shows that the award is not supported by substantial credible evidence. Teaneck. The arbitrator specifically addressed the City's financial data and recognized the budgetary constraints in awarding the salary increase. We do not perform a de novo review of the evidence and defer to the arbitrator's judgment, discretion and labor relations expertise where he weighed all of the statutory criteria and his award is supported by substantial evidence in the record as a whole. Newark. While this award may not be the only potential result from the record before him, it is supported by substantial credible evidence and we will not disturb the arbitrator's conclusions. Lodi; Newark.

The arbitrator's analysis of the costs of the award is exacting. The City disagrees with the weight that he gave to the comparison with the private sector, but that does not permit us to hold he is wrong. The arbitrator considered all of the statutory criteria and evidence - including the City's financial evidence. As set forth above, we do not substitute our judgment

on the weight given to a factor. Newark. The arbitrator found that the impact on the budget and taxpayers will be de minimis. We accept that finding.

Our review of the record confirms that the arbitrator evaluated all the statutory criteria, explained why he gave more weight to some factors and less to others, and issued a comprehensive award that reasonably determined the issues and is supported by substantial credible evidence in the record. The City has not provided a plausible argument pointing to record evidence that meets our appeal standard that would require us to reverse the award.

ORDER

The interest arbitration award is affirmed.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson, Jones and Voos voted in favor of this decision. None opposed. Commissioner Wall recused himself.

ISSUED: April 25, 2013

Trenton, New Jersey

P.E.R.C. NO. 2013-81

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF CAMDEN,

Respondent,

-and-

Docket No. IA-2013-007

CAMDEN ORGANIZATION OF
POLICE SUPERIORS,

Appellant.

SYNOPSIS

The Public Employment Relations Commission affirms a supplemental interest arbitration award establishing the terms of a successor agreement between the City of Camden and the Camden Organization of Police Superiors (COPS). COPS appealed the award, arguing that the arbitrator failed to compare COPS's wage proposal to other voluntary settlements entered into by the City, and that other recent arbitration awards were paid in full by the City. The Commission finds that the arbitrator properly applied all of the N.J.S.A. 34:13A-16g statutory factors and explained the weight afforded to each factor, including expanded analysis of the remanded issues.

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

CITY OF CAMDEN,

Respondent,

-and-

Docket No. IA-2013-007

CAMDEN ORGANIZATION OF
POLICE SUPERIORS,

Appellant.

Appearances:

For the Respondent, Brown & Connery, LLP, attorneys
(William M. Tambussi, Michael J. DiPiero and Michael J.
Watson, of counsel)

For the Appellant, Alterman & Associates, LLC,
(Christopher A. Gray, of counsel)

DECISION

This case involves Camden Organization of Police Superiors appeal of a supplemental interest arbitration award issued to resolve successor negotiations with the City of Camden.^{1/} On January 25, 2013, we issued a decision remanding the case to the arbitrator to issue a supplemental decision. P.E.R.C. No. 2013-49, 39 NJPER 318 (¶109 2013). In the original award, the

^{1/} The supplemental award sets out that sometime after the December 17, 2012 issuance of the original award, the City police department was shut down. Police functions in Camden have been taken over by the County. The arbitrator noted that for those City officers who were offered employment by the County, it was without any carryover of benefit entitlements from their previous employment with the City.

arbitrator granted the City's proposal to freeze wages on the current salary schedule and for a \$15,000 payout limit for accumulated vacation and holiday pay for retirees. The arbitrator found that the City had been unable to fund other recent arbitration awards involving other negotiations units. COPS disputed this finding. On remand, we asked the arbitrator to verify if in fact these awards had been paid. We also asked him to clarify his findings on the \$15,000 limit for accumulated vacation and holiday pay for retirees. Additionally, we asked him to comment on COPS assertion that he failed to consider evidence that the City has recently voluntarily agreed to provide other employees with wage increases that were on par with those requested by COPS. Finding that the arbitrator provided adequate analysis on the statutory factors and responded on remand to the issues identified in our January 25, 2013 decision, we now affirm the award.

COPS continues to assert that other recent arbitration awards have been paid in full by the City, and that the arbitrator failed to compare COPS's wage proposal to other voluntary settlements entered into by the City. It further asserts that the arbitrator did not apply the statutory factors properly.

The City responds that the arbitrator gave due weight to the statutory factors and applied those factors in accordance with

the substantial credible evidence in the record, and that he properly responded to each of the issues on remand.

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

(1) The interests and welfare of the public. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by P.L. 1976, c. 68 (C.40A:4-45.1 et seq.).

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

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

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

(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).

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

The standard for reviewing interest arbitration awards is well established. We will not vacate an award unless the appellant demonstrates that: (1) the arbitrator failed to give "due weight" to the subsection 16g factors judged relevant to the resolution of the specific dispute; (2) the arbitrator violated the standards in N.J.S.A. 2A:24-8 and -9; or (3) the award is not supported by substantial credible evidence in the record as a whole. Teaneck Tp. v. Teaneck FMBA, Local No. 42, 353 N.J. Super. 298, 299 (App. Div. 2002), aff'd o.b. 177 N.J. 560 (2003), citing Cherry Hill Tp., P.E.R.C. No. 97-119, 23 NJPER 287 (¶28131 1997). An arbitrator must provide a reasoned explanation for an award and state what statutory factors he or she considered most

important, explain why they were given significant weight, and explain how other evidence or factors were weighed and considered in arriving at the final award. N.J.S.A. 34:13A-16g; N.J.A.C. 19:16-5.9; Lodi. Within the parameters of our review standard, we will defer to the arbitrator's judgment, discretion and labor relations expertise. City of Newark, P.E.R.C. No. 99-97, 26 NJPER 242 (¶30103 1999).

We find that the arbitrator properly applied each of the statutory factors and explained the weight he afforded to each of the factors. The arbitrator found the interests and welfare of the public to be the paramount factor that was given the most consideration, and reaffirmed this position in his supplemental award. He noted that the City is in abject poverty and heavily dependent on Federal and State government for financial support, and that such support has been more than 80% of the City's budget for several years. He also found that the support programs have begun to show long range shrinkage and in some cases a complete discontinuance of funding. He found that some of the State funding for hiring new police officers is conditioned upon permanent offers of employment to those officers. He also noted the City's high level of unemployment, as evidenced by the fact that property taxes represent only about 17% of the City's income.

With regard to comparison of wages, he found that other police are the only relevant comparisons. He found that these superior officers are well paid in comparison with other police officers within a reasonable area where data had been provided. Regarding the overall compensation presently received, he found that given the City's dire financial condition, there was no evidence of availability of funds to award any increases, and that the primary focus if funds did become available should be to hire new officers. He also found that his awarding no increases under the contract was important when considering the continuity and stability of employment, so as not to endanger to loss of State or federal funding that is conditioned upon the City permanently hiring officers. Given the City's dire financial condition, he did not place great weight on the cost of living factor since he found that the City could not absorb the impact of any increases to be paid under the Award. He found that given that he awarded the City's proposal of freezing the salary schedule, the lawful authority of the employer, the financial impact on the governing unit and the residents, and the statutory restrictions imposed on the City was given no weight.

In his supplemental award, the arbitrator expanded on the issues that we identified as needing clarification in our January 25, 2013 decision. He found that COPS' assertion that the City had paid in full recent arbitration awards was without merit and

that any payments were made after he issued his original award and therefore are outside of the record presented to him. He confirmed the \$15,000 limitation for the accrual of accumulated vacation and holiday time for retirees. In response to COPS' assertion that he failed to consider evidence that the City has recently voluntarily agreed to provide other employees with wage increases that were on par with those requested by COPS, he found that this information was not presented to him during the initial arbitration hearing. Additionally, he stated that white and blue collar employees are not an appropriate comparison for police superiors who enjoy more generous wages and benefits. We also asked him to clarify his findings on COPS' proposal that all supervisory officers be appointed based on established Civil Service rules or regulations. He found that such proposal was within the purview of the Civil Service Commission and that COPS had presented no evidence that the City had violated any Civil Service standards or promotional examinations. Given the expanded analysis provided by the arbitrator on the remanded issues, we now affirm the award.

ORDER

The award is affirmed.

BY ORDER OF THE COMMISSION

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

ISSUED: May 13, 2013

Trenton, New Jersey

P.E.R.C. NO. 2013-82

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF ATLANTIC CITY,

Appellant,

-and-

Docket No. IA-2013-016

ATLANTIC CITY POLICE BENEVOLENT
ASSOCIATION LOCAL 24,

Respondent.

SYNOPSIS

The Public Employment Relations Commission remands an interest arbitration award between the City of Atlantic City and Atlantic City Police Benevolent Association Local 24 to the arbitrator for reconsideration. The City appealed the award, objecting to the arbitrator's use of the PBA's incremental, longevity, and educational costs to make his calculations. The Commission finds that the arbitrator did not prorate the incremental costs, and that his explanation for his calculations based on his inability to decipher the City's calculations does not meet the standards of the amended interest arbitration law. The Commission directs the City, and all public employers in interest arbitration, to provide arbitrators with the required base salary information, in an acceptable and legible format.

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

CITY OF ATLANTIC CITY,

Appellant,

-and-

Docket No. IA-2013-016

ATLANTIC CITY POLICE BENEVOLENT
ASSOCIATION LOCAL 24,

Respondent.

Appearances:

For the Appellant, Ruderman & Glickman, attorneys
(Steven S. Glickman, of counsel)

For the Respondent, O'Brien, Belland & Bushinsky,
attorneys (Mark Belland, of counsel)

DECISION

On April 19, 2013, the City of Atlantic City ("City")
appealed from an interest arbitration award involving a unit of
approximately 330 sworn police officers in the ranks of patrol
officer, sergeant, and lieutenant represented by the Atlantic
City Police Benevolent Association, Local 24 ("PBA").^{1/} The
arbitrator issued a conventional award as he was required to do
pursuant to P.L. 2010, c. 105. A conventional award is crafted
by an arbitrator after considering the parties' final offers in

^{1/} We deny the City's request for oral argument. The issues
have been fully briefed.

light of statutory factors. We remand the award to the arbitrator.

The PBA proposed a three-year agreement with a duration commencing January 1, 2013 through December 31, 2015 with 2% wage increases effective January 1 of each year to be achieved through step increments and a 1.72% across-the-board increase in 2012 and 0% across-the-board increases for 2013 and 2104 . The PBA proposed other changes that are not in issue in this appeal.

The City proposed a three-year agreement with 0% across-the-board wage increases; a reduced salary and elimination of longevity for employees hired on or after January 1, 2013; freezing longevity for current employees; new education and training incentives; and limiting terminal leave to \$15,000. The City proposed other changes that are not in issue in this appeal.

On April 11, 2013, the arbitrator issued a 145-page opinion and award. He summarized the parties' offers and reviewed in detail their respective arguments supporting their proposals. He awarded the following substantive changes to salary:

1. Duration - January 1, 2013 through December 21, 2015;
2. Wages - 2013 - 1.59% retroactive to January 1, 2013;
2014 - 0% across-the-board
2015 - 0% across-the-board

The matter of the guide application of the 2013 increase is remanded to the parties for implementation at the local level.

Jurisdiction is retained over the issue, in the event it can not be resolved.

All current employees hired prior to January 1, 2013 shall receive the pay rates established by this Award. Any police officer hired prior to January 1, 2013 and later promoted to the rank of Sergeant or Lieutenant shall also be covered by the guides appearing in the expired CNA, in addition to any increase provided in this award.

All employees hired after January 1, 2013, including the current or prospective March 2013 class of recruits shall be subject to the new guide.^{2/}

The arbitrator noted that all open proposals submitted that were not awarded were denied; any initial proposals that were not raised at hearing and discussed in the parties' briefs were considered abandoned; any proposal withdrawn at the hearing was not entertained; and all provisions in the prior agreement are carried forward except for those that have been modified by the award. The arbitrator also certified that he had taken the statutory limitation imposed on the local tax levy cap into account and that the total net annual economic changes are reasonable under the statutory criteria.

The City's appeal challenges the 1.59% salary increase effective January 1, 2013. Specifically, the City objects to the arbitrator's use of the PBA's incremental, longevity, and

^{2/} The new ten-step salary guide has a starting salary of \$45,000 and a maximum salary of \$90,000. The new sergeant and lieutenant salary is \$100,000 and \$110,000 respectively.

educational costs to make his calculations rather than its calculations. It challenges the arbitrator's finding that all of the PBA's figures prove as not supported by the record. The City also provides in its appeal papers the certifications of Director of Revenue and Finance Michael P. Stinson and City Budget Officer Thomas Monaghan. Both certifications state that the City's calculations of incremental, longevity and educational incentive are accurate and the PBA's calculations are inaccurate.

The PBA responds that the City's appeal is a post-arbitration objection to the PBA's scattergram; the City has not specifically pointed to any errors in the PBA scattergram; the Commission cannot consider the City's certifications because they constitute post-arbitration testimony not subject to cross-examination; and the excerpts from the award cited by the City are out of full context.

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

- (1) The interests and welfare of the public
 . . . ;
- (2) Comparison of the wages, salaries,
 hours, and conditions of employment of
 the employees with the wages, hours and
 conditions of employment of other
 employees performing the same or similar

services and with other employees generally:

- (a) in private employment in general . . . ;
 - (b) in public employment in general . . . ;
 - (c) in public employment in the same or comparable jurisdictions;
- (3) the overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received;
 - (4) Stipulations of the parties;
 - (5) The lawful authority of the employer . . . ;
 - (6) The financial impact on the governing unit, its residents and taxpayers . . . ;
 - (7) The cost of living;
 - (8) The continuity and stability of employment including seniority rights . . . ; and
 - (9) Statutory restrictions imposed on the employer. . . .

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

The standard for reviewing interest arbitration awards is well established. We will not vacate an award unless the appellant demonstrates that: (1) the arbitrator failed to give "due weight" to the subsection 16g factors judged relevant to the

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

In cases where the 2% salary cap imposed by P.L. 2010, c. 105 applies, we must also determine whether the arbitrator established that the award will not increase base salary by more than 2% per contract year or 6% in the aggregate for a three-year contract award.

The City objects to the salary award only. In Borough of New Milford, P.E.R.C. No. 2012-53, 38 NJPER 340, 344 (¶116 2012), we stated:

we must determine whether the arbitrator established that the award will not increase

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

Here, the parties disagreed as to the incremental, education, and longevity costs. The arbitrator relied on the PBA's calculations, justifying such reliance as follows:

In resolving the dueling scattergrams, I would admittedly ordinarily use the municipality's document, which is kept in the ordinary course of business, and would presumably be the most accurate. However, the figures contained in the exhibit in the SOA binder upon which the City relies are at

variance with the above numbers. Despite a significant amount of time, I have been unable to decipher them. Such may not be said of Union Exhibit 4.

Moreover, while it did not separately break out the guide movement, I was able to accomplish that calculation by finding the number of individuals not at maximum, with their corresponding advancement during the life of the successor agreement. For example, eight individuals moved from \$58,883 to \$70,311; 22 individuals moved from \$77,090 to \$95,231; five individuals moved from \$83,870 to the maximum of \$95,231.

I then merely took the cost of increment between steps and plugged it in. This amounted to \$2,325; \$2,324; \$6,779; \$6,779; \$6,780; \$11,361, respectively. The longevity and educational incentive figures were individually broken down by year. I understand the City's argument that we do not know where the PBA's figures came from, but it strikes me as curious that they would be acceptable for the purposes of calculating the base salary, then suddenly become suspect. Because all of the Union's figures prove, I have used them in all future calculations. [Award at 110-111]

The arbitrator then did his base salary calculation and proof that he was in compliance with the 2% cap. The parties' agreement reflects that the City pays increments on an officer's anniversary date. The arbitrator did not prorate the incremental costs to reflect that practice.

We remand the award to the arbitrator for re-calculation. In New Milford, we acknowledged that parties may not always agree on base salary information and calculations. In those circumstances, the arbitrator must make a determination based on

the evidence presented. We find that the arbitrator's explanation that he could not decipher the City's calculations does not meet the standards under the amended interest arbitration law.^{3/}

Thus, we remand this matter back to the arbitrator and direct the City, and all public employers in interest arbitration, to provide arbitrators with the required base salary information and calculations. Such information must include, at a minimum, in an acceptable and legible format, the following information:

1. A list of all unit members, their base salary step in the last year of the expired agreement, and their anniversary date of hire;
2. Costs of increments and the specific date on which they are paid;
3. Costs of any other base salary items (longevity, educational costs etc.) and the specific date on which they are paid; and
4. The total cost of all base salary items for the last year of the expired agreement.^{4/}

^{3/} We can not fault the arbitrator for not being able to decipher the list given to him by the City as it was not submitted in an acceptable and legible format.

^{4/} At the outset of being assigned to a case, the interest arbitrator should set a schedule for the public employer to provide the required base salary information and calculations, and another date for the union to respond to that information. The arbitrator should have the parties' (continued...)

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

Finally, we address the PBA's objection to the certifications provided by the City in its appeal package. We do not normally permit a party to supplement a record after a proceeding, particularly if the evidence or argument was available at the time of the hearing. See Ocean Cty. Prosecutor, P.E.R.C. No. 2012-59, 38 NJPER 363 (¶124 2012); Union Tp., P.E.R.C. No. 2002-55, 28 NJPER 198 (¶33070 2002). The City's supplemental certifications only provide a net opinion as to the accuracy of the City's calculations and the City has not asserted that these witnesses were precluded from testifying at the hearing. Therefore, we reject the certifications as the PBA has not had an opportunity to cross-examine the witnesses.^{5/}

^{4/} (...continued)
positions regarding the base salary information and calculations prior to the arbitration hearing date. The arbitration hearing is the proper forum to address any dispute and/or confusion over the base salary information and calculations.

^{5/} We have permitted certifications in interest arbitration appeals in response to arguments made on appeal. See Borough of Ramsey, P.E.R.C. No. 2012-60, 39 NJPER 17 (¶3 2012).

ORDER

The interest arbitration award is remanded to the arbitrator for reconsideration within 45 days in accordance with this decision. Any appeal from the new award is de novo and must be filed within seven days of receipt of the award.

BY ORDER OF THE COMMISSION

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

ISSUED: May 13, 2013

Trenton, New Jersey

P.E.R.C. NO. 2013-87

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF TENAFLY,

Respondent,

-and-

Docket No. IA-2013-018

PBA LOCAL 376,

Appellant.

SYNOPSIS

The Public Employment Relations Commission affirms an interest arbitration award establishing the terms of a successor agreement between the Borough of Tenafly and PBA Local 376. The PBA appealed the award, asserting that the arbitrator modified contract provisions, mostly related to new hires, without making any cost analysis for each year of the contract. The PBA also argued that the arbitrator failed to sufficiently explain which statutory factors were deemed relevant or not relevant, and why. The Commission finds that the arbitrator could not cost out the award for new hires because it was not known at the time of arbitration how many new employees would be hired during the term of the new contract. The Commission also finds that the arbitrator addressed all of the N.J.S.A. 34:13A-16g statutory factors and adequately explained the relative weight given.

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. 2013-87

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF TENAFLY,

Respondent,

-and-

Docket No. IA-2013-018

PBA LOCAL 376,

Appellant.

Appearances:

For the Appellant, Loccke, Correia, Limsky & Bukosky,
attorneys (Leon B. Savetsky, of counsel and on the
brief)

For the Respondent, Ruderman & Glickman, P.C.,
attorneys (Mark S. Ruderman, of counsel; Ellen M. Horn,
on the brief)

DECISION

PBA Local 376 ("PBA") appeals from an interest arbitration award involving a unit of approximately 32 police officers in the ranks of patrol officer, sergeant and lieutenant who are represented by PBA Local 376.^{1/}

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

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

The PBA primarily appeals the award asserting that the arbitrator modified contract provisions, mainly with respect to new hires, by removing and modifying longevity, vacation, personal days, and terminal leave without making any cost analysis for each year of the three year contract. Second, the PBA asserts that the arbitrator did not sufficiently indicate which statutory factors were deemed relevant, did not satisfactorily explain why the other statutory factors were not relevant, and, did not provide an analysis on each relevant factor. The PBA requests that the award be vacated and remanded.

The Borough responds that the Commission should affirm the award because the arbitrator gave due weight to all of the relevant statutory criteria; the arbitrator's inability to calculate the cost savings of the modification to or elimination of various benefits for new hires does not require more precise calculations and is not fatal to the award; and, the arbitrator more than sufficiently discussed his rationale supporting his determination that the net annual economic changes for each year of the agreement are reasonable under the statutory criteria.

The parties' final offers in pertinent part to the appeal are as follows.

The PBA's Final Offer:

1. WAGE INCREASE - The PBA proposes an across-the-board wage increase in each year of a three (3) year contract of two percent (2% across-the-board effective each January 1st).

The Borough'S Final Offer:

Article IX - Vacations

1. All employees hired after January 1, 2013 shall receive vacation under the following schedule:

Less than 1 year up to 10 days	1 day per month
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Completion of 1 year to completion of 5 years	10 days
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Commencement of 6th year to completion of 10 years	12 days
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Commencement of 11th year to completion of 15 years	15 days
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Commencement of 16th year to completion of 25 years	20 days
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Commencement of 26th year	25 days
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2. Vacation leave shall be prorated during the last year of service.

3. Employee must secure chief's written permission to carry over vacation time.

4. In Section 7 specify that the employee must receive from chief of police written permission to carry over vacation time.

