



**BIENNIAL REPORT**

**OF THE**

**NEW JERSEY**

**PUBLIC EMPLOYMENT RELATIONS COMMISSION**

**ON THE**

**POLICE AND FIRE PUBLIC INTEREST**

**ARBITRATION REFORM ACT**

**JANUARY 2010**

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**BIENNIAL REPORT  
OF THE  
NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION  
ON  
THE POLICE AND FIRE PUBLIC INTEREST ARBITRATION REFORM ACT  
JANUARY 2010**

**EXECUTIVE SUMMARY**

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.*, (Appendix, Tab 1), which took effect on January 10, 1996, has now been in place for fourteen years. There have been no significant problems in its implementation or administration and fourteen years of experience under the legislation indicates the following trends:

- Parties are invoking the interest arbitration process less frequently than before the Reform Act. However, the number of filings during the last six months of 2009 represent a 33% increase over the same period in 2008.
- In a substantial majority of cases – and virtually all cases during the past eleven years – the parties have mutually agreed on the selection of an interest arbitrator instead of having an arbitrator assigned by lot by the New Jersey Public Employment Relations Commission (Commission).
- Interest arbitrators continue to play a significant role in assisting parties reach voluntary settlements.
- When disputes do proceed to an award, interest arbitrators are overwhelmingly deciding disputes by conventional arbitration -- the terminal procedure mandated by the Reform Act unless the parties agree to one of the other optional procedures allowed by statute.
- The number of awards issued in each of the last fourteen calendar years is substantially less than the average annual

number of awards issued under the predecessor statute. In addition, the number of interest arbitration appeals filed with the Commission has been low.

These developments were evident during the first years the Reform Act was in place and, over the course of the past fourteen years, appear to have become firmly rooted features of the interest arbitration process under the Reform Act.

This report, the seventh submitted under the revised statute, reviews Commission actions in implementing and administering the statute and provides information concerning interest arbitration petitions, settlements, awards and appeals during the first fourteen years under the Reform Act.

### **INTRODUCTION**

This report is submitted pursuant to Section 7 of the Reform Act, *N.J.S.A.* 34:13A-16.4, which directs the Commission to:

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

In undertaking this charge, the Commission is mindful that interest arbitration has often been the focus of intense discussion by the parties to a specific case and the interest arbitration community as a whole. The Legislature has given interest arbitrators the authority to set contract terms that may significantly affect both management and labor, and participants in the process may at times voice their

opinions about the interest arbitration statute. The Commission considers and responds to constituent concerns as appropriate within the existing statutory framework. Substantive policy discussions about the interest arbitration statute are the province of the Legislature, labor and management representatives, and the public in general. 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 in a neutral and impartial manner and in accord with the Legislature's direction.

## **IMPLEMENTATION AND ADMINISTRATION OF THE REFORM ACT**

### **Overview**

As noted in the Commission's previous reports, the Reform Act made the following significant changes in the predecessor