Article X - Holidays and Personal Days

1. In Section 3 specify employees hired after January 1, 2013 shall be entitled to 2 personal days per year.

Article XII - Sick Leave

1. Employees hired after January 1, 2013 shall be entitled to 12 sick days after the first year of service.

Article XVII - Terminal Leave

1. Employees hired after January 1, 2013 shall not be entitled to terminal leave.

Article XX - Wages Detective Stipend and Longevity

1. 2013 0%
2014 0%
2015 0%
2016 0%
2017 0%

The arbitrator issued a 170-page Opinion and Award. After summarizing the parties' arguments on their respective proposals, and addressing the required statutory factors, the arbitrator awarded the following in pertinent part to this appeal:

AWARD

1. Term

Three (3) years - Effective January 1, 2013 through December 31, 2015.

2. Salary/Salary Guides/Longevity

Eliminate all 3 salary guides and replace them with the guides below. Longevity for all employees hired on or before May 6, 2013, will be suspended for the duration of the 2013-2015 Agreement. Longevity is eliminated for employees hired on or after May 7, 2013.

For Sergeants, Lieutenants, and all Patrol Officers at the top step of their respective salary guides as of December 31, 2012, a wage freeze and a longevity freeze at their December 31, 2012 levels for the duration of the 2013 - 2015 Agreement. Their salaries for 2013, 2014 and 2015 are as follows:

2013, 2014, 2015

Patrol Officer	125215
Sergeant	132402
Lieutenant	138976

For Patrol Officers who have not reached the top step of their salary guide as of December 31, 2012, and were hired on or after January 17, 2006, but prior to January 13, 2009, a longevity freeze at their December 31, 2012 levels for the duration of the 2013-2015 Agreement, 2 new steps effective January 1, 2013, step movement for 2013 (1 step), step movement for 2014 (1 step), but no step movement for 2015:

Employees hired on or after 1/17/06 but prior to 1/13/09
(Not at top step as of 12/31/12)

	EFF.	EFF.	EFF.
POSITION	1/1/2013	1/1/2014	1/1/2015
PATROL OFFICER			
After Six Years	115924	115924	115924
After Seven Years	119021	119021	119021
After Eight Years	122118	122118	122118
After Nine Years	125215	125215	125215

Sergeant	132402	132402	132402
Lieutenant	138976	138976	138976

For Patrol Officers who have not reached the top step of their salary guide as of December 31, 2012, and were hired on January 13, 2009, a longevity freeze at their December 31, 2012

levels for the duration of the 2013-2015 Agreement, 4 new steps effective January 1, 2013, step movement for 2013 (1 step), step movement for 2014 (1 step), but no step movement for 2015:

Employees hired on January 13, 2009
(Not at top step as of 12/31/12)

	EFF.	EFF.	EFF.
POSITION	1/1/2013	1/1/2014	1/1/2015
PATROL OFFICER			
After Three Years	81859	81859	81859
After Four Years	87279	87279	87279
After Five Years	92698	92698	92698
After Six Years	98118	98118	98118
After Seven Years	103537	103537	103537
After Eight Years	108957	108957	108957
After Nine Years	114376	114376	114376
After Ten Years	119796	119796	119796
After Eleven Years	125215	125215	125215
Sergeant	132402	132402	132402
Lieutenant	138976	138976	138976

For Patrol Officers who have not reached the top step of their salary guide as of December 31, 2012, and were hired on or after January 1, 2012, a longevity freeze at their December 31, 2012 levels for the duration of the 2013-2015 Agreement, 4 new steps effective January 1, 2013, step movement for 2013 (1 step), step movement for 2014 (1 step), but no step movement for 2015:

Employees hired on or after January 1, 2012:

	EFF.	EFF.	EFF.	EFF.
POSITION	1/1/2012	1/1/2013	1/1/2014	1/1/2015
PATROL OFFICER				
Academy Rate	44582	44582	44582	44582
Probationary Rate	50219	50219	50219	50219
After One Year	66041	66041	66041	66041
After Two Years	71420	71420	71420	71420
After Three Years	76800	76800	76800	76800
After Four Years	82179	82179	82179	82179
After Five Years	87559	87559	87559	87559
After Six Years	92938	92938	92938	92938
After Seven Years	98318	98318	98318	98318
After Eight Years	103697	103697	103697	103697
After Nine Years	109077	109077	109077	109077
After Ten Years	114456	114456	114456	114456
After Eleven Years	119836	119836	119836	119836
After Twelve Years	125215	125215	125215	125215
Sergeant	132402	132402	132402	132402
Lieutenant	138976	138976	138976	138976

3. New Hires - Vacation Leave, Personal Days and Terminal Leave

For employees hired on or after May 7, 2013:

Vacation Leave - Amend Article IX to include:

All employees hired on or after May 7, 2013
shall receive vacation under the following
schedule:

Less than 1 year 1 day per month
up to 10 days

Completion of 1 year to 10 days
completion of 5 years

Commencement of 6th year 12 days
to completion of 10 years

Commencement of 11th year 15 days
to completion of 15 years

Commencement of 16th year 20 days
to completion of 25 years

Commencement of 26th year 25 days

Vacation leave shall be prorated during the
last year of service.

Employee must secure chief's written
permission to carry over vacation time.

In Section 7, specify that the employee must
receive written permission from the chief of
police to carry over vacation time.

Personal Days - Amend Article X. Section 3 to include:

Employees hired on or after May 7, 2013 shall
be entitled to 3 personal days per year.

Terminal Leave - Amend Article XVII to include:

Employees hired on or after May 7, 2013 shall
not be entitled to terminal leave.

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

- (1) The interests and welfare of the public
. . . ;
- (2) Comparison of the wages, salaries,
hours, and conditions of employment of
the employees with the wages, hours and
conditions of employment of other
employees performing the same or similar
services and with other employees
generally:

- (a) in private employment in general . . . ;
- (b) in public employment in general . . . ;
- (c) in public employment in the same or comparable jurisdictions;
- (3) the overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received;
- (4) Stipulations of the parties;
- (5) The lawful authority of the employer . . . ;
- (6) The financial impact on the governing unit, its residents and taxpayers . . . ;
- (7) The cost of living;
- (8) The continuity and stability of employment including seniority rights . . . ; and
- (9) Statutory restrictions imposed on the employer. . . .

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

The standard for reviewing interest arbitration awards is well established. We will not vacate an award unless the appellant demonstrates that: (1) the arbitrator failed to give "due weight" to the subsection 16g factors judged relevant to the resolution of the specific dispute; (2) the arbitrator violated the standards in N.J.S.A. 2A:24-8 and -9; or (3) the

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

In cases where the 2% salary cap imposed by P.L. 2010, c. 105 applies, we must also determine whether the arbitrator established that the award will not increase base salary by more than 2% per contract year or 6% in the aggregate for a three year contract award.

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

a. As used in this section:

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

parties, or any other item that was included in the base salary as understood by the parties in the prior contract. Base salary shall not include non-salary economic issues, pension and health and medical insurance costs.

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

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

Borough of New Milford P.E.R.C. No. 2012-53, 38 NJPER 340

(¶116 2012) was the first interest arbitration award that we reviewed under the new 2% limitation on adjustments to base salary. We held:

Accordingly, we modify our review standard to include that we must determine whether the arbitrator established that the award will not increase base salary by more than 2% per contract year or 6% in the aggregate for a three-year contract award. In order for us to make that determination, the arbitrator must state what the total base salary was for the last year of the expired contract and

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

The crux of the PBA's argument is that the arbitrator erred by not providing a cost analysis for benefit modifications for new hires in the new contract because he was unable to provide such an analysis based on the speculative nature of who would be hired during the term of the contract. In Borough of Ramsey P.E.R.C. No. 2012-60, 39 NJPER 17 (¶3 2012), we discussed this issue regarding the speculative nature of unknown future employment actions by the employer and employees:

In New Milford, we determined that reductions in costs resulting from

retirements or otherwise, or increases in costs stemming from promotions or additional new hires, should not affect the costing out of the award. N.J.S.A. 34:13a-16.7(b) speaks only to establishing a baseline for the aggregate amount expended by the public employer on base salary items for the twelve months immediately preceding the expiration of the collective negotiation agreement subject to arbitration.

The Cost Out of the Award

In this case, the arbitrator cited both New Milford and Ramsey and complied with the guidance we provided when he fashioned his award. It should also be noted that both final offers from the parties had to be rejected by the arbitrator because both resulted in a violation of the 2% cap.^{2/} The salary information provided to the arbitrator by the Borough which was not refuted by the PBA,^{3/} indicated that the Borough had expended \$3,763,060 in the twelve months preceding the expiration of the contract. Based on that figure, the arbitrator could not award base salary increases of more than \$225,784 over the three year term of the new contract.

Neither the arbitrator nor the parties had the ability to cost out the award with respect to additional new hires because

2/ The Borough's final offer of 0% salary increase for the term of the contract still resulted in a violation of the 2% cap based on step increments and longevity increments for existing employees.

3/ Neither party provided the exhibits that were part of the interest arbitration record.

it was not known at the time of the arbitration proceeding how many new employees would be hired during the term of the new contract. The arbitrator stated in his award:

In accordance with PERC's standards, by utilizing the same complement of officers employed by the Borough as of December 31, 2012 over a term of three (3) years, and assuming for the purposes of comparison there are no resignations, retirements, promotions or additional hires, the increases to base salary awarded herein increase the total base salary including salary, holiday pay, education pay and longevity pay as follows:

<u>Base Year</u>	<u>Total Base Salary</u>	<u>Increase from Prior Year</u>
2012	\$ 3,763,060	
2013	\$ 3,922,636	\$106,222
2014	\$ 4,029,877	\$107,242
2015	\$ 4,029,877	\$ <u>0</u>

Total Increase \$213,464^{4/}

^{4/} The \$213,464 complied with the statutory 2% cap. We also note that the PBA cited Point Pleasant Boro. P.E.R.C. No. 2013-28, 39 NJPER 203 (¶65 2012) (award vacated and remanded to a new arbitrator), asserting that the facts in that decision were similar to the instant case because "[T]here was no detailed analysis of how the items which he awarded would be calculated in any of the years of the four (4) years which he awarded." However, in Point Pleasant we determined that the award had to be vacated because, unlike in this case, "There was no detailed analysis of the costs of the base year, including increments and longevity. There was no analysis as to how these costs would be calculated in any of the years of the four years awarded, nor was there a calculation demonstrating how the award met the 2% salary cap requirements of N.J.S.A. 34:13A-16.7." Additionally, there was also a violation of the mandatory health care contributions established by P.L. 2011 c., 78. Point Pleasant.

Consideration of the Statutory Criteria

With respect to the consideration of the statutory criteria to this award, the arbitrator addressed all nine factors^{5/} on pages 143 through 154 of his decision. For example, he considered the lawful authority of the employer and the financial impact on the governing unit, its residents and taxpayers by addressing the tax levy cap and the appropriations cap based on the evidence that was introduced. The arbitrator gave greater weight to the interests and welfare of the public, the statutory restrictions imposed on the employer (the 2% cap) and the internal comparisons with the Borough's four other employee units. The arbitrator weighed the other factors and satisfactorily explained why they were not relevant. For example, the arbitrator gave little or no weight to comparisons with private employment, external employment comparisons, and the cost of living.

The arbitrator was essentially constrained by the 2% cap as set forth above where even the 0% final offer from the Borough violated the cap. The arbitrator ultimately concluded:

I conclude that the terms of this Award represent a reasonable determination of the issues after applying the statutory criteria. I have given greater weight to the interests and welfare of the public, the

^{5/} The arbitrator noted that there were no stipulations of the parties.

Hard Cap,^{6/} and internal comparisons. I have also considered all of the other factors and conclude there is nothing in the record that compels a different result than I have determined in this proceeding.

Based on the totality of the arbitrator's decision and award, taking into account the constraints placed on him based on the 2% cap, we find that the arbitrator gave due weight to the subsection 16g factors judged relevant to the resolution of this matter and explained the weight he afforded to each of the factors in an appropriate manner.

ORDER

The award is affirmed.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson and Voos voted in favor of this decision. None opposed. Commissioners Jones and Wall recused themselves.

ISSUED: June 13, 2013

Trenton, New Jersey

^{6/} The "Hard Cap" is the 2% statutory cap.

P.E.R.C. NO. 2014-3

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF ATLANTIC CITY,

Appellant,

-and-

Docket No. IA-2013-016

ATLANTIC CITY POLICE BENEVOLENT
ASSOCIATION LOCAL 24,

Respondent.

SYNOPSIS

The Public Employment Relations Commission affirms a supplemental interest arbitration award establishing the terms of a successor agreement between the City of Atlantic City and the Atlantic City Police Benevolent Association Local 24. The City appealed the award, asserting that the arbitrator erred by accepting the PBA's scattergram, that the City consistently objected to the PBA's figures, and that the arbitrator directed the City to use its prior submission. The Commission finds that the arbitrator complied with the remand order, and that the City was given the opportunity to provide the arbitrator with documentation to support its argument that the PBA's figures were inaccurate. The Commission notes that the City did not provide the Commission with evidence of inaccurate numbers or miscalculations to establish that the award violates the statutory salary cap, and therefore the interest arbitration review standard has not been met.

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

CITY OF ATLANTIC CITY,

Appellant,

-and-

Docket No. IA-2013-016

ATLANTIC CITY POLICE BENEVOLENT
ASSOCIATION LOCAL 24,

Respondent.

Appearances:

For the Appellant, Ruderman & Glickman, attorneys
(Steven S. Glickman, of counsel)

For the Respondent, O'Brien, Belland & Bushinsky,
attorneys (Mark Belland, of counsel; David F. Watkins,
on the brief)

DECISION

On July 10, 2013, the City of Atlantic City appealed an interest arbitration award involving a unit of approximately 330 sworn police officers represented by the Atlantic City Police Benevolent Association, PBA Local 24.^{1/} The award was issued by an interest arbitrator after a remand of the initial award. ("Atlantic City I"). P.E.R.C. No. 2013-82, 39 NJPER 505 (¶161 2013). We affirm the second award.

The initial award is a 145-page opinion issued on April 11, 2013 wherein the arbitrator summarized the parties' offers and

1/ We deny the City's request for oral argument.

and reviewed in detail their respective arguments supporting their proposals.^{2/} He awarded a three-year agreement with a 1.59% wage increase retroactive to January 1, 2013 and 0% wage increases in 2014 and 2015. He also awarded a new salary guide for officers hired after January 1, 2013.

On April 19, 2013, the City appealed the initial award challenging the 1.59% salary increase effective January 1, 2013. Specifically, the City objected to the arbitrator's use of the PBA's incremental, longevity, and educational costs to make his calculations rather than the City's calculations.

On May 12, 2013, we issued Atlantic City I. In that decision, we granted the City's appeal and remanded the case to

^{2/} The PBA proposed a three-year agreement with 2% wage increases effective January 1 of each year through step increments and a 1.72% across-the-board increase in 2012 and 0% across-the-board increases for 2013 and 2104 . The PBA further sought to include the investigative officer salary differential in the agreement; increase in vacation time from 24 to 25 days to have all officers at the same benefit level; and increase sick time to 120 hours annually for all members to have the same benefit level.

The City proposed a three-year agreement with 0% across-the-board wage increases; a reduced salary and elimination of longevity for employees hired on or after January 1, 2013; freezing longevity for current employees; new education and training incentives; limiting terminal leave to \$15,000; reducing sick leave at retirement; revising the call back procedure to require the officer to work the four-hour minimum; change the overtime eligibility calculation; reduce sick and injured leave time; reduction in vacation time for new hires; eliminating personal days; and eliminating the shift differential.

the arbitrator finding that the arbitrator did not prorate the incremental costs, and that his explanation for his calculations did not meet the standards of the amended interest arbitration law. We remanded the award for re-calculation and specifically directed the City, and all public employers, to provide interest arbitrators with the following information:

1. A list of all unit members, their base salary step in the last year of the expired agreement, and their anniversary date of hire;
2. Costs of increments and the specific date on which they are paid;
3. Costs of any other base salary items (longevity, educational costs etc.) and the specific date on which they are paid; and
4. The total cost of all base salary items for the last year of the expired agreement.^{3/}

On July 2, 2013, the arbitrator issued a supplemental award on remand. The arbitrator outlined the procedural history of his attempts to achieve the required information from the City.

Concluding that the City was unable to provide him with the

3/ At the outset of being assigned to a case, the interest arbitrator should set a schedule for the public employer to provide the required base salary information and calculations, and another date for the union to respond to that information. The arbitrator should have the parties' positions regarding the base salary information and calculations prior to the arbitration hearing date. The arbitration hearing is the proper forum to address any dispute and/or confusion over the base salary information and calculations.

evidence required to make his calculations, the arbitrator rejected the City's evidence again noting it was not different from the prior submissions and crediting the PBA's arguments as to errors contained therein - including the inclusion of employees separated from the City. The arbitrator then re-affirmed his award and directed the parties to pro-rate the incremental, longevity and education costs.

The City again appeals the salary award alleging that the arbitrator erred by accepting the PBA's scattergram; that the City has consistently objected to the PBA's figures; that the arbitrator directed the City to utilize its prior submission; and generally questioning the arbitrator's judgment.

The PBA responds that the City has not provided a meaningful analysis to support its assertions and the PBA's scattergram is consistent with our decision in Borough of New Millford, P.E.R.C. No. 2012-53, 38 NJPER 340 (¶116 2012).

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

- (1) The interests and welfare of the public
 . . . ;
- (2) Comparison of the wages, salaries,
 hours, and conditions of employment of
 the employees with the wages, hours and

conditions of employment of other employees performing the same or similar services and with other employees generally:

- (a) in private employment in general . . . ;
 - (b) in public employment in general . . . ;
 - (c) in public employment in the same or comparable jurisdictions;
- (3) the overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received;
 - (4) Stipulations of the parties;
 - (5) The lawful authority of the employer;
 - (6) The financial impact on the governing unit, its residents and taxpayers;
 - (7) The cost of living;
 - (8) The continuity and stability of employment including seniority rights; and
 - (9) Statutory restrictions imposed on the employer. . . .

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

The standard for reviewing interest arbitration awards is well established. We will not vacate an award unless the appellant demonstrates that: (1) the arbitrator failed to give

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

In cases where the 2% salary cap imposed by P.L. 2010, c. 105 applies, we must also determine whether the arbitrator established that the award will not increase base salary by more than 2% per contract year or 6% in the aggregate for a three-year contract award.

The City objects to the salary award only. In Borough of New Milford, P.E.R.C. No. 2012-53, 38 NJPER 340, 344 (¶116 2012), we stated:

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

We have reviewed the City's evidence and argument. The City does not assert that the award increases the employer's costs for base salary by more than 2% per contract year or 6% in the aggregate. The City again appeals the salary award and objects to the figures used by the arbitrator. The interest arbitration appeal process is not a forum to re-litigate the

case. Our interest arbitration review standard vests the arbitrator with the responsibility of weighing the evidence and arriving at an award. We do not perform a de novo review.

The City was given the opportunity to provide the arbitrator with documentation to support its argument that the figures used by the PBA were not accurate. This task requires an effort to create a scattergram as we set forth in *Atlantic City I*. The City did not create an acceptable scattergram for the arbitrator. The City has also not provided this Commission with a chart, precise explanation, or calculation to prove the PBA's figures are not accurate. Where a party has provided us with evidence of a mistake in the base salary calculation or scattergram analysis, we have remanded a case to the arbitrator for re-calculation. Borough of Ramsey, P.E.R.C. No. 20012-60, 30 NJPER 17 (¶3 2012). Where an appellant does not provide us with the evidence to see the errors alleged or with the calculations to establish the award violates the cap, we will defer to the arbitrator. Newark.

The arbitrator complied with our directive on remand and the City has already been given a second chance to establish its case. Having not met our review standard, we dismiss the City's appeal and affirm the award.

ORDER

The interest arbitration award is affirmed.

BY ORDER OF THE COMMISSION

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

ISSUED: August 8, 2013

Trenton, New Jersey

P.E.R.C. NO. 2014-4

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF UNION BEACH,

Respondent,

-and-

Docket No. IA-2013-026

PBA LOCAL 291,

Appellant.

SYNOPSIS

The Public Employment Relations Commission grants the appeal of PBA Local 291 in an interest arbitration case between the PBA and Borough of Union Beach. The Commission remands the award to a new arbitrator holding that the arbitrator did not analyze the subsection 16g factors as required by law because he did not satisfactorily explain the relevance and weight given to each 16g factor. The Commission also finds that the arbitrator did not comply with N.J.S.A. 34:13A-16f(5) because he did not certify that he took the statutory local tax levy cap into account.

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 UNION BEACH,

Respondent,

-and-

Docket No. IA-2013-026

PBA LOCAL 291,

Appellant.

Appearances:

For the Appellant, Mets, Schiro & McGovern, LLP,
attorneys (James M. Mets, of counsel)

For the Respondent, Scarinci & Hollenbeck, attorneys
(Ramon E. Rivera, of counsel)

DECISION

PBA Local 291 ("PBA") appeals from an interest arbitration award involving a unit of approximately 11 full time police officers in the ranks of police officer and sergeant who are represented by PBA Local 291.^{1/}

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

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

The PBA appeals and requests that the award be vacated and remanded to a new arbitrator asserting that the arbitrator violated N.J.S.A. 2A:24-8(a) and (d)^{2/} because the award was procured by undue means and the arbitrator so imperfectly executed his powers that a mutual, final and definite award upon the subject matter submitted was not made; that the arbitrator failed to analyze the statutory factors as required by law; that the award is not supported by substantial credible evidence in the record; and that the award was filed outside the statutory 45 day time limit^{3/} and the arbitrator did not certify that he took the statutory limitations imposed on the local levy cap into account in making his award as required by statute.^{4/}

2/ N.J.S.A. 2A:24-8 provides in pertinent part:

"The court shall vacate the award in any of the following cases:

a. Where the award was procured by corruption, fraud or undue means;

d. Where the arbitrators exceeded or so imperfectly executed their powers that a mutual, final and definite award upon the subject matter submitted was not made."

3/ The award was due to the Commission on June 24, 2013; it was executed by the arbitrator on June 28 and filed with the Commission on June 29.

4/ N.J.S.A. 34:13A-16f(5) provides in pertinent part:

"The decision of an arbitrator or panel of arbitrators shall include an opinion and an award, and shall be rendered within 45 days of the commission's assignment of that
(continued...)

The Borough responds that the Commission should affirm the award because the Borough presented substantial evidence during the proceeding and that demonstrates that the arbitrator gave due weight to all of the relevant statutory criteria; the arbitrator determined that the "interest and welfare of the public" was the most important statutory factor given that the Borough was devastated by Hurricane Sandy in late October 2012; and the fact that award was filed outside the statutory 45 day time limit does not affect the validity of the award.

The Borough also filed a cross-appeal requesting that the award be remanded to the arbitrator so that he could address the vacation allotment for new hires, which was not reflected in the award.^{5/6/}

The PBA filed a final offer and the Borough filed a revised final offer with the arbitrator. However, as set forth below,

4/ (...continued)
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."

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

6/ Neither the PBA nor the Borough allege that the arbitrator violated the 2% cap under N.J.S.A. 34:13a-16.7(b) in his award.

the deciding issue in this appeal that is paramount is whether or not the arbitrator complied with N.J.S.A. 34:13A-16g and appropriately and satisfactorily analyzed the required statutory factors.

The arbitrator issued a single spaced nine (9) page opinion and award. After summarizing the presentation of the parties at the arbitration hearing and their proposals, the arbitrator issued the following award in pertinent part which included a 4.5 year collective negotiations agreement covering the period from July 1, 2011 through December 31, 2015:^{7/}

AWARD

The Employer made demands for changes in many benefits now enjoyed. The following are hereby awarded:

These include a reduced limit on the number of consecutive sick days which require a doctor's note from five consecutive days to two; provide that the administration can call for a fitness for duty examination whenever there is a pattern of absenteeism. In Article VI the provision for attendance at a funeral shall be four days, including the day before the wake, the day of the wake, day of the funeral, and the day after the funeral. In Article X, Overtime, Section One, shall be amended to provide that the maximum accumulation of compensatory time off in lieu of overtime is 100 hours. Section G provides that the past practice concerning the flex day schedule which is paid at straight time, shall be continued. Article XI, Vacation, Section One, is amended to reflect all

^{7/} The arbitrator discussed the statutory criteria after issuing his award.

current officers are frozen at their current step in vacation allowance. Section D will provide that vacation use may be limited to certain times of the year unless there is no conflict in terms of staff requirements as determined by the Employer. Article XVI shall be eliminated. Article XX, Arbitration, Section Two, is amended to provide that the parties shall adhere to the appointment process of the Public Employment Relations Commission. Article XXI Section Three, is amended to provide a freeze on longevity for all current officers. Longevity pay shall be measured in dollar amounts rather than percentages. Section Three is further amended to provide that new hires are not eligible for longevity. Article XXIII, Section One will provide that all current and new employees will be capped at \$15,000 for unused sick leave. The \$15,000 will apply to all current employees that have less than \$15,000 in accrued sick leave. Current employees with more than \$15,000 credit shall be capped at that level as of July 1, 2011. Article XXV Education, Section Two, is amended to provide that the Borough will pay a maximum of \$3000 annually for the entire department in total for courses taken with the Chiefs approval. New Article, Drug Testing, Borough will implement drug testing procedures using AG guidelines, including illegal use of steroids.

The Union also made many proposals and the following are hereby awarded:

Article VI, Special Leaves: should a death in the family occur and services are out of state, the attendance leave may be increased to five days. Article X Overtime Section One: the Borough agrees that overtime at the rate of time and one half shall be paid to all employees in compensatory time or cash for hours worked in excess of the regular work day. Article XXVI, Duration: negotiations for a successor agreement shall be initiated according to law. Article XXIX Duration. Section One: all internal affairs

investigations will be conducted in accordance with New Jersey Attorney General guidelines. Article XVII Discharge and Suspension, Section One: amended to read that all discipline will be issued in accordance with the Rules and Regulations promulgated by the New Jersey Civil Service Commission and New Jersey State law.

.

The first wage increase will be in 2011. The increase of 1 % shall be granted on October 1, 2011. There shall be a second increase granted on September 1, 2012, in the amount of .75%. A third increase shall be granted on March 1, 2013 and the amount shall be 1.25%. A fourth increase shall be in the amount of 1.25% and shall be granted on March 1, 2014, and there shall be a fifth increase in the amount of 1.50% granted on February 1, 2015 with an expiration date of December 31, 2015.

.

My award is for the 4.5 year plan set forth above and costing a total of 5% is the compromise I believe to be the fairest and can afforded by both parties. It has the advantage of extending the settlement for two years beyond the expiration of the originally proposed three year contract term which should provide a period of labor-management peace. An added advantage is that this agreement will not be subject to new regulations by the State, which may possibly become effective as early as January 1, 2014. This stabilizing effect coupled with a good will commitment of the parties should help to provide labor peace for the remainder of the contract.

N.J.S.A. 34:13A-16g requires that an arbitrator shall state in the award which of the factors are deemed relevant,

satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor. The statutory factors are as follows:

- (1) The interests and welfare of the public . . . ;
- (2) Comparison of the wages, salaries, hours, and conditions of employment of the employees with the wages, hours and conditions of employment of other employees performing the same or similar services and with other employees generally:
 - (a) in private employment in general . . . ;
 - (b) in public employment in general . . . ;
 - (c) in public employment in the same or comparable jurisdictions;
- (3) the overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received;
- (4) Stipulations of the parties;
- (5) The lawful authority of the employer . . . ;
- (6) The financial impact on the governing unit, its residents and taxpayers . . . ;
- (7) The cost of living;
- (8) The continuity and stability of employment including seniority rights . . . ; and

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

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

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

We vacate the award and remand to a new arbitrator for the following reasons: First, the arbitrator's award did not analyze the subsection 16g factors as required by law. As an example,

under N.J.S.A. 34:13A-16g(6)^{8/} (the financial impact on the governing unit, its residents and taxpayers) the arbitrator is required to analyze and consider the factors of that subsection in any award to the extent that evidence is introduced as set forth in N.J.S.A. 34:13A-16g.^{9/} In this case, numerous exhibits were introduced into evidence regarding the financial condition of the Borough and the Police Department budget with dollar

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

The financial impact on the governing unit, its residents, the limitations imposed upon the local unit's property tax levy pursuant to section 10 of P.L. 2007, c.62 (C.40A:4-45.45), and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take into account, to the extent that evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element or, in the case of a county, the county purposes element, required to fund the employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers of the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in a proposed local budget.

9/ N.J.S.A. 34:13A-16g provides in pertinent part:

...in every interest arbitration proceeding, the parties shall introduce evidence regarding the factor set forth in paragraph (6) of this subsection and the arbitrator *shall* analyze and consider the factors set forth in paragraph (6) of this subsection in any award. (Emphasis added).

amounts provided. The arbitrator's discussion of the 16g(6) factors is completely bereft of the required statutory analysis and he also did not indicate whether he believed they were relevant.^{10/}

Second, other than the interests and welfare of the public factor, where the arbitrator stated that it was a "key factor" and ranked it as the "number one criterion in importance," it is not entirely clear the relevance and weight he gave to the other factors in all cases. Even where the award appears to indicate that a factor may not be relevant, he did not satisfactorily explain why the factor is not relevant. For example, under the stipulations of the parties factor, the arbitrator merely stated that "Stipulations of the parties were made concerning three minor issues" without identifying the stipulations or providing any other explanation. Further, under the lawful authority of

^{10/} The arbitrator's complete discussion of the 16g(6) factors:

"The Financial Impact on the Governing Unit, Its Residents and Taxpayers

The terms of this award are not anticipated to have a negative effect on the municipal purposes element or local property taxes, although the costs of government derived from the impact of the hurricane have threatened to stretch the budget. There has been considerable thought given to the need for additional funds to provide for the expanded needs of the public due to the aftermath of the hurricane. To date, this an ongoing concern and will probably not be resolved for some time to come. Therefore, it is very possible that there will be an impact on the local budget."

the employer factor,^{11/} the arbitrator did not state if it was relevant, and if not, satisfactorily explain why, as his complete analysis only consisted of the following sentence: "There is nothing in the statutes which has precluded complete and comprehensive submissions for resolution at this time."

Similarly, under the statutory restrictions imposed on the employer factor,^{12/} the arbitrator only provided the following: "No issues have arisen which would suggest that these restrictions are likely to become a limiting factor during the term of this agreement."

Third, we note that the arbitrator concluded his discussion of the statutory factors with the following statement:

My consideration of the parties proposals is governed by law. In arriving at this award, I conclude that all the statutory factors have some relevance, but not all are entitled to equal weight. My focus in the above award has been essentially on wages and benefits. I believe I have dealt fairly with the issues

11/ N.J.S.A. 34:13A-16g(5) provides:

"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.)."

12/ N.J.S.A. 34:13A-16g(9) provides:

"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)."

raised by both parties in reaching an overall new contract of employment.

However, this conclusory statement does not relieve the arbitrator of the statutory requirement to carefully consider and to address all the 16g factors, whether deemed relevant or not relevant, as set forth above. See Burlington County Prosecutor's Office and PBA Local 320, P.E.R.C. No. 2012-61, 39 NJPER 20 (¶4 2012), rem'd 39 NJPER ____ (¶____ 2013).

Finally, the arbitrator did not comply with N.J.S.A. 34:13A-16f(5) because he did not certify that he took the statutory limitations imposed on the local levy cap into account in making the award.

Since we are vacating the award and remanding the case to a new arbitrator, we need not address the other arguments made on appeal or cross-appeal by the parties.^{13/}

^{13/} We find that the fact that the award was filed outside the statutory 45 day time limit does not affect the validity of the award since N.J.S.A. 34:13A-16 allows for the Commission to take appropriate remedial action with respect to arbitrators who do not comply with the tenets of the statute.

ORDER

The interest arbitration award is vacated and this matter is remanded for appointment of a new arbitrator.

BY ORDER OF THE COMMISSION

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

ISSUED: August 8, 2013

Trenton, New Jersey

P.E.R.C. NO. 2014-22

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BURLINGTON COUNTY PROSECUTOR'S OFFICE,

Appellant,

-and-

Docket No. IA-2012-016

BURLINGTON COUNTY PROSECUTOR'S
DETECTIVES, PBA LOCAL 320,

Respondent.

SYNOPSIS

The Public Employment Relations Commission affirms a supplemental interest arbitration award establishing the terms of a successor agreement between the Burlington County Prosecutor's Office and the Burlington County Prosecutor's Detectives, PBA Local 320. The Commission finds that the arbitrator complied with the remand order from the court to perform a thorough analysis regarding financial impact on the County, comparison to private sector wages, and which statutory factors he deemed more or less relevant. The Commission also finds that the arbitrator reasonably explained the relative weight given to the statutory factors, and based his award on substantial credible evidence in the record.

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

P.E.R.C. NO. 2014-22

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BURLINGTON COUNTY PROSECUTOR'S OFFICE,

Appellant,

-and-

Docket No. IA-2012-016

BURLINGTON COUNTY PROSECUTOR'S
DETECTIVES, PBA LOCAL 320,

Respondent.

Appearances:

For the Appellant, Capehart & Scatchard, attorneys
(Carmen Saginario, Jr., on the brief)

For the Respondent, Detzky, Hunter & De Fillippo, LLC,
attorneys (David J. De Fillippo, on the brief)

DECISION

This case involves Burlington County Prosecutor's Office appeal of a third interest arbitration award issued to resolve a negotiations impasse over the terms of a successor contract between the Prosecutor and law enforcement officers represented by the Burlington County Prosecutor's Detectives, PBA Local 320.

This case has a long and complex procedural history. The arbitrator issued his initial award on April 21, 2012, which was appealed by the County to the Commission. On May 30, 2012, we affirmed the majority of the award but remanded it to the arbitrator to clarify contract language relating to seniority. Burlington County, P.E.R.C. No. 2012-61, 39 NJPER 20 (¶4 2012).

On July 31, 2012, the arbitrator issued a second award in which he clarified the seniority language.^{1/} On August 31, 2012, the County filed an appeal with the Appellate Division of the Superior Court.^{2/}

On June 10, 2013, the court remanded the case to the Commission, finding that the arbitrator did not address the statutory factors of financial impact of the award on the governing unit, its residents, and its taxpayers, and comparison of wages to the private sector and did not indicate which statutory factors he deemed more relevant or less relevant.^{3/} In the Matter of Burlington County Prosecutor's Office, 2013 N.J. Super. Unpub. LEXIS 1387, 40 NJPER 41 (¶17 App. Div. 2013); pet. for certif. pending.

On July 2, 2013, as directed by the Court, we remanded the award to the arbitrator. On September 9, 2013, the arbitrator

1/ Neither party appealed the second award to the Commission.

2/ On September 10, 2012, the Commission Chair denied the County's request for a stay of implementation of the April 21 award.

3/ On September 10, 2013, the County filed a petition for certification with the Supreme Court, asserting, inter alia, as it did before the Appellate Division, that the court should have vacated the award and remanded it to another arbitrator. On September 23, the PBA filed a brief in opposition to the petition for certification and on September 25, the Commission's General Counsel filed a timely response advising the Court that the Commission opposed granting the County's petition. The petition is currently pending.

issued his third award. On September 18, 2013, the County filed an appeal with the Commission from the September 9 award, and on September 24, the PBA filed a responsive brief.

The County argues that the award must be vacated because the arbitrator did not adequately consider the statutory factors of comparison to private sector wages, financial impact on the governing unit, the interests and welfare of the public, costs of living and continuity and stability of employment and his analysis on these factors is not supported by substantial credible evidence in the record as a whole. The PBA responds that the arbitrator adequately analyzed those statutory factors, as well as indicated which factors he deemed more or less relevant.

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

- (1) The interests and welfare of the public
 . . . ;
- (2) Comparison of the wages, salaries, hours, and conditions of employment of the employees with the wages, hours and conditions of employment of other employees performing the same or similar services and with other employees generally:

- (a) in private employment in general . . . ;
- (b) in public employment in general . . . ;
- (c) in public employment in the same or comparable jurisdictions;
- (3) the overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received;
- (4) Stipulations of the parties;
- (5) The lawful authority of the employer . . . ;
- (6) The financial impact on the governing unit, its residents and taxpayers . . . ;
- (7) The cost of living;
- (8) The continuity and stability of employment including seniority rights . . . ; and
- (9) Statutory restrictions imposed on the employer. . . .

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

The standard for reviewing interest arbitration awards is well established. We will not vacate an award unless the appellant demonstrates that: (1) the arbitrator failed to give "due weight" to the subsection 16g factors judged relevant to the resolution of the specific dispute; (2) the arbitrator violated the standards in N.J.S.A. 2A:24-8 and -9; or (3) the award is not

supported by substantial credible evidence in the record as a whole. Teaneck Tp. v. Teaneck FMBA, Local No. 42, 353 N.J. Super. 298, 299 (App. Div. 2002), *aff'd* o.b. 177 N.J. 560 (2003), citing Cherry Hill Tp., P.E.R.C. No. 97-119, 23 NJPER 287 (¶28131 1997).

However, an arbitrator must provide a reasoned explanation for an award and state what statutory factors he or she considered most important, explain why they were given significant weight, and explain how other evidence or factors were weighed and considered in arriving at the final award. N.J.S.A. 34:13A-16g; N.J.A.C. 19:16-5.9; Borough of Lodi, P.E.R.C. No. 99-28, 24 NJPER 466 (¶30103 1999).

We find that the arbitrator followed the directive on remand to perform a thorough analysis regarding the financial impact on the County, make comparisons to private sector wages, and indicate which statutory factors he deemed more or less relevant. At the outset, we note that arbitrators are constrained by the record, or lack thereof, before them. With regard to the financial impact on the County, the arbitrator noted that the County failed to introduce any evidence which addressed the considerations to be made when analyzing this factor such as how the award may impact the County's ability to maintain existing local programs and services, and expand existing local programs or initiate new programs for which public

moneys have been designated by the governing body in a proposed local budget. He also noted that the County did not introduce any evidence which indicated that payment of the award would compromise its ability to stay within its budget cap or property tax levy cap. The sole expert testimony came from a financial expert produced by the PBA, and the arbitrator relied on this expert's testimony in finding that in the two years preceding the interest arbitration hearing the County amassed \$722,000 in reserves relative to prosecutors salaries and wages and other expenses. He found the \$722,000 was sufficient to completely pay for the three annual increases in the Award. He also noted that the County did not challenge the union's argument that in 2010 and 2011, the County underutilized its spending cap by \$9,596,751.29 and \$6,058,349.29, respectively, and also in 2011 did not utilize \$12,251,820 of available tax levy. He also noted that the County sold Buttonwood Hospital a few weeks before the initial arbitration hearing, realizing \$15,000,000 while eliminating taxpayers dollars of more than 3.7 million in Buttonwood's \$24,000,000 operating budget. Finally, he noted that the County's budget is only 17% of the total tax bill of County residents, and the Prosecutor's Office accounts for roughly 0.9% of the total tax bill or an estimated \$54.45 a year based on the average tax bill. Ultimately, the arbitrator supported why he concluded that the wage increases for this

bargaining unit would not have a noticeable financial impact on the County's finances, or any sector of its taxpayers or residents. The County failed to point to any evidence that the arbitrator failed to consider which conflicts with his findings on this statutory factor.

With regard to comparisons to the private sector, the arbitrator found that for prosecutor's detectives, comparison to the private sector is not useful because the large majority of employees in this occupation are public employees, and public sector wage rates tend to set industry and job standards. Nonetheless, the data in the record which he found to be most current, but still outdated, was United States Bureau of Labor Statistics (BLS) produced in October 2010 for the regional area of Philadelphia, Camden, Vineland, Pennsylvania, New Jersey, Delaware and Maryland and the Biennial Report on police and fire interest arbitration produced by this agency in January 2012. The data produced by the BLS contained hourly wage percentiles for civilian workers. The arbitrator disagreed with the County that the appropriate comparison for prosecutor's detectives was with "protective service occupations" because this category included lower skilled security guards. Rather, he found that comparison to "police and sheriff's patrol officers" was the appropriate comparison, although he noted that the comparison was limited since the BLS data does not further categorize "police

and sheriff's patrol officers" into subcategories. He found that while the subject prosecutor's detectives average hourly rate was higher than civilian police and sheriff's patrol officers in the 75th percentile (\$34.83 vs. \$33.66 respectively), it was not "out of line" especially given the generally high cost of living and high wages in the County. The arbitrator noted the union's argument that private sector wage increases in the County rose 3.0% in 2010 over 2009, and that State-wide average private sector increases was 2.2%. He highlighted that in his initial award, the mid-range increase in 2011 was 5.2%, which was inclusive of both the wage increase he awarded and movement on the step guide. He found that within the overall State-wide average of 2.2%, a 5.2% increase was not an "outlier" because there were several industries that had similar or higher increases, such as utilities (4.3%), manufacturing (3.9%), finance/industry (7.2%) and management of company/enterprises at (6.4%). Overall, the arbitrator did not place significant weight on private sector comparisons, but nonetheless found there was not enough evidence to support the County's claims that the awarded increases were substantially higher than those awarded to a similar occupation in the private sector.

With regard to the other statutory factors, the more relevant factors identified by the arbitrator were comparison with the wages, hours and conditions of employment in both the

public and private sector, which was analyzed both in his initial award as well as in his award on remand as discussed above. He also placed more importance on the financial impact on the governing unit as discussed above. Further, the arbitrator found the cost of living to be more relevant, which in his initial award noted has risen approximately one to three percent in recent years. He also found the continuity and stability of employment including seniority rights and such other factors to be more relevant, and awarded language relating to seniority rights in his initial award, and clarified the meaning of such language in July 31, 2012 award. The arbitrator placed less relevance on the interests and welfare of the public, the lawful authority of the employer and the statutory restrictions imposed on the employer because there was no evidence submitted that the County's ability to stay within its budget cap or property tax levy cap would be threatened in any year of the contract. He also placed less importance on the overall compensation presently received including wages and benefits and all other economic benefits because there the parties raised no issues regarding this factor. He noted that the parties made no stipulations. Having found that the arbitrator followed the court's directive on remand to provide expanded analysis on the financial impact on the County and private sector comparisons and provided a reasonable explanation as to why he placed more importance on

certain factors and less importance on others, and ultimately based his award on substantial credible evidence in the record, we affirm the award.

ORDER

The interest arbitration award is affirmed.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson, Jones and Voos voted in favor of this decision. None opposed. Commissioner Wall recused himself.

ISSUED: October 17, 2013

Trenton, New Jersey

P.E.R.C. NO. 2014-23

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF WARREN,

Respondent,

-and-

Docket No. IA-2014-001

WARREN COUNTY CORRECTIONS
FOP LODGE 171,

Appellant.

SYNOPSIS

The Public Employment Relations Commission affirms an interest arbitration award establishing the terms of a successor agreement between the County of Warren and Warren County Corrections FOP Lodge 171. The FOP appealed the award, asserting that the arbitrator erred by not awarding salary step movement at the expiration of the contract, and not adequately addressing all of the N.J.S.A. 34:13A-16g statutory factors. The FOP also argued that the arbitrator committed an ethical violation when she clarified the award for the County. The Commission finds that the arbitrator adequately explained her rationale for freezing step movement at the expiration of the contract; did not exceed her authority; and adequately addressed the statutory factors. The Commission also finds that the arbitrator's alleged ethical error was harmless and did not result in prejudice against the FOP.

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

COUNTY OF WARREN,

Respondent,

-and-

Docket No. IA-2014-001

WARREN COUNTY CORRECTIONS
FOP LODGE 171,

Appellant.

Appearances:

For the Respondent, Florio, Perrucci, Steinhardt &
Fader, LLC, attorneys (J. Andrew Kinsey and Veronica P.
Hallett, on the brief)

For the Appellant, Loccke, Correia, Limsy & Bukosky,
attorneys (Leon B. Savetsky, of counsel)

DECISION

On October 2, 2014, Warren County Corrections FOP Lodge 171 appealed from an interest arbitration award involving a unit of correction officers employed by the County of Warren.^{1/} The arbitrator issued a conventional award as she was required to do pursuant to P.L. 2010, c. 105, effective January 1, 2011. A conventional award is crafted by an arbitrator after considering the parties' final offers in light of statutory factors.^{2/}

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

2/ The last contract expired on December 31, 2010 and therefore
(continued...)

The arbitrator issued 97-page opinion and award. She awarded a three-year term from January 1, 2011 through December 31, 2013. Regarding salary issues, she awarded no salary increases for officers moving through the step guide but a two percent salary increase for officers at the top step only, effective July 1 of each year. She also added two additional steps on the salary guide effective September 23, 2013, and froze step movement at the expiration of the contract if the interest arbitration salary cap is still in effect on January 1, 2014.^{3/} Additionally, she revised contract language relating to overtime on storm days or during emergencies.

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

2/ (...continued)
this contract is not subject to the 2% base salary cap.

3/ Prior to these interest arbitration proceedings, employees moving through steps of the salary guide received increments for step movement for 2011, 2012 and 2013, which cost the County, respectively, \$206,883, \$265,297 and \$251,839.

- (1) The interests and welfare of the public . . . ;
- (2) Comparison of the wages, salaries, hours, and conditions of employment of the employees with the wages, hours and conditions of employment of other employees performing the same or similar services and with other employees generally:
 - (a) in private employment in general . . . ;
 - (b) in public employment in general . . . ;
 - (c) in public employment in the same or comparable jurisdictions;
- (3) the overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received;
- (4) Stipulations of the parties;
- (5) The lawful authority of the employer . . . ;
- (6) The financial impact on the governing unit, its residents and taxpayers . . . ;
- (7) The cost of living;
- (8) The continuity and stability of employment including seniority rights . . . ; and
- (9) Statutory restrictions imposed on the employer. . . .

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

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

The FOP argues that the arbitrator erred in not awarding salary step movement at the expiration of the contract. It also asserts that the arbitrator did not adequately address the statutory factors of financial impact on the County and the continuity and stability of employment. It also argues that the

arbitrator committed an ethical violation when she clarified the award without its permission or giving it an opportunity to be heard. Finally, it requests that the award be vacated and sent to a new arbitrator.

The County responds that it was within the arbitrator's discretion to freeze step movement in view of the County's proposal to eliminate step movement and that the prior contract specifically provided for step movement at expiration. It also noted that the next contract will fall under the two percent salary cap which would have permitted automatic step increases above the cap if left unchanged. It also asserts that the arbitrator provided a thorough analysis on the financial impact on the County and the continuity and stability of employment. Finally, it contends that the arbitrator's email to both parties clarifying the award did not prejudice the FOP.

With regard to the arbitrators freezing of step movement upon the expiration of the contract, the arbitrator awarded the following contract language:

If an interest arbitration salary cap is still in effect as of January 1, 2014, Officers who are not at the top step in 2013 will not move to the next step in the guide in 2014 until the parties finalize a successor agreement through negotiations or through interest arbitration. Those officers will then move, if applicable, pursuant to the terms of the successor agreement. If the 2014 step movement cost does not exceed any interest arbitration salary cap in effect as of January 1, 2014, upon mutual agreement by

the parties, those officers in the guide shall receive their step increment in 2014 prior to resolving the successor agreement.

Award at 78 - 79.

We do not agree with the FOP that the arbitrator exceeded her authority by freezing step movement upon expiration of the contract. An interest arbitrator retains the conventional authority to make determinations outside the parties' final offers. Hudson Cty. Pros., P.E.R.C. No. 98-88, 24 NJPER 78 (¶29043 1997) (finding that conventional arbitration allows the arbitrator considerable discretion to fashion an award, although the arbitrator may not reach out and decide issues not presented by the parties). In her analysis of the salary proposals, the arbitrator found that the County's final offer of 0% and the FOP's final offer of 9% (before compounding) were both unrealistic. She noted that Article 7, Section 2 of the parties' prior agreement provided for step movement, and set forth that the cost of such step movement must be considered as part of the overall compensation of these employees and be given due weight regarding the financial impact on the governing unit. The arbitrator then declined to eliminate the step guide altogether as proposed by the County, but did freeze step movement upon the expiration of the contract. She reasoned as follows:

While I will not dismantle the employees' current step guide, I intend to freeze employees on their current step going forward into the next contract unless certain

circumstances dictate otherwise as discussed below. At the expiration of this contract, this bargaining unit will be subject to the 2.0% cap on arbitration awards pursuant to Chapter 105, P.L. 2010. Under the provisions of this statute, an interest arbitrator is limited to awarding a maximum of 2.0% increases in base salary which is inclusive of base pay, increments, and longevity increases. In January, 2014, approximately 46 employees would be eligible to receive step increases. Step increases have in recent years cost the County more than \$250,000 per year for this unit. It is therefore very likely that the increment load will far exceed the available cap should the parties require interest arbitration to settle the contract.

The arbitrator also noted that similar language was contained in the memorandum of agreement between the County and the FOP for the sheriff's officers unit. We are satisfied that the freezing of salary increments upon the expiration of the contract is an issue that stemmed from the arbitrator's consideration of the County's proposal to eliminate the step guide altogether. The arbitrator adequately explained her rationale for freezing step movement upon the expiration of the contract - - mainly to avoid handicapping negotiations for the next contract since it will be subject to the two percent base salary cap. The FOP's reliance on Township of Montclair v. Montclair PBA Local No. 53, 2012 N.J. Super. Unpub. LEXIS 1122 (App. Div. 2012) is misplaced since that case involved a grievance arbitration award and interest arbitrators retain broader authority than grievance arbitrators.

The second issue the FOP appeals from is the arbitrator's alleged clarification of the revised contract language relating to overtime on storm days and during emergencies. The arbitrator awarded the County's proposal which made substantive changes, inter alia, regarding earning double time by "essential employees" who work during a Storm Day or Emergency. According to the FOP, counsel for the County e-mailed a letter to the arbitrator noting that the award did not specify whether or not the change was prospective and noting that if it was not prospective, it could cost the County "tens of thousands of dollars." The attorney for the FOP was copied on the letter. According to the FOP, before it could respond to the FOP's letter, the arbitrator responded via e-mail to both parties stating the change in the contract language of the award was intended to be prospective. The FOP argues that the arbitrator changed the award because in the award summary she uses the language "replace" which means to do it from the beginning of the contract unless specified. The Code of Professional Responsibility for Arbitrators of Labor-Management Disputes of the National Academy of Arbitrators, section 6 (D), sets forth that arbitrators may not clarify an award without the consent of both parties and must afford both parties an opportunity to be heard.

A review of the arbitrator's analysis makes reasonably clear that the provision was awarded on a prospective basis. In her analysis of the proposal, she specifically noted that the County was seeking the new language on a prospective basis from the date of the award. Award at 82. Then, after contrasting the proposal with the existing contract language and explaining why the change was warranted, she stated that the County's proposal was awarded. Award at 85. While the arbitrator did inappropriately respond to the County without the FOP's permission and without providing the FOP with an opportunity to be heard, we find that the error was harmless and did not result in any prejudice to the FOP since the arbitrator's analysis supported that the change was to be made on a prospective basis.

The third basis for the FOP's appeal is that the arbitrator did not adequately address the statutory factors of financial impact on the governing unit and the continuity and stability of employment. The FOP's makes no specific assertions with regard to this argument and does not point to any evidence in the record which the arbitrator failed to consider. We find that the arbitrator provided a thorough analysis of the record that was submitted to her by the parties, and that she meticulously reviewed the financial impact on the County and the continuity and stability of employment in her salary guide analysis.

ORDER

The interest arbitration award is affirmed.

BY ORDER OF THE COMMISSION

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

ISSUED: October 31, 2013

Trenton, New Jersey

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4989-10T3
A-5311-10T3

IN THE MATTER OF
COUNTY OF HUNTERDON,

Appellant,

vs.

FRATERNAL ORDER OF POLICE
LODGE NO. 94,

Respondent.

IN THE MATTER OF
COUNTY OF HUNTERDON,

Appellant,

vs.

FRATERNAL ORDER OF POLICE
LODGE NO. 29,

Respondent.

Argued: March 21, 2012 - Decided: June 5, 2012

Before Judges Cuff and Lihotz.

On appeal from the Public Employment
Relations Commission, P.E.R.C. No. 2011-75,
No. IA-2009-103 (A-4989-10); and P.E.R.C.
No. 2011-80, No. IA-2009-067 (A-5311-10).

Matthew J. Giacobbe argued the cause for
appellant (Cleary, Giacobbe, Alfieri and

Jacobs, attorneys; Gaetano M. DeSapio, on the brief).

James M. Mets argued the cause for respondent Fraternal Order of Police Lodge No. 94 (Mets, Schiro & McGovern, LLP, attorneys; Mr. Mets, of counsel and on the brief; Ryan S. Carlson, on the brief).

Matthew D. Areman argued the cause for respondent Fraternal Order of Police Lodge No. 29 (Markowitz & Richman, attorneys; Mr. Areman, on the brief).

Office of the General Counsel, attorney for the New Jersey Public Employment Relations Commission (Mary E. Hennessy-Shotter, Deputy General Counsel, on the statement in lieu of brief).

PER CURIAM

This opinion addresses the appeals filed by the County of Hunterdon (the County) from final orders entered by the Public Employment Relations Commission (PERC) affirming the arbitrator's award following conventional arbitration of contract disputes between the County and the Fraternal Order of Police (FOP) Lodge No. 94 (FOP 94) (Sheriff's Officers) and FOP Lodge No. 29 (FOP 29) (Corrections Officers). The principal issue in contention between the parties in this appeal is the incremental salary guide awarded by the arbitrator for each group of officers. We calendared these separate appeals back-to-back and now consolidate them for the purpose of opinion only. We affirm.

Our review of the PERC order issued in each case is governed by the statutory role of PERC and our standard of review. PERC is authorized by statute, N.J.S.A. 34:13A-16f(5)(a), to decide appeals of public interest arbitration awards. Twp. of Teaneck v. Teaneck Firemen's Mut. Benev. Ass'n Local No. 42, 353 N.J. Super. 289, 306 (App. Div. 2002), aff'd o.b., 177 N.J. 560 (2003). "Absent violation of standards of conduct, PERC's appellate role is to determine whether the arbitrator considered the criteria in N.J.S.A. 34:13A-16(g) governing the issuance of an interest arbitration award and rendered a reasonable determination of the issue or issues at impasse that was supported by substantial evidence in the record." Ibid.

This court, in turn, owes deference to an order rendered by PERC because of the expertise of that agency. The Supreme Court in In re Hunterdon County Board of Chosen Freeholders, 116 N.J. 322, 328 (1989), explained that deference as follows:

It must also be emphasized that the judicial role in this kind of case must be both sensitive and circumspect. We deal here with the regulatory determination of an administrative agency that is invested by the Legislature with broad authority and wide discretion in a highly specialized area of public life These manifestations of legislative intent indicate not only the responsibility and trust accorded to PERC, but also a high degree of confidence in the ability of PERC to use expertise and

knowledge of circumstances and dynamics that are typical or unique to the realm of employer-employee relations in the public sector.

An arbitrator in a public interest conventional arbitration is not required to select from one of the last offers of the parties. See Fox v. Morris Cnty. Policemen's Ass'n, P.B.A. 151, 266 N.J. Super. 501, 514 (App. Div. 1993) (holding an arbitrator is not required to consider only factors on which the parties choose to produce evidence because "this may lead to a choice between two unreasonable offers"), certif. denied, 137 N.J. 311 (1994). Rather the arbitrator may fashion an award based on the evidence produced by the parties. See Hillsdale PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71, 82 (1994) (holding an arbitrator's analysis "depends on the disputed issues and the evidence presented"). He is also obliged to analyze and consider nine statutory factors. Ibid.; see also N.J.S.A. 34:13A-16g. In addition, the party seeking to alter a provision in an existing agreement has the burden of proof on any modification, addition or deletion sought by it of an existing provision. Twp. of Teaneck, 25 N.J.P.E.R. 450 (¶30199 1999).

Here, the same arbitrator resolved the contract dispute between the County and FOP 94 (Sheriff's Officers) and FOP 29 (Corrections Officers). In each case, the principal issue was whether an incremental salary schedule should be reinstituted

for both groups of employees. Although recognizing that the use of an incremental salary schedule is a mandatorily negotiable term, and the representatives of both groups had properly presented that issue for resolution by the arbitrator, the County argued vociferously against the provision noting that such a schedule had been eliminated through an earlier round of collective negotiations in 2003. Each award was accompanied by a comprehensive decision in which the arbitrator addressed the factors outlined in N.J.S.A. 34:13A-16g. We briefly outline the award for each bargaining unit and the last offers by both parties.

FOP 94 (Sheriff's Officers).

The arbitrator entered an award containing five provisions. For the FOP 94 agreement, in addition to the issues stipulated by the FOP and the County, the arbitrator awarded a three-year agreement, an incremental salary schedule with eleven steps reflecting a 14.96% salary increase over the life of the agreement, and a salary payment schedule of twenty-five payments in place of twenty-six payments on an annual basis. The latter provision had been advanced by the County. The arbitrator also rejected the proposed salary increase advanced by FOP 94, modifications to the provisions governing overtime for officer's "called out" to duty outside of regular work hours, holiday pay,

leaves of absence, medical benefits, employee expenses, safety, uniforms and equipment, attendance bonus, on-call, longevity, tuition reimbursement, and employment and reimbursement agreements. The arbitrator also rejected a new provision governing modified duty. Additionally, the arbitrator denied the County's proposed salary increase schedule.

FOP 29 (Corrections Officers).

The arbitrator entered an award containing six provisions. In addition to the provisions stipulated by the parties, the arbitrator awarded a three-year agreement, an incremental salary schedule consisting of eleven steps reflecting a 13.40% increase over the life of the agreement, a salary payment schedule of twenty-five weeks in place of twenty-six weeks on an annual basis, and a \$100 increase in the uniform maintenance allowance. The arbitrator also rejected the ten step salary schedule proffered by FOP 29, as well as the salary increase proposed by the corrections officers, and a \$200 increase in the clothing allowance. Additionally, the arbitrator rejected the salary increase proposed by the County.

In his decision on each agreement, the arbitrator explained that the award of a salary schedule with annual increments was consistent with the practice in every other county and throughout all law enforcement units. He noted that the ranks

of Sheriff's Officers and Corrections Officers in the County have been depleted by low salaries and the absence of annual increments. Furthermore, the incremental salary schedule has worked well in every county in which it was instituted to address recruitment and retention of experienced and qualified personnel to serve as Sheriff's Officers and Corrections Officers.

The arbitrator also explained that he structured the salary schedule to freeze salaries for 2009 at 2008 levels and froze the first nine steps at the 2009 level for 2010 and 2011, but increased step 10 in 2011 and step 11 in 2010 and 2011. This structure permitted the cost of the salary portion of the agreement to fall "within the total cost of the County's own salary proposal." Notwithstanding the significant improvement in salaries achieved by the incremental salary schedule, the arbitrator emphasized that the maximum salary in 2011 for each group of officers is still well below the maximum salary in all other counties.

The County appealed each award to PERC. In its May 5, 2011 decision, PERC addressed the award governing the FOP 94 contract. The agency determined that the arbitrator provided a reasoned explanation for the award that reflected consideration of the statutory criteria and further explained how other

evidence or factors were weighed and considered. PERC expressly found that "the arbitrator acted within his conventional arbitration authority to award an incremental salary guide" even when that guide covers increases beyond the duration of the award. PERC noted that "P.L. 2010, c.105¹ will apply to any impasse that the parties may reach in negotiating a successor agreement." The agency also found that the analysis in support of the incremental salary guide was well-supported by the record. In doing so, PERC cited the 85% turnover rate for Sheriff's Officers between 1996 and October 2008 and the retention of only four of the thirty-two officers hired between 2000 and 2005.

PERC also found that the arbitrator addressed the public interest and welfare when he awarded the incremental salary guide. The agency noted that the arbitrator awarded "substantially lower increments and increases than those proposed by the FOP," and that the arbitrator properly assigned the burden of proof to the FOP to impose an incremental salary guide in the agreement. PERC also held that the record

¹ This statute amends N.J.S.A. 34:13A-16 to expressly require the arbitrator to consider the caps imposed on the municipality or county tax levy. The collective negotiation agreements between the County and FOP 94 and FOP 29 expired before January 1, 2011; therefore, this amendment did not apply to either award. See L. 2010, c. 105, § 4.

supported the comparability analysis produced by the arbitrator and his assignment of greater weight to the extra-county agreements governing Sheriff's Officers and Corrections Officers than the intra-county agreements governing non-law enforcement personnel. Finally, PERC found that the record demonstrated that the incremental salary schedule will not cause the County to exceed the cap restrictions, see N.J.S.A. 40A:4-45.45, or that the County lacks the funds to pay the increase or that it is unreasonable in light of current economic conditions. In doing so, the agency also noted "that the base salaries are the second lowest in the State and therefore a 14.96% increase yields a total cost of \$115,300 for a three-year agreement."

In its May 26, 2011 decision, PERC addressed the FOP 29 (Corrections Officers) award. The County argued that the arbitrator exceeded his authority in awarding an incremental salary guide, and the evidence did not support an incremental salary guide. PERC held that the record fully supported the award, that the arbitrator did not exceed his authority, and that it was not in a position to substitute its judgment for that of the arbitrator.

In affirming the award, PERC found that the arbitrator considered and weighed each of the statutory factors. The agency noted that the Correction Officers' staffing suffered a

60-70% turnover rate in the past ten years. Notably "between 2000 and 2010, approximately 100 officers were hired for a 30-officer unit and 28 of the current officers were hired after January 1, 2000." The agency also found that the evidence submitted by FOP 29 supported the finding that the current salary schedule and the schedule proposed by the County paid smaller raises to senior officers than junior officers. The County's approach to pay valued inexperience over experience and contributed to the high turnover rate.

In addition, PERC found the arbitrator did not shift the burden of proof on the incremental salary guide issue to the County. It found the evidence supported the arbitrator's imposition of a incremental salary schedule because all other public safety officers throughout the State are paid in accordance with an incremental salary schedule. As to the amount of the raises accorded to the corrections officers, PERC found that "the base salaries are the lowest in the State and therefore a 3.73% to 11.45% increase depending on the step of the guide yields a total cost of \$236,336 for a three-year agreement -- a figure the County does not dispute is \$100,000 less than its offer." (emphasis supplied). PERC also stated, and the County did not disagree, that the award will not impose an unexpected financial hardship on the County.

PERC summarized its decision as follows:

[A]n interest arbitration award with a cumulative cost that is less than the County's final offer in total cost and percentage raise is not unreasonable and should not create unexpected pressure to the County.

The agency also acknowledged that the terms of P.L. 2010, c. 105, the new interest arbitration law, will apply to any impasse that may arise in the course of negotiations of a successor agreement.

In each appeal, the County argues that the arbitrator exceeded his authority in awarding an incremental salary schedule, that the arbitrator violated N.J.S.A. 34:13A-16 by awarding salary increases for 2012 and each year thereafter without making factual findings as to the need for and ability to pay such increases, that the record does not contain sufficient credible evidence to support the salary guide award, and that the economic award is unreasonable. FOP 29 and FOP 94 respond the arbitrator did not exceed his authority, the incremental salary guide is consistent with N.J.S.A. 34:13A-16, the record supports all portions of the economic award and the award is reasonable.

At the outset of this opinion, we recognized not only the scope of review of PERC of an appeal from an award by an arbitrator in a public interest arbitration proceeding, but also

the scope of review of this court of the action by PERC. We are required to determine whether the arbitrator exceeded his authority as established by law, considered the factors identified by statute, N.J.S.A. 34:13A-16g, and rendered an award that is supported by the evidence in the record. Hunterdon Cnty., supra, 116 N.J. at 328; Teaneck FMBA, supra, 353 N.J. Super. at 306. N.J.S.A. 34:13A-16 sets forth the process and the factors the arbitrator must analyze and consider. If we find that he did not exceed his authority, that he considered and analyzed each statutory criterion, and made findings supported by the credible evidence in the record, we must affirm. See Hunterdon Cnty., supra, 116 N.J. at 328.

The factors that the arbitrator must consider and analyze are set forth in N.J.S.A. 34:13A-16g, which provides:

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

(1) The interests and welfare of the public. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by P.L. 1976, c. 68 (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; .
...

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

(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);

(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: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 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).

Our review of each award demonstrates that the arbitrator considered each factor, provided an analysis of each relevant factor, and explained which factors he weighed more heavily than others. He conducted an exhaustive comparison of wages and salaries of the Sheriff's Officers and the Corrections Officers with the wages and salaries of other employees performing the same or similar services. See N.J.S.A. 34:13A-16g(2). He considered the interests and welfare of the public to have well-trained and experienced officers performing the critical duties assigned to Sheriff's Officers and Corrections Officers. See N.J.S.A. 34:13A-16g(1). He considered the impact of the exceedingly high turnover on both units due to the low salaries paid to Sheriff's Officers and Corrections Officers and a salary strategy that discouraged retention of senior officers. See N.J.S.A. 34:13A-16g(8). The arbitrator also identified other counties which had experienced similar turn-over problems and noted that an incremental salary schedule reversed that trend in each county in which it was installed. See N.J.S.A. 34:13A-16g(2).

The arbitrator did not exceed his authority in awarding an incremental salary guide. The County acknowledges that whether an incremental salary guide should be adopted is a mandatorily

negotiable issue and that FOP 29 and FOP 94 presented the guide as an issue for negotiation. Sussex Cnty., 9 N.J.P.E.R. 77 (¶14042 1982); see also Belleville Educ. Ass'n v. Belleville Bd. of Educ., 209 N.J. Super. 93, 98 (App. Div. 1986) (holding placement on a salary schedule is mandatorily negotiable and subject to arbitration). The decision by parties to prior agreements to eliminate an incremental salary guide does not preclude one or both parties to an agreement to seek reinstatement of such a feature in a subsequent agreement. Finally, the incremental salary schedule does not prevent the County from seeking to modify the number of steps or the increments associated with each step in the course of future negotiations for future agreements.

We are also satisfied that the record fully supports each finding, neither award is economically unreasonable, the County is able to afford each award without exceeding existing caps on spending and taxes, and each award will not impose an excessive financial burden on taxpayers.

We, therefore, affirm the May 5, 2011 decision of PERC of the County's appeal of the Interest Arbitration Award to FOP 94 (Sheriff's Officers) and the May 26, 2011 decision of PERC of the County's appeal of the Interest Arbitration Award to FOP 29 (Corrections Officers).

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1449-11T2

IN THE MATTER OF THE COUNTY OF
MERCER AND THE MERCER COUNTY
PROSECUTOR'S OFFICE,

Appellants,

v.

PROSECUTOR'S DETECTIVES AND
INVESTIGATORS PBA LOCAL 339
and PROSECUTOR'S SUPERIOR
OFFICERS ASSOCIATION,

Respondents.

Argued September 11, 2012 - Decided October 1, 2012

Before Judges Waugh and St. John.

On appeal from the New Jersey Public
Employment Relations Commission, Docket Nos.
IA-2010-069 and IA-2010-070.

Brian W. Kronick argued the cause for
appellant Mercer County Prosecutor (Genova
Burns Giantomasi & Webster, attorneys; Mr.
Kronick, of counsel and on the briefs;
Phillip M. Rofsky, on the briefs).

Leon B. Savetsky argued the cause for
respondents (Loccke Correia Linsky &
Bukosky, attorneys; Mr. Savetsky, of counsel
and on the brief).

Mary E. Hennessy-Shotter, Deputy General
Counsel, argued the cause for respondent New
Jersey Public Employment Relations
Commission (Martin R. Pachman, General

Counsel, attorney; Ms. Hennessy-Shotter, on the statement in lieu of brief).

PER CURIAM

Appellants County of Mercer and the Mercer County Prosecutor's Office (Prosecutor) (collectively Mercer County)¹ appeal from the final administrative action of the New Jersey Public Employment Relations Commission (PERC) affirming an interest arbitration award setting the terms of the contracts between the Prosecutor and prosecutor's investigators and detectives, represented by respondent Prosecutor's Detectives and Investigators PBA Local 339, and prosecutor's senior officers, represented by respondent Prosecutor's Superior Officers Association. We affirm.

I.

We discern the following facts and procedural history from the record on appeal.

The most recent agreements between the Prosecutor and the two unions expired on December 31, 2009. Although the parties

¹ The county prosecutors are constitutional officers pursuant to Article VII, section 2, paragraph 1 of the New Jersey Constitution. However, funding for the county prosecutors and their staff comes from the county. Even though the county funds the prosecutor's office, the prosecutor is a separate employer. See Middlesex Cty. Prosecutor, P.E.R.C. No. 91-22, 16 NJPER 491 (¶21214 1990) aff'd 255 N.J. Super. 333 (App. Div. 1992).

engaged in negotiations for successor agreements, they were unsuccessful.

The unions filed petitions for interest arbitration in February 2010. PERC appointed Joel M. Weisblatt to serve as the arbitrator. The hearing was held in October 2010. Weisblatt issued an eighty-two page decision and award on September 6, 2011.

The award provided as follows:

1. The duration of the contracts shall be from January 1, 2010 through December 31, 2013.

2. (A) The wage rates shall be increased, across-the-board, as follows:

Effective January 1, 2010 - 0.0%

Effective January 1, 2011 - 2.0%

Effective January 1, 2012 - 2.5%

Effective January 1, 2013 - 2.5%

-
- (B) The language of Article 6.3 of the PBA contract shall be amended to reflect the existing past practice that step movement be applied annually on July 1st of each year.

3. The Health Benefits provisions of the contracts shall be modified to expressly provide that the health benefits program shall be consistent with P.L. 2010, c. 2, and with P.L. 2011, c. 78.

4. The Bereavement Days provision of the contracts [Article 8.1 (PBA) and 7.1 (SOA)] shall be amended to add stepmother and

stepfather to this list of immediate family members.

5. The existing sentence barring the use of personal days in conjunction with vacation leave shall be deleted from the contracts [Article 8.4 (PBA) and 7.4 (SOA)] and replaced with the following sentence:

Personal days may be taken in conjunction with vacation leave subject to prior Departmental approval.

6. The existing language with respect to Seniority, set forth in Article 11.2 (PBA) and Article 10.2 (SOA) shall be replaced by the following clause:

Seniority will be given preference in layoffs, recall, vacation and scheduling, provided that it is expressly understood that the Prosecutor has the authority, as a matter of sole discretion, to determine exceptions to the use of seniority based on personnel needs relating to specific skill sets, experience and/or specialized training. Such discretion shall not be unreasonably exercised.

7. All proposals not specifically addressed in the Award herein are denied due to the absence of sufficient evidence to support their implementation. The prior contracts shall remain in full force and effect except as modified herein or by the express agreement of the parties.

Mercer County appealed the award to PERC. It focused its appeal on two issues: the amount of the wage increases and the duration of the award, which was four years rather than the

three years sought by the County. PERC affirmed the award in a twelve-page decision dated October 14, 2011. This appeal followed.

II.

On appeal, Mercer County argues that PERC's affirmance of the award was arbitrary and capricious. The County argues that PERC should have vacated the award based on what it characterizes as Weisblatt's failure properly to consider or give appropriate weight to four of the nine factors set forth in N.J.S.A. 34:13A-16(g).

The Legislature has specifically mandated interest arbitration to resolve collective bargaining disputes between public employers and law enforcement employees, recognizing the "unique and essential duties" those employees perform, the "life threatening dangers [they] regularly confront" and the importance of maintaining the "high morale" of these employees. N.J.S.A. 34:13A-14(a). The same statute, however, also recognizes the importance of giving "all due consideration to the interests and welfare of the taxpaying public." N.J.S.A. 34:13A-14(b).

When a public employer and a law enforcement agency reach an impasse, the dispute is resolved by an arbitrator, who hears the dispute and crafts the terms of a new agreement. See

N.J.S.A. 34:13A-16(d). Either party may appeal the arbitrator's award to PERC, which in turn "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." N.J.S.A. 34:13A-16(f)(5)(a).

In deciding an interest arbitration, the arbitrator must consider nine factors, as follows:

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

(1) The interests and welfare of the public. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by [the Local Budget Law, N.J.S.A. 40A:4-1 to -89].

(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 [N.J.S.A. 34:13A-16.2]; provided, however, that each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.

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

(4) Stipulations of the parties.

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

(6) The financial impact on the governing unit, its residents, the limitations imposed upon the local unit's property tax levy pursuant to [N.J.S.A. 40A:4-45.45], and taxpayers. When considering this factor in

a dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take into account, 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 [N.J.S.A. 40A:4-45.45].

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

In this appeal, Mercer County focuses on the following statutory provisions: the interests and welfare of the public factor, subsection (g)(1); the lawful authority factor, subsection (g)(5); the financial impact factor, subsection (g)(6); and the statutory restrictions factor, subsection (g)(9). The County's primary focus concerns the relationship between the award and the cap on property tax increases referred to directly in subsections (g)(6) and (9), and indirectly in subsections (g)(1) and (5). See N.J.S.A. 40A:4-45.45. However, the County conceded at oral argument that, because of the relatively small number of employees involved, the award itself will not cause a cap problem and that it was not an "illegal" award. Instead, the County expressed concern that the award could be used to justify other wage settlements that could create a cap problem.

While the arbitrator need not rely on all of the statutory factors in fashioning the award, the arbitrator must at least consider all of the factors and explain why any factor not relied upon is not relevant. This specific statutory requirement reflects earlier decisional law from the Supreme Court:

[A]n arbitrator need rely not on all factors, but only on those that the

arbitrator deems relevant. An arbitrator should not deem a factor irrelevant, however, without first considering the relevant evidence. An arbitrator who requires additional evidence may request the parties to supplement their presentations. . . . [H]owever, the arbitrator need not require the production of evidence on each factor. . . . Such a requirement might unduly prolong a process that the Legislature designed to expedite collective negotiations with police and fire departments.

Whether or not the parties adduce evidence on a particular factor, the arbitrator's opinion should explain why the arbitrator finds that factor irrelevant. Without such an explanation, the opinion and award may not be a "reasonable determination of the issues." N.J.A.C. 19:16-5.9. Neither the parties, the public, nor a reviewing court can ascertain if the determination is reasonable or if the arbitrator has given "due weight" to the relevant factors.

. . . A reasoned explanation along those lines should satisfy the requirement for a decision based on "those factors" that are "judged relevant." Also, such an explanation should satisfy the requirement that the arbitrator "give due weight" to each factor. Anything less could contravene the Act's provision for vacating an award "for failure to apply the factors specified in subsection g. . . ." N.J.S.A. 34:13A-16f(5). In sum, an arbitrator's award should identify the relevant factors, analyze the evidence pertaining to those factors, and explain why other factors are irrelevant.

[Hillsdale PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71, 83-85 (1994) (citations omitted).]

In regulations adopted to implement N.J.S.A. 34:13A-16(g), PERC likewise requires arbitrators to consider and explain all of the subsection (g) factors.

N.J.S.A. 34:13A-16(g) identifies eight^[2] factors that an interest arbitrator must consider in reviewing the parties' proposals. The arbitrator must indicate which of the factors listed in that subsection are deemed relevant; satisfactorily explain why the others are not relevant; and provide an analysis of the evidence on each relevant factor.

[N.J.A.C. 19:16-5.14(a).]

Our "scope of review of PERC decisions reviewing arbitration [awards] is sensitive, circumspect and circumscribed. PERC's decision will stand unless clearly arbitrary or capricious." Twp. of Teaneck v. Teaneck Firemen's Mut. Benev. Ass'n Local No. 42, 353 N.J. Super. 289, 300 (App. Div. 2002) (citations omitted and emphasis added), aff'd o.b., 177 N.J. 560 (2003).

In turn, in reviewing an arbitrator's decision, PERC follows Hillsdale in determining whether the arbitrator gave due weight to the subsection (g) factors and whether the decision

² In 2007, the Legislature added a ninth factor to N.J.S.A. 34:13A-16(g). L. 2007, c. 62. PERC regulations have not been updated to reflect this change.

was supported by substantial credible evidence. Cherry Hill Twp., P.E.R.C. No. 97-119, 23 NJPER 287 (¶28131 1997).

In reviewing the parties' challenges to the award, we must determine whether the arbitrator adequately considered the criteria in N.J.S.A. 34:13A-16g and rendered a reasonable determination on the issues in dispute. Our analysis is also informed by Hillsdale; Washington [Twp.] v. New Jersey PBA Local 206, 137 N.J. 88 (1994); and Fox v. Morris Cty. [Policemen's Ass'n PBA 151], 266 N.J. Super. 501 (App. Div. 1993), certif. denied, 137 N.J. 311 (1994).

[Ibid.]

That standard is consistent with our decision in Teaneck, supra, 353 N.J. Super. at 306, that "PERC's appellate role is to determine whether the arbitrator considered the criteria in N.J.S.A. 34:13A-16(g) governing the issuance of an interest arbitration award and rendered a reasonable determination of the issue or issues at impasse that was supported by substantial evidence in the record."

PERC reviewed each of Mercer County's objections to the award, and determined that they were without merit because the arbitrator had considered and discussed each of the statutory factors and rendered a reasonable decision on the issues in dispute.

The employer objects to two aspects of the award - wages and duration. It asserts that the arbitrator did not properly apply the interest and welfare of the public,

financial impact, and the lawful authority of the employer because the arbitrator ignored the evidence of the employer's precarious financial situation that includes increased labor and public safety costs, decreasing revenues and a budget deficit. Further, it asserts that the arbitrator did not adequately explain where the County would get the money to fund the wage increases.

We reject these grounds for appeal. The arbitrator found that his award would not present a problem with respect to the Cap Law limitations on the County's budget as the overall County budget will be reduced from receiving significant health benefit contributions, the incremental costs of the award are low because most members of the unit do not receive increments, and there will be personnel changes as the unit ages. The arbitrator stated:

[T]here is absolutely nothing to indicate that the package awarded herein will present a Cap problem. The evidence of the history of retirements and other personnel changes, with lower cost replacements, provides reason in combination with other factors, to confidently find that these increases present no Cap problems.

[Award at 42.]

The arbitrator reviewed the financial information set forth by the County and found that the cost of each percentage awarded equaled 0.0155% of the total County budget. The employer has not disputed these figures or pointed to any record evidence to establish that the award itself places it outside the cap. Further, the tax levy cap is applied to the County budget as a whole and not to each of its components. Town of

Kearny, P.E.R.C. No. 2011-37, 36 NJPER 413 (1160 2010). We must defer to the arbitrator's expertise and review of the evidence. Since the arbitrator has found that the award will not present a Cap limitation problem, we defer to his judgment.

It is also not the obligation of an interest arbitrator to direct an employer as to how to fund an award. An interest arbitration award is not unreasonable even though an employer may be forced to make economies in order to implement the award. Kearny; [N.J. State Policemen's Benev. Ass'n Local 29] Irvington PBA v. Town of Irvington, 80 N.J. 271, 296 (1979). That is true even where municipal officials must determine whether, and to what extent, police personnel or other employees should be laid off, or whether budgetary appropriations for non-payroll costs should be reduced. [Ibid.] We recognize that any salary increase places pressure on a public employer's cap limitations. However, the employer has not presented any specific evidence or argument for us to conclude that the arbitrator erred in his finding that the award would not present a cap problem.

The employer also argues that the arbitrator did not take into consideration the effect the award will have on other negotiations units and the costs associated with other negotiations. The Associations respond that the evidence did not support this argument as there is no established history of pattern negotiations between the Prosecutor's employees and corrections personnel.

We reject this argument. In discussing his wage award, the arbitrator stated:

The calculations are based upon the two bargaining units that are

the parties to this impasse but the judgments made herein are made with the understanding that these two units do not function alone in a vacuum but that they are part of a more complex labor relations structure within an overall County budget.

[Award at 59-60.]

The arbitrator clearly took the effect his award may have on impasses with other County law enforcement units into consideration. We find that he adequately evaluated all the statutory criteria; explained why he gave more weight to some factors and less to others; and issued a comprehensive award that reasonably determined the issues and is supported by substantial credible evidence in the record as to the wage award. The arbitrator only had jurisdiction to decide the impasse on the evidence and record between these parties. He may subjectively consider that there are costs associated to other units in his award, but to consider evidence presented as to other units and for practical purposes - a separate employer - would be outside his authority. Essex Cty., P.E.R.C. No. 2011-92[, 38 NJPER 76 (¶17] 2011).

The employer also objects to the arbitrator's award of a fourth year arguing that it could potentially be damaging to the County's financial well-being. However, the arbitrator found that it was in the public interest to order a four-year contract to provide an opportunity for the employer to face the 2012 and 2013 budgets with knowledge as to personnel costs so that it may construct future budgets with a greater degree of certainty as a three-year agreement would put the parties right back in negotiations next year.

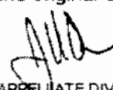
We reject this argument. There is no per se bar to awarding terms and conditions of employment for future years based on the record evidence and current economic trends. We recognize that there can only be limited hard economic data for 2012 and 2013. We have continually held that the collective negotiations process contemplates the parties agreeing to future years even though no one can predict with any assurance the exact budget circumstances a public employer will face in future years. Kearny; City of Asbury Park, P.E.R.C. No. 2011-17, 36 NJPER 323 (126 2010). Here, the employer presented volumes of documents and it has not pointed to any particular evidence in the record that requires rejecting the contract term that was awarded.

[P.E.R.C. No. 2012-15, 8-12 (Oct. 14, 2011).]

PERC concluded that the arbitrator had appropriately considered each statutory requirement, explained the weight given to it, and reached a reasonable overall determination that was adequately "supported by substantial evidence in the record" as required by Teaneck, supra, 353 N.J. Super. at 306. Having reviewed the County's arguments in light of the arbitrator's decision, the reasons given by PERC for its affirmance, the record on appeal, and the applicable law, we conclude that PERC's affirmance of the award was not "clearly arbitrary or capricious." Having so determined, our standard of review requires us to affirm the decision on appeal. Id. at 300.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office



CLERK OF THE APPELLATE DIVISION

A-1449-11T2

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1244-11T2

IN THE MATTER OF THE
CITY OF CAMDEN AND
THE INTERNATIONAL ASSOCIATION
OF FIREFIGHTERS, LOCAL 788.

APPROVED FOR PUBLICATION

January 29, 2013

APPELLATE DIVISION

Argued December 3, 2012 - Decided January 29, 2013

Before Judges Graves, Espinosa and Guadagno.

On appeal from the New Jersey Public
Employment Relations Commission, Docket No.
IA-2009-065.

William M. Tambussi argued the cause for
appellant City of Camden (Brown & Connery,
LLP, attorneys; Mr. Tambussi, Michael J.
DiPiero and Kristin L. Van Arsdale, on the
briefs).

Raymond G. Heineman argued the cause for
respondent International Association of
Firefighters, Local 788 (Kroll Heineman
Carton, LLC, attorneys; Mr. Heineman, on the
brief).

Martin R. Pachman, General Counsel, argued
the cause for respondent The New Jersey
Public Employment Relations Commission
(David N. Gambert, Deputy General Counsel,
on the statement in lieu of a brief).

Sally Ann Fields, Senior Deputy Attorney
General, argued the cause for amicus curiae
State of New Jersey (Jeffrey S. Chiesa,
Attorney General, attorney; Robert Lougy,

Assistant Attorney General, of counsel; Ms. Fields, on the brief).

The opinion of the court was delivered by
ESPINOSA, J.A.D.

For more than a decade, the State of New Jersey has responded to the dire financial circumstances of appellant, City of Camden (the City), by providing "extraordinary payments of State aid[.]" N.J.S.A. 52:27BBB-2(i). The amount of State aid has, however, declined in recent years. When the collective bargaining agreement (CBA) between the City and defendant International Association of Fire Fighters, Local 788 (the Union or IAFF) expired on December 31, 2008, the parties engaged in compulsory interest arbitration pursuant to the Police and Fire Public Interest Arbitration Reform Act (the Compulsory Interest Arbitration Act), N.J.S.A. 34:13A-14 to -21.¹ The resulting arbitration award provided for salary increases for the firefighters which, it is undisputed, the City cannot pay from its own tax base. Stated briefly, the arbitrator's means of accommodating that obstacle was to call the State of New Jersey a "fourth party" to the arbitration and conclude that the State is required to pay the shortfall. The City appeals from a final

¹ The Act was amended in 2010 to add sections -16.7 to 16.9, effective January 1, 2011.

decision of the Public Employee Relations Commission (PERC) that affirmed the award. For the reasons that follow, we reverse PERC's decision to affirm the award, vacate the award and further hold that the matter should proceed before a different arbitrator on remand.

I

In 2005, the City entered into a CBA with IAFF that expired December 31, 2008. When the parties entered into the CBA, the City's fiscal distress was already the subject of legislative action.

Two years earlier, the Legislature enacted the Municipal Rehabilitation and Economic Recovery Act (MRERA), N.J.S.A. 52:27BBB-1 to -65, having found that "certain municipalities" were "[e]conomically impoverished," and in a "continuing state of fiscal distress[.]" N.J.S.A. 52:27BBB-2(a), (b). The Legislature observed that conditions in "those municipalities . . . [have] necessitated the maintenance of large police and fire departments, at enormous taxpayer cost in municipalities without a sound tax base[,]" N.J.S.A. 52:27BBB-2(b), and further, that "the ratable base in these municipalities has declined steadily during the 1990's[.]" N.J.S.A. 52:27BBB-2(f). As a result, "[t]hese municipalities have experienced a substantial budget deficit for many years which has only been

addressed through extraordinary payments of State aid[.]"

N.J.S.A. 52:27BBB-2(i).

The Legislature declared:

In light of the dire needs faced by such municipalities and the lack of progress in addressing those needs either governmentally or through private sector initiative, and given the successful interventions on the part of other states in analogous circumstances, it is incumbent upon the State to take exceptional measures, on an interim basis, to rectify certain governance issues faced by such municipalities and to strategically invest those sums of money necessary in order to assure the long-term financial viability of these municipalities.

[N.J.S.A. 52:27BBB-2(o).]

To be a qualified municipality under MRERA at the time, "the municipality already [had to] be subject to the supervision of a financial review board and the State Local Finance Board pursuant to other statutory schemes . . . [and] the municipality [had to] be relying on state funding for at least fifty-five percent of its 'total budget.'" Camden City Bd. of Educ. v. McGreevey, 369 N.J. Super. 592, 598 (App. Div. 2004) (citing N.J.S.A. 52:27BBB-3). As of 2007, Camden was the only municipality in the State in which MRERA had been implemented. N.J.S.A. 52:27BBB-2.2(b); see Senate Community and Urban Affairs Committee, Statement to S.3006 (June 21, 2007).

As part of the implementation of MRERA, the Governor appointed a "chief operating officer" (COO) for Camden for a five-year "rehabilitation term" to reorganize municipal governance and finances in conjunction with the mayor and the municipality's governing body. N.J.S.A. 52:27BBB-7 to -30; McGreevey, supra, 369 N.J. Super. at 597-98. In the fourth year of the rehabilitation term, the COO prepared a report, as required by N.J.S.A. 52:27BBB-8(a), in which he recommended an extension of the rehabilitation term. N.J.S.A. 52:27BBB-7(c).

The Legislature agreed, finding a ten-year rehabilitation term "more realistic" for the effectuation of necessary government reform. N.J.S.A. 52:27BBB-2.2(d). It amended the statute to extend the term of the COO to ten years upon such a recommendation, provided the extension was approved by the Commissioner of Community Affairs. N.J.S.A. 52:27BBB-7(c)(1); see also L. 2007, c. 176, § 3, effective September 16, 2007.

Thus, when the CBA expired on December 31, 2008, the City's initial five-year rehabilitation term had been extended to ten years just one year earlier. Negotiations for a successor agreement failed and, in March 2009, the Union filed a petition for interest arbitration pursuant to the Compulsory Interest Arbitration Act.

In April 2009, an interest arbitrator was appointed by PERC.² As the arbitrator acknowledged in his subsequent Opinion and Award, he was designated "to render an Award regarding the terms and conditions of a successor Collective Bargaining Agreement . . . after consideration of the statutory criteria of N.J.S.A. [3]4:13A-16(g)(1) through (9)."

The arbitrator was also authorized to assist the parties in reaching a settlement through mediation. After his appointment, the parties participated in mediation sessions in 2009. At the parties' first meeting, the Union offered to accept a contract similar to that reached with the City's police officers, which was described as a one-year agreement with a 4% wage increase. The City rejected this offer.

In January 2010, the Legislature amended MRERA to return control of the City to the municipality. N.J.S.A. 52:27BBB-6(b)(1)-(8), -27(a), -63(b). Although the mayor assumed the powers of the COO, her authority continued to be limited by MRERA and subject to the veto power of the Commissioner of the Department of Community Affairs. N.J.S.A. 52:27BBB-23(a)(2).

² The procedural history in this case is extensive. We summarize those facts relevant to the issues on appeal.

The first scheduled evidentiary hearing was conducted on March 9, 2010. The Union submitted eighty exhibits but presented no testimony.

The parties continued efforts to come to an agreement. On May 18, 2010, the City submitted a proposal that called for a three and one-half year term, to end with the fiscal year, in which the employees would receive no raises. In addition, the employees would be required to take one furlough day per month; increase their contributions to health insurance and co-pays; and agree to other provisions. On May 24, 2010, the parties agreed that each would submit an economic proposal to the arbitrator who would then issue a non-binding recommendation for settlement. In the event that either party did not agree with the proposed settlement, the interest arbitration proceeding would resume.

On November 17, 2010, the arbitrator issued a Proposed Settlement of Economic Issues, which included wage increases of 2.5% for calendar year beginning January 1, 2009; 2.0% for calendar year beginning January 1, 2010; 2.0% for calendar year beginning January 1, 2011; and 2.0% for calendar year beginning January 1, 2012. The Union accepted the recommendation but the City rejected the recommendation on the ground that it was unable to fund the proposed settlement.

On January 18, 2011, the City implemented a Layoff Plan it had filed with the Civil Service Commission in November 2010. Among the City employees laid off were a substantial number of police officers and approximately one-third of the firefighters.³ The Union requested the completion of the arbitration.

The final arbitration hearing was conducted on April 18, 2011.⁴ The City presented the testimony of Glynn Jones, the City's Director of Finance, and Michael Nadol, Managing Director of Public Financial Management, a national public financial consulting firm.

Jones testified that for fiscal year 2010, the City's total budget was \$185 million, \$125 million of which came from State-controlled aid. Local taxes levied by the City accounted for \$20.6 million of the budget, approximately 89% of which was collected. Jones testified that the City no longer received "special municipal aid or extraordinary aid or capital City aid" from the State. The only State-controlled aid available was "transitional aid," for which the City had to apply each year. Jones stated further that from fiscal year 2010 to fiscal year

³ The bargaining unit consisted of one hundred sixty firefighters.

⁴ In the interim, the parties engaged in a mediation session; the City unsuccessfully sought adjournments until it had passed its budget for 2011; and the City presented its Final Proposal on April 12, 2011.

2011, the total amount of all forms of aid from the State decreased, and noted a newspaper report that the Governor announced he was reducing the State aid pool from \$750 million to approximately \$250 million.

Jones also described the difficulty in raising additional revenue by increasing property taxes. He stated the City had no choice regarding an increase. Fifty-two percent of the City's real estate is tax exempt. Even assuming 100% collection, the 3% increase permitted under MRERA would yield less than \$700,000, and the City needed to find a way to obtain an exception to the cap. Jones testified that the actual cost of the police and fire pension obligations was \$12 million for 2010, \$17.7 million for fiscal year 2011, and was projected to be \$19.3 million for 2012.

Jones explained how the City's financial problems had led to substantial layoffs of municipal employees, including public safety employees. Describing the pension obligation as "the main problem," Jones said that, as a result of the amount required to be paid, the City submitted an amended aid request and increased its levy "to the max." With personnel costs accounting for "over 70 percent" of the City's budget, Jones said "the only choice [the City] had" was to impose layoffs. Jones testified that over one-third of the City workforce had

been laid off, including one hundred sixty-eight police officers and sixty-seven firefighters. The City obtained a one-time \$2.5 million grant from South Jersey Port, \$500,000 of which was used to return fifteen firefighters to duty for the balance of 2011. The City also obtained a Staffing for Adequate Fire and Emergency Response (SAFER) grant of \$5.1 million from the Federal Emergency Management Agency (FEMA), which allowed the City to return sixteen firefighters to duty. However, a condition of the SAFER grant was that the City maintain the staffing level it had at the time of application. In the event that the City could not maintain that level, FEMA could cut its funding or require the return of funds to them. The City argued that the financial crisis precluded any increase in firefighter compensation and warned that any increase would force additional firefighter layoffs and possibly trigger FEMA sanctions.

On August 14, 2011, the arbitrator issued his Opinion and Award.⁵ At the outset, the arbitrator acknowledged the City's "fiscal dilemma" and "the harsh realities of decreased state aid[.]" The arbitrator stated his task was to "objectively balance" that dilemma with "the expectations of its citizens of

⁵ Although the Opinion and Award were issued after the amendment of the Compulsory Interest Arbitration Act, the mediation and arbitration hearings were conducted prior to the effective date of the amendment.

receiving services and the economic goals of professional fire fighters in maintaining a level of compensation equivalent to their unique, ever-dangerous occupation and service to the City and its residents."

The arbitrator noted that "Camden was (and is) strikingly dependent upon state aid, having received a total of \$125,100,682 in state aid for Fiscal Year 2010, including supplemental state aid of \$67 million." The City maintained that, despite this aid, it had a deficit for that year of \$8 million.

The arbitrator reviewed evidence and acknowledged the parties' arguments pertinent to the nine statutory criteria, N.J.S.A. 34:13A-16(g). In his conclusion, he stated,

There is little question that the huge budget deficit and declining state aid forced the City's action in laying off approximately one-third of its Fire Fighters But, in leaving the Fire Department with a reduced workforce, the City is, by sheer numbers, less capable of performing firefighting duties and, consequently, less capable of providing the protection of its citizens and structures.

The arbitrator stated his "intention was to recognize the importance of the service provided the City by its Fire Fighters through a minimal wage increase within a reasonable, yet confined, financial boundary." The arbitrator described the evidence regarding the City's financial straits as "both

informative and reliable." He cited the good faith efforts of the City to meet the fiscal demands, but considered it futile to impose concessions upon the Union:

[E]ven if this Arbitrator were to consider "freezes" in wages (or zero increases), together with deep reductions in previously negotiated contractual benefits, would the City of Camden be in a stable budgetary position or, more relevant to this interest arbitration, would the City find financial stability if granted nearly 20% reductions or concessions in the Firefighters salary budget? With extensive experience in interest arbitration and the ability to review a record, this Arbitrator is not convinced that any level of concessions by the Firefighters or an award by this Arbitrator would place the City of Camden in a stable budgetary position.

The arbitrator reached beyond the parties to include a "fourth party" that, he stated, "controls the fiscal condition" of the City:

[D]espite the efforts of the City Administration, the IAFF and the residents of Camden, there is a fourth party⁶ to this arbitration which, in reality, controls the fiscal condition of this City. It is the State of New Jersey (for purposes of reference herein, Governor Chris Christie and the State Legislature) which funds the budget shortfall and controls the ultimate amount of money to aid the City and grant Camden its operational ability. And irrespective of the level of success in

⁶ The Arbitrator had previously referred to the "citizens of Camden" as a "third party" to the proceeding.

progressing toward economic stability or independence, it is the final decision of the State of New Jersey, achieved through the State budget process . . . and aid programs administered primarily through the Commissioner of the Department of Community Affairs, which permits the City to operate. As such, the State of New Jersey is the fourth party to this Interest Arbitration.

[(Emphasis added).]

"[S]tressing [that] the interests and welfare of the public are best served through a well-trained and effective Fire Department," the arbitrator granted increases to base wages in the award that totaled 8.5% over four years. However, the arbitrator harbored no illusion that the City had the ability to pay the increases awarded:

To alleviate any misunderstanding or confusion, this Arbitrator does not contend that these increases fit within the City's ability to pay from its present tax base nor could be funded by greater bargaining unit concessions. Indeed, the City, alone, does not have sufficient funds to meet the modest, but reasonable, increases granted. But, when the record was finalized and the evidence reviewed, this Arbitrator reached three clear and realistic conclusions: 1) The City must continue an appropriate level of fire services, irrespective of budgetary shortages, in order to protect the City of Camden, its residents and property; 2) Fire Fighters should be granted reasonable increases in base wages, together with the obligation of paying for a portion of their health care coverage, as their responsibilities continue to grow and their duties expand; and, perhaps most important, 3) The State must affirmatively provide for

the City of Camden what the City cannot provide for itself.

Herein, when faced with the extreme State mandates and reductions in aid, the City Administration, however well-intentioned in its far-reaching pursuit of 20%-plus reduction in the municipal budget, will struggle to provide the level of fire protection for persons and property within Camden. In the opinion of this Arbitrator, the State cannot deny addition[all] aid or refuse to fund, either on reasoned basis or moral grounds, the City's Fire Department budget, whether for its operation or for modest Fire Fighter salary increases. Politic expediency, personal sentiment and current public opinion aside, the State cannot abandon a citizenry that faces the enormity of protecting its city while engaged in budgetary challenges. The breadth of evidence produced in hearing convinced this Arbitrator that the State of New Jersey must continue as a party to this process (along with the City, the IAFF and the residents of Camden) to maintain the safety and welfare of the citizens of Camden.

[(Emphasis added).]

The City appealed the arbitrator's award to PERC, asking that the award be vacated and the matter remanded to a different arbitrator. A draft opinion was prepared that would have granted the relief sought by the City. The opinion failed to win approval by a majority of the Board and, thereafter, the Commission adopted an opinion that affirmed the arbitration award.

In this appeal, the City argues that PERC's decision must be reversed because it is arbitrary and capricious for the following reasons: it violates the statutory mission of N.J.S.A. 34:13A-16(g); it is predicated on unsupported findings and violates the standards in N.J.S.A. 2A:24-8; and the arbitrator failed to consider evidence which was material to the controversy. In addition, the City argues that the matter must be remanded to a new arbitrator.

II

We begin by reviewing the legal principles applicable to this appeal.

Labor negotiations between the City and the Union are governed by N.J.S.A. 34:13A-16(a)(1). When the parties are unable to negotiate a new agreement, they may seek mediation or, as the Union did here, file a petition with PERC for "compulsory interest arbitration." Hillsdale PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71, 80 (1994); see N.J.S.A. 34:13A-16(b)(2). Such 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 v. Irvington, 80 N.J. 271, 284 (1979) (citing Div. 540, Amalgamated Transit Union v. Mercer Cnty. Improvement Auth., 76

N.J. 245, 249 (1978)). This differs from "grievance arbitration," in which "differences concerning the interpretation, application, or violation of an already existing contract" are submitted to an arbitrator. Ibid.; see also In re Camden Cnty. Prosecutor, 394 N.J. Super. 15, 18-19 (App. Div. 2007); S. Plainfield Bd. of Educ. v. S. Plainfield Educ. Ass'n ex rel. English, 320 N.J. Super. 281, 288-89 (App. Div.), certif. denied, 161 N.J. 332 (1999).

In declaring the public policy underlying the Compulsory Interest Arbitration Act, the Legislature stated, "the best interests of the people of the State are served by the prevention or prompt settlement of labor disputes, both in the private and public sectors[,]" N.J.S.A. 34:13A-2, a policy consistent with the favor given to the arbitration of labor-management disputes generally. See Middletown Twp. PBA Local 124 v. Twp. of Middletown, 193 N.J. 1, 10 (2007); Scotch Plains-Fanwood Bd. of Educ. v. Scotch Plains-Fanwood Educ. Ass'n, 139 N.J. 141, 149 (1995). There is a corresponding "strong preference for judicial confirmation of arbitration awards[,]" Middletown Twp., supra, 193 N.J. at 10, designed to ensure "finality, as well as to secure arbitration's speedy and inexpensive nature[.]" Ibid. (quoting N.J. Tpk. Auth. v. Local 196, 190 N.J. 283, 292 (2007)).

The New Jersey Arbitration Act, N.J.S.A. 2A:24-1 to -11, which is applicable to arbitration generally, establishes four circumstances under which a court may vacate an arbitration award:

- a. Where the award was procured by corruption, fraud or undue means;
- b. Where there was either evident partiality or corruption in the arbitrators, or any thereof;
- c. Where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause being shown therefor, or in refusing to hear evidence, pertinent and material to the controversy, or of any other misbehaviors prejudicial to the rights of any party;
- d. Where the arbitrators exceeded or so imperfectly executed their powers that a mutual, final and definite award upon the subject matter submitted was not made.

[N.J.S.A. 2A:24-8.]

Arbitration conducted pursuant to the Compulsory Interest Arbitration Act is further subject to a statutorily mandated procedure, which requires the arbitrator to "decide the dispute based on a reasonable determination of the issues, giving due weight to [enumerated statutory factors] that are judged relevant for the resolution of the specific dispute." N.J.S.A. 34:13A-16(g). The factors to be considered are:

- (1) The interests and welfare of the public.
Among the items the arbitrator or panel of

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

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

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

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

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

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

(4) Stipulations of the parties.

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

the employer by P.L.1976, c.68 (C.40A:4-45.1 et seq.).

(6) The financial impact on the governing unit, its residents, the limitations imposed upon the local unit's property tax levy pursuant to section 10 of P.L.2007, c.62 (C.40A:4-45.45), and taxpayers. . . .

(7) The cost of living.

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

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

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

In resolving disputes under the Compulsory Interest Arbitration Act, the arbitrator must give "due weight" to these statutory criteria. Irvington, supra, 80 N.J. at 287. The arbitrator must "indicate which of the factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor[.]" N.J.S.A. 34:13A-16(g). The arbitrator need not rely on all factors, but must identify and weigh the

relevant factors and explain why the remaining factors are irrelevant. Hillsdale, supra, 137 N.J. at 83-84. The resulting "reasoned explanation" serves to satisfy the requirement that the decision be based on the statutory factors that are judged to be relevant and reflect the fact that the arbitrator gave "due weight" to each factor. Ibid. "Without such an explanation, the opinion and award may not be a 'reasonable determination of the issues.'" Id. at 83 (quoting N.J.A.C. 19:16-5.9(b)). The requirement that such an explanation be included in the arbitrator's decision was codified in the amendment to N.J.S.A. 34:13A-16 that became effective in January 2011. As amended, N.J.S.A. 34:13A-16(f)(5) states, "[e]ach arbitrator's decision shall be accompanied by a written report explaining how each of the statutory criteria played into the arbitrator's determination of the final award." (Emphasis added.)

No one factor is dispositive. Hillsdale, supra, 137 N.J. at 83-84. Yet, the factors themselves reflect the significance of fiscal considerations. In Irvington, supra, 80 N.J. at 291, the Supreme Court observed that three of the statutory factors, (1) the "interests and welfare of the public"; (5) the "lawful authority of the employer"; and (6) the "financial impact [of an award] on the governing unit, its residents, . . . and

taxpayers[,]" N.J.S.A. 34:13A-16(g), "were so phrased as to insure that budgetary constraints were 'giv[en] due weight' prior to the rendition of an award." As to factor (6), the financial impact of the award, the statute imposes specific requirements on both the parties and the arbitrator, stating,

[I]n every interest arbitration proceeding, the parties shall introduce evidence regarding the factor set forth in paragraph (6) of this subsection and the arbitrator shall analyze and consider the factors set forth in paragraph (6) of this subsection in any award[.]

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

The statute also instructs the arbitrator as to the analysis required:

When considering this factor in a dispute in which the public employer is a . . . municipality, the arbitrator . . . 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 . . . ; 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.

[N.J.S.A. 34:13A-16(g)(6).]

Appeals from the interest arbitration award are decided by PERC, which may "affirm, modify, correct or vacate the award or may, at its discretion, remand the award to the same arbitrator or to another arbitrator . . . for reconsideration." N.J.S.A. 34:13A-16(f)(5)(a). The scope of our review of PERC decisions reviewing arbitration is "sensitive, circumspect and circumscribed." Twp. of Teaneck v. Teaneck Firemen's Mut. Benevolent Ass'n Local No. 42, 353 N.J. Super. 289, 300 (App. Div. 2002), aff'd, 177 N.J. 560 (2003). PERC's "interpretation of the statute it is charged with administering . . . is entitled to great weight," In re Camden Cnty. Prosecutor, supra, 394 N.J. Super. at 23, and its decision "will stand unless clearly arbitrary or capricious." Teaneck, supra, 353 N.J. Super. at 300. However, PERC's interpretation of the statute is entitled to no deference when its interpretation is "plainly unreasonable, contrary to the language of the Act, or subversive of the Legislature's intent[.]" N.J. Tpk. Auth. v. AFSCME, Council 73, 150 N.J. 331, 352 (1997) (internal citation omitted); Twp. of Franklin v. Franklin Twp. PBA Local 154, 424 N.J. Super. 369, 378 (App. Div. 2012); In re Camden Cnty. Prosecutor, supra, 394 N.J. Super. at 23.

When a public interest arbitration award is reviewed, judicial scrutiny is "more stringent" because "such arbitration is statutorily-mandated and public funds are at stake." Hillsdale, supra, 137 N.J. at 82. In addition to the public interest and welfare, the public sector arbitrator is obligated to consider "the prevailing law[] in rendering any award." Weiss v. Carpenter, 143 N.J. 420, 431 (1996) (citing Tretina Printing, Inc. v. Fitzpatrick & Assocs., Inc., 135 N.J. 349, 364-65 (1994)); see also Camden Bd. of Educ. v. Alexander, 181 N.J. 187, 237 (2004).

In Hillsdale, the Supreme Court articulated principles that govern our review of the award⁷ here:

[A] reviewing court may vacate an award when the decision fails to give "due weight" to the section 16g factors, when the award has been procured by corruption, fraud, or undue means, when arbitrators have refused to hear relevant evidence or committed other

⁷ At the time Hillsdale was decided, the Compulsory Interest Award Arbitration Act provided that the parties were permitted to choose among several "terminal procedures" for the resolution of their dispute, including arbitration in which the award was confined to a choice between the last offers of the employer and the employees' representative. Hillsdale, supra, 137 N.J. at 81. Hillsdale concerned such a "last offer" arbitration. See id. at 82. When N.J.S.A. 34:13A-16 was amended in 2010, effective January 1, 2011, the selection of terminal procedures was deleted and all disputes were required to be resolved through binding arbitration pursuant to "conventional arbitration." N.J.S.A. 34:13A-16(d). The principles set forth in Hillsdale remain controlling despite the difference in resolution procedure.

prejudicial errors, or when arbitrators have so imperfectly executed their powers that they have not made a final award[.]

[Hillsdale, supra, 137 N.J. at 82 (internal citations omitted).]

III

The City contends that the arbitrator exceeded his authority by stating the State was a "fourth party" to the arbitration and by concluding the State must fund the City's Fire Department budget, including salary increases. As a result, the City argues, PERC's decision to affirm the award was arbitrary and capricious. We agree.

The State was neither a party to the original CBA nor to the successor agreement the arbitrator was charged to craft. Therefore, the arbitrator lacked the authority to render an award that essentially required the State to assume funding responsibilities for the salary increases. See Atlantic City v. Laezza, 80 N.J. 255, 268 (1979). Indeed, both the City and the Union agree the arbitrator lacked the authority to make the State a party and that the award is not enforceable against the State. The net result is that the City is obligated to pay the salary increases awarded, regardless of the amount of aid received and without regard to the effect of the award on its ability to meet other financial demands or to avoid further layoffs.

As noted earlier, it was undisputed that the City was unable to fund the award from its own tax base. As the arbitrator acknowledged, State aid was shrinking at the time of the award. The Governor's exercise of a line-item veto⁸ to strike the Transitional Aid Program for the State's budget for fiscal year 2012 eliminated approximately 40% of the City's budget for that year. The arbitrator recognized that "the continued downturn in the City and State economy" precluded an agreement that included both a conditional wage freeze and no further layoffs through December 31, 2012.

However, after taking stock of the toll the City's fiscal crisis had taken on the firefighting service, the arbitrator made a policy decision that the services could not be reduced further, that "equity mandated a reasonable adjustment of compensation" for the firefighters, and that "drastic steps were necessary to address the overwhelming budget obstacles." That determination laid the foundation for the award in which he stated "[t]he State must affirmatively provide for the City of Camden what the City cannot provide for itself[,]" and stated further, "the State cannot deny addition[al] aid or refuse to

⁸ The Constitution grants the Governor the authority to object to any item or items included in an appropriation bill through the exercise of a selective veto. N.J. Const. art. V, § I, ¶ 15.

fund . . . the City's Fire Department budget, whether for its operation or for modest Fire Fighter salary increases." In affirming the award, PERC reasoned that "the arbitrator's opinion regarding the City's dependence on State aid [was] a realistic assessment of the City's financial position."

We recognize that, in light of the City's financial straits, the challenge to provide both adequate firefighting service to the municipality and reasonable compensation to the firefighters presents a fiscal Gordian knot. But it was not within the arbitrator's authority to sever that knot by usurping both the authority granted by the New Jersey Constitution to the Legislature and Governor and governmental policy-making authority.

As a preliminary matter, the nature of the policy decision that is the keystone to the arbitration award is not a proper subject for arbitration. See Teaneck, supra, 353 N.J. Super. at 302 ("In the public sector, . . . because the employer is government, the responsibility is to make and implement public policy through the political process, as opposed to negotiation and arbitration."); see also N.J. Tpk. Auth. v. N.J. Tpk. Supervisors Ass'n, 143 N.J. 185, 203 (1996); In re Local 195,/FPTE, 88 N.J. 393, 404 (1982); Kearny PBA Local No. 21 v. Town of Kearny, 81 N.J. 208, 215 (1979) (stating that

"prerogatives of management, particularly those involving governmental policy making, cannot be bargained away to be determined by an arbitrator").

Moreover, "the power and authority to appropriate funds lie solely and exclusively with the legislative branch of government." City of Camden v. Byrne, 82 N.J. 133, 148 (1980); see also N.J.Const., art. VIII, § II, ¶ 2; Commc'ns Workers of Am. v. Florio, 130 N.J. 439, 451 (1992); Karcher v. Kean, 97 N.J. 483, 489 (1984); In re Deborah Heart & Lung Ctr. SFY 2009 Charity Care Subsidy Allocation, 417 N.J. Super. 25, 30-31 (App. Div. 2010). Because the Legislature's authority even includes the "inherent power to disregard" its own fiscal enactments, Byrne, supra, 82 N.J. at 147, "[t]here can be no redress in the courts to overcome either the Legislature's action or refusal to take action pursuant to its constitutional power over state appropriations." Id. at 149. The Court's proscription against the exercise of judicial authority aptly describes the limit on the arbitrator's authority here:

It is not for the courts to weigh the equities in a case such as this. The Constitution has placed the State's conscience in these matters in the Legislature and it is that branch of government which must weigh the interests of its citizens at all levels of government.

[Id. at 158.]

This is not to say that the arbitrator must disregard the State's contributions to the City in determining an appropriate award. Both the City and the State agree that the arbitrator may consider the historical facts, which include that the State has provided significant aid, continues to provide significant aid, and that such aid is decreasing, in determining an appropriate award.

IV

The City also argues that the arbitrator's failure to follow substantive law constituted "undue means," requiring the award to be vacated under N.J.S.A. 2A:24-8(a), and that, therefore, PERC's decision must be reversed. Again, we agree.

Although private parties may authorize an arbitrator "to decide legal issues as he deems fit irrespective of the governing law, this freedom is not available in the public sector." Commc'ns Workers of Am., Local 1087 v. Monmouth Cnty. Bd. of Soc. Servs., 96 N.J. 442, 450 (1984). Instead, "the arbitrator in a public employment case is obliged to resolve it in accordance with the law and the public interest." Id. at 453.

Therefore, a court may vacate an award in a public sector case if it is contrary to existing law. N.J. Tpk. Auth., supra,

190 N.J. at 294.⁹ Even under the criteria of N.J.S.A. 2A:24-8(a), an arbitrator's failure to follow the substantive law may also constitute "undue means" which would require the award to be vacated. Jersey City Educ. Ass'n, Inc. v. Bd. of Educ., 218 N.J. Super. 177, 188 (App. Div.), certif. denied, 109 N.J. 506 (1987); see also Held v. Comfort Bus Line, Inc., 136 N.J.L. 640, 641-42 (Sup. Ct. 1948). Thus, in Monmouth Cnty. Bd. of Soc. Servs., supra, 96 N.J. at 453-55, the Court vacated an arbitration award in part because the award may have violated applicable statutes and regulations. See Weiss, supra, 143 N.J. at 431. Similarly, we vacated an award based upon an arbitrator's finding that any affirmative action hiring plan was illegal as "inconsistent with existing law and violative of the guidelines applicable to public sector arbitration." Jersey City Educ. Ass'n, supra, 218 N.J. Super. at 194.

Here, it is argued that the arbitration award was inconsistent with N.J.S.A. 40A:10-21(b) and N.J.S.A. 40A:10-21.1.

⁹ A court may also vacate an award if it is contrary to public policy. Ibid. To vacate an award on public policy grounds, the award itself must violate policy that is "embodied in legislative enactments, administrative regulations, or legal precedents," and may not be "based on amorphous considerations of the common weal." Id. at 295; see also Middletown Twp., supra, 193 N.J. at 11; Borough of Glassboro v. Fraternal Order of Police, Lodge No. 108, 197 N.J. 1, 10 (2008).

N.J.S.A. 40A:10-21(b) states:

Commencing on the effective date [May 21, 2010] of P.L.2010, c.2 and upon the expiration of any applicable binding collective negotiations agreement in force on that effective date, employees of an employer shall pay 1.5 percent of base salary, through the withholding of the contribution from the pay, salary or other compensation, for health care benefits coverage provided pursuant to N.J.S.40A:10-17, notwithstanding any other amount that may be required additionally pursuant to subsection a. of this section for such coverage

The CBA here expired in December 2008, well before the effective date of the statute. As a result, the obligation to contribute 1.5% of base salary toward the cost of health care benefits commenced in May 2010.

Moreover, because the CBA had expired, any new agreement was also subject to the terms of N.J.S.A. 40A:10-21.1 when it became effective in June 2011. See N.J.S.A. 40A:10-21.1(d), (e). This statute phased in a new scale of employee contributions to health care benefits in which each employee paid a percentage of the cost of medical and prescription drug plan coverage pursuant to a scale based upon income set forth in N.J.S.A. 52:14-17.28(c), and further established that no employee would contribute less than 1.5% of base salary toward such coverage.

In his opinion, the arbitrator addressed this issue as follows:

If this Arbitrator is guided by the recent legislation (passed in June 2011), there are clear indications for substantial increases to that percent of salary for public sector employees['] contributions to health care premium coverage.

. . . .

Candidly, while these questions have been addressed by the State Legislature, it is difficult for this Arbitrator to predict how recent or future legislative actions will ultimately alter public sector employee contributions for health care as it applies to the bargaining unit and collective bargaining. Nevertheless, this Arbitrator shall attempt to limit the present increase of contributions for the bargaining unit during the term of the Agreement in a relative proportion to salary increases awarded and shall direct the parties to implement the 1.5% (of base salary) co-pay contribution for health care (as the City has already accomplished) and, to the extent of the law, preclude further percentage increases during the term of this Agreement.

Article XXX, Section 16 of the Interest Arbitration Award accordingly provides, "Effective upon the execution of a successor agreement, the employees shall contribute 1.5% of their base salary as a contribution for health insurance, as required by N.J.S.A. 40A:10-21." (Emphasis added.)

The Opinion and Award were issued August 14, 2011, after the effective date of N.J.S.A. 40A:10-21.1. Indeed, the

arbitrator notes the statute was passed in June 2011, and that, "[if] guided" by that legislation, "there are clear indications for substantial increases" to the contributions the employees would be required to make. The arbitrator then "candidly" expresses uncertainty as to how legislative action will "ultimately" affect the amounts of contributions, and chooses to "attempt to limit" the contributions here to 1.5%. The arbitrator's action in declining to be "guided" by N.J.S.A. 40A:10-21.1, a statute that he recognized was in effect and applicable at the time of the award, was clearly contrary to law.

In addition to ignoring the amount the employees were required to contribute, the arbitrator also improperly delayed the time when the contributions would commence. As the arbitrator acknowledged, the City had been deducting 1.5% of the firefighters' base salary as required by N.J.S.A. 40A:10-21. Nonetheless, the arbitrator directed that implementation of the 1.5% contribution not commence until the execution of a successor agreement, contrary to the terms of N.J.S.A. 40A:10-21(b). See Laezza, supra, 80 N.J. at 269 (concluding that, if the arbitrator rendered an award without first considering its impact on the municipal budget cap, see N.J.S.A. 40A:4-45.2 and -45.3, "that award would be subject to vacation on grounds of

procurement by 'undue means'"); S. Plainfield Bd. of Educ., supra, 320 N.J. Super. at 289-90.

The award here must, therefore, be vacated due to the arbitrator's failure to render an award consistent with statutory mandates governing the contributions employees were required to make toward their health benefits.

V

The City argues further that the arbitrator failed to discharge his statutory obligation to "indicate which of the factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor[.]" N.J.S.A. 34:13A-16(g). Again, we agree.

The arbitrator is required to give a "reasoned explanation" that reflects he gave "due weight" to the statutorily mandated criteria. As we have noted, the arbitrator was required by N.J.S.A. 34:13A-16(f)(5) to accompany his decision with a written report "explaining how each of the statutory criteria played into [his] determination of the final award."

The arbitrator here failed to meet these requirements. His discussion of the statutory factors was essentially limited to a discussion of the parties' positions as to each factor. He failed to identify which factors he deemed relevant or explain

why any factor was not relevant to his determination. Although the language of his opinion does not obscure his personal view as to how the matter should be resolved, the opinion fails to provide the required analysis of the statutory criteria to support his conclusions.

The inadequacy of the arbitrator's findings are particularly evident in his discussion of "[t]he financial impact on the governing unit, its residents, . . . and taxpayers." N.J.S.A. 34:13A-16g(6). Even when it is presumed that a municipality has the ability to pay an arbitration award, further analysis is required.¹⁰ The terms of this factor "do not equate with the municipality's ability to pay."¹¹ Hillsdale, supra, 137 N.J. at 85. It is "not enough to simply assert that the public entity involved should merely raise taxes to cover the costs of a public interest arbitration award." Id. at 86. (quoting Hillsdale PBA Local 207 v. Borough of Hillsdale, 263 N.J. Super. 163, 188 n.16 (App. Div. 1993)).

¹⁰ As noted, the statute also instructs the arbitrator as to the analysis required. N.J.S.A. 34:13A-16(g).

¹¹ Even when a municipality has a "perceived ability to pay" increases, an arbitration award may be properly vacated if the arbitrator places undue emphasis on a comparison with contracts negotiated in other municipalities. Hillsdale, supra, 137 N.J. at 86; see also Twp. of Washington v. N.J. State Policemen's Benevolent Ass'n, Inc., Local 206, 137 N.J. 88, 92 (1994).

Unlike Hillsdale, where there was a perceived ability to pay, there was a recognized inability to pay the award here. Moving past the fundamental error of assuming the State would fund the award, the decision failed to give adequate consideration to factors identified in N.J.S.A. 34:13A-16(g)(6) that the arbitrator was required to take into account, such as:

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.

[Ibid.]

There was evidence here that the City's financial straits had already resulted in widespread layoffs of municipal employees and tax increases "to the max." There was further evidence that the award initially proposed by the arbitrator would have a significant and adverse impact on the ability of the City to maintain the already reduced staffing level of the fire department. Although the arbitrator accepted this evidence as credible, the decision failed to give due consideration to the impact of the award on the City in light of this evidence. As a result of this and other errors, the award must be vacated and PERC's decision must be reversed.

VI

Finally, the City argues that this matter should be submitted to a different arbitrator upon remand. The City argues that the arbitrator failed to properly analyze the statutory factors and violated his duty of impartiality. The Union counters that there is insufficient reason to depart from the "standard remedy" of remanding the matter to the same arbitrator for a further analysis of the statutory factors, particularly in light of the additional delay in resolving this dispute that would result from referring this matter to a different arbitrator.

The grounds for vacating an arbitration award under N.J.S.A. 2A:24-8 are identical to those set forth in 9 U.S.C.A. § 10(a) for vacating an arbitration award under the Federal Arbitration Act (FAA), 9 U.S.C.A. §§ 1 to -16. Both statutes provide that an award may be vacated where the arbitrator demonstrated "evident partiality[.]" 9 U.S.C.A. § 10(a)(2); N.J.S.A. 2A:24-8(b). The Supreme Court observed that in authorizing this ground for vacating an award, Congress evinced its "desire . . . to provide not merely for any arbitration but for an impartial one." Commonwealth Coatings Corp. v. Cont'l Cas. Co., 393 U.S. 145, 147, 89 S. Ct. 337, 338, 21 L. Ed. 2d 301, 304 (1968). Upon vacating an arbitration award, the court

has the discretion to remand for further proceedings before the same arbitrator or to direct that the matter be heard by a different arbitrator. N.J.S.A. 34:13A-16(f)(5)(a); see also Fox v. Morris Cnty. Policemen's Ass'n, P.B.A. 151, 266 N.J. Super. 501, 520-21 (App. Div. 1993), certif. denied, 137 N.J. 311 (1994); Manchester Twp. Bd. of Educ. v. Carney, Inc., 199 N.J. Super. 266, 282 (App. Div. 1985).

Although a failure to fully analyze the mandatory statutory criteria will be sufficient to vacate an award, that failure alone will not be sufficient to require that the arbitration proceed before a different arbitrator upon remand. See Hillsdale, supra, 137 N.J. at 87; Fox, supra, 266 N.J. Super. at 521-22. However, when deficiencies in the arbitrator's process call into question the arbitrator's ability to have an open mind regarding the disposition, see, e.g., Manchester Twp., supra, 199 N.J. Super. at 282, a remand to a different arbitrator may be appropriate. We are satisfied that the errors here are not mere deficiencies in the analysis of statutory factors that could be remedied by further review.

As the arbitrator acknowledged, he was charged "to render an Award regarding the terms and conditions of a successor Collective Bargaining Agreement . . . after consideration of the statutory criteria of N.J.S.A. [3]4:13A-16(g)(1) through (9)."

Nevertheless, his avowed "intention was to recognize the importance of the service provided the City by its Fire Fighters through a minimal wage increase[.]" To implement that intention, the arbitrator rendered an award he acknowledged the City was unable to pay; ignored statutes he knew to be in effect in an "attempt" to shield the employees from legislatively mandated increases in employee contributions to health benefits; and, sua sponte, in the absence of any authority, called the State "a fourth party" to the arbitration and the presumptive source of funds necessary to fund the award. The nature of these errors suggests a commitment to the arbitrator's stated intention and requires the matter proceed before a different arbitrator. See State v. Thompson, 405 N.J. Super. 163, 172 (App. Div. 2009), certif. denied, 209 N.J. 232 (2012); R. 1:12-1(d).

PERC's decision to affirm the award is reversed, the arbitration award is vacated and this matter is remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION

215 N.J. 485; 73 A.3d 511;
2013 N.J. LEXIS 822, *



1 of 100 DOCUMENTS

IN THE MATTER OF THE CITY OF CAMDEN AND THE INTERNATIONAL
ASSOCIATION OF FIREFIGHTERS, LOCAL 788. (INTERNATIONAL
ASSOCIATION OF FIRE FIGHTERS, LOCAL 788-PETITIONER.)

C-962 September Term 2012, 072202

SUPREME COURT OF NEW JERSEY

215 N.J. 485; 73 A.3d 511; 2013 N.J. LEXIS 822

July 30, 2013, Decided
July 31, 2013, Filed

PRIOR HISTORY: In re City of Camden,
429 N.J. Super. 309, 58 A.3d 1186,
2013 N.J. Super. LEXIS 8 (App.Div.,
2013)

JUDGES: [*1] Honorable Stuart Rabner,
Chief Justice.

OPINION

ON PETITION FOR CERTIFICATION

A petition for certification of the

judgment in A-001244-11 having been
submitted to this Court, and the Court
having considered the same;

It is ORDERED that the petition for
certification is denied, with costs.

WITNESS, the Honorable Stuart
Rabner, Chief Justice, at Trenton,
this 30th day of July, 2013.

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0040-12T1

IN THE MATTER OF BURLINGTON
COUNTY PROSECUTOR'S OFFICE.

Argued May 20, 2013 — Decided June 10, 2013

Before Judges Parrillo and Fasciale.

On appeal from the Public Employment
Relations Commission, Docket No. IA-2012-
016.

Carmen Saginario, Jr., argued the cause for
appellant Burlington County Prosecutor's
Office (Capehart & Scatchard, P.A.,
attorneys; Mr. Saginario, of counsel and on
the brief; Laurel B. Peltzman and Katheryn
Eisenmann, on the brief).

David J. DeFillippo argued the cause for
respondents Burlington County Prosecutor's
Detectives (Klatsky, Sciarabone &
DeFillippo, attorneys; Mr. DeFillippo, of
counsel and on the brief).

Martin R. Pachman, General Counsel, attorney
for respondent New Jersey Public Employment
Relations Commission (Don Horowitz, Deputy
General Counsel, on the statement in lieu of
brief).

PER CURIAM

The Burlington County Prosecutor's Office and the County of
Burlington (collectively Burlington County) appeal from a final
agency decision by the New Jersey Public Employment Relations

Commission (PERC) affirming an interest arbitration award permitting a salary increase. We remand for further proceedings.

Burlington County Prosecutor's Detectives PBA Local #320 (the Union) is the exclusive bargaining agent for all detectives and investigators employed by Burlington County. On December 31, 2010, the parties' collective bargaining agreement (CBA) expired. In February 2012, Burlington County filed a Petition to Initiate Compulsory Interest Arbitration. PERC appointed an Arbitrator, who conducted interest arbitration hearings on April 2, 2012, and April 5, 2012. On April 21, 2012, the arbitrator issued his written decision and awarded a salary increase for certain employees amounting to 0.5% on January 1, 2011, 1.25% on January 1, 2012, and 2% on January 1, 2013.¹

Burlington County appealed to PERC and contended that the award was subject to a 2% salary cap enacted pursuant to N.J.S.A. 34:13A-16.7, the arbitrator failed to properly analyze nine factors enumerated in N.J.S.A. 34:13A-16g, and that the salary increases were otherwise unreasonable. On May 30, 2012,

¹ Counsel for Burlington County contends in his merits brief that the arbitrator "issued an award which provided for a [twenty-six percent] increase in salaries over a three-year period for [twenty-five] prosecutor's detectives."

PERC issued its decision and affirmed the award regarding salary increases stating that

[t]he arbitrator discussed at length the economic condition of [Burlington] County, and the impact of the tax levy cap which is incorporated by reference into N.J.S.A. 34:13A-16g. . . . Here, he found that the award which he rendered would not cause the County to exceed its levy cap, and that the County had the ability to pay the salary award. . . .

. . . .

We find that the arbitrator adequately evaluated all the statutory criteria; explained why he gave more weight to some factors and less to others; and issued a comprehensive award that reasonably determined the issues and is supported by substantial credible evidence as to the salary award. . . .

This appeal followed.

On appeal, Burlington County argues that the arbitrator failed to fully analyze the factors enumerated in N.J.S.A. 34:13A-16g, PERC's decision was arbitrary, and that the CBA expired on January 1, 2011, thereby implicating the two percent salary cap enacted pursuant to N.J.S.A. 34:13A-16.7. Based on our review of the record and the controlling legal principles, we conclude that defendant's two-percent argument is without sufficient merit to warrant extended discussion in a written

opinion. R. 2:11-3(e)(1)(E). Instead, we focus on whether the subsection 16g factors were sufficiently considered.²

"Our scope of review of PERC decisions reviewing arbitration is sensitive, circumspect[,] and circumscribed. PERC's decision will stand unless clearly arbitrary or capricious." Twp. of Teaneck v. Teaneck Firemen's Mut. Benevolent Ass'n Local No. 42, 353 N.J. Super. 289, 300 (App. Div. 2002) (citation omitted), aff'd o.b., 177 N.J. 560 (2003). "Absent violation of standards of conduct, PERC's appellate role is to determine whether the arbitrator considered the criteria in N.J.S.A. 34:13A-16(g) . . . and rendered a reasonable determination of the issue or issues at impasse that was supported by substantial evidence in the record." Id. at 306. "Although an agency's interpretation of the statute it is charged with administering . . . is entitled to great weight, we will not yield to PERC if its interpretation is plainly unreasonable, contrary to the language of the Act, or subversive of the Legislature's intent." In re Camden Cnty. Prosecutor, 394 N.J. Super. 15, 23 (App. Div. 2007) (citations omitted) (internal quotation marks omitted).

² At oral argument, counsel for Burlington County acknowledged that at a minimum, his client is seeking a remand so the record can more fully be developed regarding the subsection 16g analysis.

In general, when parties are unable through labor negotiations to reach a new agreement, they are permitted to seek compulsory interest arbitration, pursuant to N.J.S.A. 34:13A-16b. Such arbitration "involves the submission of a dispute concerning the terms of a new contract to an arbitrator, who selects those terms and thus in effect writes the parties' collective agreement." N.J. State Policemen's Benevolent Ass'n v. Irvington, 80 N.J. 271, 284 (1979). The arbitration is subject to a statutorily mandated procedure under N.J.S.A. 34:13A-16g, which states:

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

(1) The interests and welfare of the public. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by P.L. 1976, c. 68 ([N.J.S.A.] 40A:4-45.1 et seq.).

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

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

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

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

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

(4) Stipulations of the parties.

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

upon the employer by P.L. 1976, c. 68 ([N.J.S.A.] 40A:4-45.1 et seq.).

(6) The financial impact on the governing unit, its residents, the limitations imposed upon the local unit's property tax levy pursuant to section 10 of P.L. 2007, c. 62 ([N.J.S.A.] 40A:4-45.45), and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take into account, to the extent that evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element or, in the case of a county, the county purposes element, required to fund the employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers of the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in a proposed local budget.

(7) The cost of living.

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

bargaining between the parties in the public service and in private employment.

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

[(Emphasis added).]

An arbitrator must give "due weight" to the nine statutory factors of subsection 16g. Irvington, supra, 80 N.J. at 287. "The arbitrator need not rely on all factors, but must identify and weigh the relevant factors and explain why the remaining factors are irrelevant." In re City of Camden, 429 N.J. Super. 309, 326 (App. Div. 2013). The resulting explanation satisfies the requirement that the decision be based on the relevant statutory factors and that the arbitrator gave due weight to each factor. Ibid.; see also N.J.S.A. 34:13A-16f(5) (indicating that "[e]ach arbitrator's decision shall be accompanied by a written report explaining how each of the statutory criteria played into the arbitrator's determination of the final award"). Moreover, N.J.A.C. 19:16-5.9b provides that

[e]ach arbitrator's decision shall be accompanied by a written report explaining how each of the statutory criteria played into the arbitrator's determination of the final award. The opinion and award shall be signed and based on a reasonable determination of the issues, giving due

weight to those factors listed in N.J.S.A. 34:13A-16g which are judged relevant for the resolution of the specific dispute. In the award, the arbitrator shall indicate which of the factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor. The opinion and award shall set forth the reasons for the result reached.

[(Emphasis added).]

"No one factor is dispositive," but the factors "reflect the significance of fiscal considerations." In re City of Camden, supra, 429 N.J. Super. at 326-27. Three of the statutory factors, the "interests and welfare of the public"; the "lawful authority of the employer"; and the "financial impact on the governing unit, its residents, . . . and taxpayers, were so phrased as to insure that budgetary constraints were 'giv[en] due weight' prior to the rendition of an award." Irvington, supra, 80 N.J. at 291 (internal quotation marks omitted).

The New Jersey Supreme Court has addressed the need to comply with the statutory requirements. In Hillsdale PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71, 86 (1994), the Court determined that the arbitrator's award did not comply with the requirements of subsection 16g. The award failed to identify the relevant factors, analyze the evidence pertaining to those factors, and explain why other factors are irrelevant. Id. at 85-86. The Court stated that the arbitrator's award "unduly

emphasized the comparison with police salaries in other communities and inappropriately relied on the Borough's perceived 'ability to pay.'" Id. at 86. The Court specifically criticized the arbitrator's analysis of two factors, N.J.S.A. 34:13A-16g(2) and (6). Id. at 85-86.

Subsection 16g(2) requires more than a comparison of public employer salaries in other communities. The Court indicated that it "invites comparison with other jobs in both the public and private sectors." Id. at 85. Moreover, the Court stated that "[t]he arbitrator should also consider the relationship between any such increases . . . in comparable areas of private employment," and after considering such information, "an arbitrator may still conclude that police and fire-fighters' salaries in similar municipalities provide the most relevant" comparison. Ibid. An arbitrator should set forth the reasons for reaching that conclusion. Ibid. The Court found the arbitrator failed to explain his reasoning for accepting the PBA's submission of the salary increases from other municipalities and for rejecting other bases for comparison. Ibid.

Here, the arbitrator did not address salary increases in comparable areas of private employment, as required by subsection 16g(2). Although he discussed the salaries and

salary increases of similar detectives and investigators in other counties, a consideration that is certainly relevant, subsection 16g(2) also requires an analysis of private sector jobs. This analysis was not done.

Moreover, subsection 16g(6) requires an analysis of the financial impact on the governing unit, its residents, and its taxpayers. "The terms of that factor do not equate with the municipality's ability to pay." Hillsdale, 137 N.J. at 85. "[I]t is not enough to simply assert that the public entity involved should merely raise taxes to cover the costs of a public interest arbitration award." Id. at 86 (internal quotation marks omitted). "The statutory direction to consider the financial impact on the municipality demands more than answering the question whether the municipality can raise the money to pay the salary increase." Ibid.

Here, the arbitrator "inappropriately relied" on the County's ability to pay instead of focusing on the financial impact on the County as required by subsection 16g(6). See id. at 86. He made no mention of the financial impact of the salary increases, and instead focused on current tax revenues and projected revenues from tax increases. This analysis is insufficient under subsection 16g(6). The arbitrator must demonstrate more than simply asserting that raising taxes would

cover the increased costs of an arbitration award. See Hillsdale, supra, 137 N.J. at 86 (stating that "[i]t is not enough to simply assert that the public entity involved should merely raise taxes to cover the costs of a public interest arbitration award" (internal quotation marks omitted)). Moreover, the arbitrator's decision failed to give sufficient consideration to the factors identified in N.J.S.A. 34:13A-16g(6), such as

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.

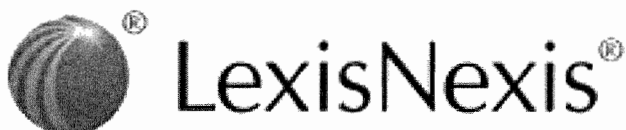
Although he acknowledged that he had to address all nine factors, the arbitrator did not indicate which factors he deemed relevant nor did he explain why others were irrelevant as the statute requires. It is therefore unclear from the arbitrator's opinion which factors he relied on in making his decision. "Without such an explanation, the opinion and award may not be a 'reasonable determination of the issues.'" Hillsdale, supra, 137 N.J. at 84 (quoting N.J.A.C. 19:16-5.9).

We therefore remand to develop the record regarding the arbitrator's subsection 16g analysis consistent with this opinion. We leave this task to the discretion of PERC. We do not retain jurisdiction.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION



IN THE MATTER OF BURLINGTON COUNTY PROSECUTOR'S OFFICE.
(BURLINGTON COUNTY PROSECUTOR'S OFFICE AND THE COUNTY OF
BURLINGTON - PETITIONERS)

C-604 September Term 2013, 073193

SUPREME COURT OF NEW JERSEY

2014 N.J. LEXIS 209

February 19, 2014, Decided
February 21, 2014, Filed

PRIOR HISTORY: In re Burlington County
Prosecutor's Office, 2013 N.J. Super.
Unpub. LEXIS 1387 (App.Div., June 10,
2013)

JUDGES: [*1] Honorable Stuart Rabner,
Chief Justice.

OPINION

ON PETITION FOR CERTIFICATION

A petition for certification of the

judgment in A-000040-12 having been
submitted to this Court, and the Court
having considered the same;

It is ORDERED that the petition for
certification is denied, with costs.

WITNESS, the Honorable Stuart
Rabner, Chief Justice, at Trenton,
this 19th day of February, 2014.

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1109-12T1

IN THE MATTER OF
COUNTY OF MORRIS,
MORRIS COUNTY SHERIFF'S OFFICE,
and PBA LOCAL 298.

Argued: October 30, 2013 – Decided: November 15, 2013

Before Judges Fuentes, Fasciale and Haas.

On appeal from the Public Employment
Relations Commission, Docket No. IA-2012-
035.

Stephen E. Trimboli argued the cause for
appellant County of Morris/Morris County
Sheriff's Office (Trimboli & Prusinowski,
LLC, attorneys; Mr. Trimboli, of counsel and
on the briefs).

Steven Backfisch argued the cause for
respondent PBA Local 298 (Lindabury,
McCormick, Estabrook & Cooper, attorneys;
Donald B. Ross, Jr., on the brief).

Martin R. Pachman, General Counsel, argued
the cause for respondent Public Employment
Relations Commission (Mary E. Hennessy-
Shotter, Deputy General Counsel, on the
statement in lieu of brief).

PER CURIAM

The Morris County Sheriff's Office and the County of Morris
(collectively Morris County) appeal from a final agency decision
by the New Jersey Public Employment Relations Commission (PERC)

affirming an interest arbitration award permitting automatic step increments for the 2011 calendar year. We remand for further proceedings.

PBA Local 298 (the Union) is the exclusive bargaining agent for all sheriff's officers employed by Morris County. On December 31, 2010, the parties' collective bargaining agreement (CBA) expired. On April 17, 2012, Morris County filed a Petition to Initiate Compulsory Interest Arbitration. PERC appointed an arbitrator, who conducted an interest arbitration hearing on May 17, 2012 and June 4, 2012. On June 18, 2012, the arbitrator issued a written decision establishing a three-year contract with a term of January 1, 2011 through December 31, 2013. The arbitrator awarded the Union step increments for 2011, with no other salary increases in that year. He further awarded the Union two percent salary increases in each of the final two years of the contract, but with no step movement in those years.

Morris County and the Union both appealed to PERC. Morris County challenged the arbitrator's decision to award the step increases in 2011. The Union sought additional salary increases. On July 19, 2012, PERC issued a decision upholding both appeals and remanding the matter to the arbitrator. PERC found that the arbitrator failed to make adequate findings

regarding the statutory factors set forth in N.J.S.A. 34:13A-16g, which govern an arbitrator's determination of an interest arbitration. Thus, PERC concluded that "[t]his award must be remanded to the arbitrator to provide an independent analysis of each of the statutory factors and to explain how the evidence and each relevant factor was considered in arriving at his award."

On August 28, 2012,¹ the arbitrator issued a new decision reaffirming the terms of his prior award, including the award of step increments for 2011. Morris County appealed to PERC and argued that the arbitrator had again failed to consider the factors set forth in N.J.S.A. 34:13A-16g.² On October 11, 2012, PERC issued its decision and affirmed the arbitrator's award. PERC stated:

Our review of the record confirms that the arbitrator evaluated all of the statutory criteria, explained why he gave more weight to some factors and less to others, and issued a comprehensive award that reasonably determined the issues and is supported by substantial credible evidence in the record.

This appeal followed.

¹ The decision is erroneously dated September 28, 2012.

² Morris County's appeal was limited to the award of the step increments in 2011. The Union did not file an appeal from any aspect of the arbitrator's decision on remand.

On appeal, Morris County argues that PERC's affirmance of the award was arbitrary and capricious. It contends that PERC should have vacated the award because the arbitrator failed to fully analyze the factors enumerated in N.J.S.A. 34:13A-16g. We agree.

"Our scope of review of PERC decisions reviewing arbitration is sensitive, circumspect[,] and circumscribed. PERC's decision will stand unless clearly arbitrary or capricious." Twp. of Teaneck v. Teaneck Firemen's Mut. Benevolent Ass'n Local No. 42, 353 N.J. Super. 289, 300 (App. Div. 2002) (citation omitted), aff'd o.b., 177 N.J. 560 (2003). "Absent violation of standards of conduct, PERC's appellate role is to determine whether the arbitrator considered the criteria in N.J.S.A. 34:13A-16(g) . . . and rendered a reasonable determination of the issue or issues at impasse that was supported by substantial evidence in the record." Id. at 306. "Although an agency's interpretation of the statute it is charged with administering . . . is entitled to great weight, we will not yield to PERC if its interpretation is plainly unreasonable, contrary to the language of the Act, or subversive of the Legislature's intent." In re Camden Cnty. Prosecutor, 394 N.J. Super. 15, 23 (App. Div. 2007) (citations and internal quotation marks omitted).

In general, when parties are unable through labor negotiations to reach a new agreement, they are permitted to seek compulsory interest arbitration, pursuant to N.J.S.A. 34:13A-16b. Such arbitration "involves the submission of a dispute concerning the terms of a new contract to an arbitrator, who selects those terms and thus in effect writes the parties' collective agreement." N.J. State Policemen's Benevolent Ass'n v. Irvington, 80 N.J. 271, 284 (1979). The arbitration is subject to a statutorily mandated procedure under N.J.S.A. 34:13A-16g, which states:

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

(1) The interests and welfare of the public. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by P.L. 1976, c. 68 ([N.J.S.A.] 40A:4-45.1 et seq.).

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

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

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

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

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

(4) Stipulations of the parties.

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

upon the employer by P.L. 1976, c. 68 ([N.J.S.A.] 40A:4-45.1 et seq.).

(6) The financial impact on the governing unit, its residents, the limitations imposed upon the local unit's property tax levy pursuant to section 10 of P.L. 2007, c. 62 ([N.J.S.A.] 40A:4-45.45), and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take into account, to the extent that evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element or, in the case of a county, the county purposes element, required to fund the employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers of the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in a proposed local budget.

(7) The cost of living.

(8) The continuity and stability of employment including seniority rights and such other factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours, and conditions of employment through

collective negotiations and collective bargaining between the parties in the public service and in private employment.

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

[(Emphasis added).]

An arbitrator must give "due weight" to the nine statutory factors of subsection 16g. Irvington, supra, 80 N.J. at 287. "The arbitrator need not rely on all factors, but must identify and weigh the relevant factors and explain why the remaining factors are irrelevant." In re City of Camden, 429 N.J. Super. 309, 326 (App. Div. 2013). The resulting explanation satisfies the requirement that the decision be based on the relevant statutory factors and that the arbitrator gave due weight to each factor. Ibid.; see also N.J.S.A. 34:13A-16f(5) (indicating that "[e]ach arbitrator's decision shall be accompanied by a written report explaining how each of the statutory criteria played into the arbitrator's determination of the final award"). Moreover, N.J.A.C. 19:16-5.9b provides that

[e]ach arbitrator's decision shall be accompanied by a written report explaining how each of the statutory criteria played into the arbitrator's determination of the final award. The opinion and award shall be signed and based on a reasonable

determination of the issues, giving due weight to those factors listed in N.J.S.A. 34:13A-16(g) which are judged relevant for the resolution of the specific dispute. In the award, the arbitrator shall indicate which of the factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor. The opinion and award shall set forth the reasons for the result reached.

[(Emphasis added).]

"No one factor is dispositive," but the factors "reflect the significance of fiscal considerations." In re City of Camden, supra, 429 N.J. Super. at 326-27. Three of the statutory factors, the "interests and welfare of the public"; the "lawful authority of the employer"; and the "financial impact [of an award] on the governing unit, its residents and taxpayers, were so phrased as to insure that budgetary constraints were giv[en] due weight prior to the rendition of an award." Irvington, supra, 80 N.J. at 291 (alteration in original) (citations and internal quotation marks omitted).

When an arbitrator's award fails to adequately address the criteria set forth in N.J.S.A. 34:13A-16g, the award should be vacated and the matter remanded to ensure compliance with the statutory requirement. See Hillsdale PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71, 82 (1994) (arbitrator's award failed to identify the relevant statutory factors, analyze the evidence

pertaining to those factors, and explain why other factors were irrelevant); In re City of Camden, supra, 429 N.J. Super. at 335 (arbitrator did not provide an adequate explanation of the statutory criteria or how they factored into the determination of the award).

Here, we are constrained to conclude that the arbitrator failed to meet the requirements of N.J.S.A. 34:13A-16g. PERC specifically instructed the arbitrator on the remand "to provide an independent analysis of each of the statutory factors and to explain how the evidence and each relevant factor was considered in arriving at his award." That did not occur. Instead, the arbitrator merely restated his initial conclusion that the Union should receive step increments in 2011 and explained that this decision was based solely upon his belief that the payments were required by the terms of the expired contract. The arbitrator stated:

In my award I included the payment of increments in the first year of the contract. This was done because of the particular provision of the expired agreement which I defended as being enforceable.

. . . .

The key area of dispute raised by the employer had to do with my award of increment pay in 2011. My determination of that issue was simply an interpretation of the commitment incorporated in the expiring

agreement of 2010. Although this was disputed at hearing I found the claim of the Union as to the payment of increments to be convincing and awarded same. Clearly the parties had addressed that issue and formulated such payments as part of their prior agreement. The agreed upon option to revisit that commitment was never timely exercised by the County and no evidence to the contrary was offered. I did not find that the costs involved provided a sufficiently compelling rationale to warrant a change in what was determined to be a contractual obligation.

There are two problems with the arbitrator's determination. First, this was an interest arbitration, not a grievance arbitration. An 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.'" In re City of Camden, supra, 429 N.J. Super. at 324 (quoting Irvington, supra, 80 N.J. at 284. On the other hand, in a grievance arbitration, "'differences concerning the interpretation, application, or violation of an already existing contract' are submitted to an arbitrator." Ibid.

In an interest arbitration, consideration of the terms of an expired contract is not one of the nine statutory factors set forth in N.J.S.A. 34:13A-16g. Here, the arbitrator's task was to establish a new contract for the parties, not to interpret the terms of their prior, expired contract. Thus, the

arbitrator clearly erred by basing his decision to award step increments in 2011 entirely upon his interpretation of the expired contract.

Just as importantly, by limiting his rationale for awarding step increments in 2011 to a statement of his belief that the expired contract required such payments, the arbitrator ignored his responsibility to thoroughly analyze the statutory factors. For example, N.J.S.A. 34:13A-16g(6) requires an analysis of the financial impact of the award on the governing unit, its residents, and its taxpayers. However, because the arbitrator decided that the increments were a "contractual dedication" required by the expired contract, he stated that this factor "is not essentially a matter requiring my further attention." Thus, the arbitrator made no findings concerning

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.

[N.J.S.A. 34:13A-16g(6).]

While the arbitrator mentioned the other factors in his decision, he did so only in the context of explaining why he rejected the arguments raised by the Union for additional salary

increases. For example, in discussing the public interest under N.J.S.A. 34:13A-16g(1), the arbitrator noted that the Union had done much better than other Morris County employees, who had received no salary increases or step increments during their negotiations. The arbitrator found that "those in non-police positions harbor the feeling that they are being treated as second citizens when comparison is made with the police employed by the County." Similarly, in discussing the "continuity and stability of employment" factor under N.J.S.A. 34:13A-16g(8), the arbitrator stated "[t]here was no indication of these employees being negatively impacted by this award" and that "while [the] salary increases granted herein may not have been as generous as were requested[,] there is nothing in the record to suggest a problem of turnover." While these brief remarks might explain why no additional compensation was awarded to the Union, they do nothing to justify the arbitrator's decision to award the step increments.

In sum, the arbitrator did not explain why his analysis of any of the statutory factors justified the award of step increments for 2011. "Without such an explanation, the opinion and award may not be a 'reasonable determination of the issues.'" Hillsdale, supra, 137 N.J. at 84 (quoting N.J.A.C. 19:16-5.9). We therefore remand to develop the record regarding

the arbitrator's analysis of the factors established in N.J.S.A.
34:13A-16g consistent with this opinion. We leave this task to
the discretion of PERC.³ We do not retain jurisdiction.

I hereby certify that the foregoing
is a true copy of the original on
file in my office


CLERK OF THE APPELLATE DIVISION

³ At oral argument, the parties advised that the arbitrator who handled this matter has retired. Therefore, we do not address Morris County's request that a new arbitrator be assigned in the event of a remand.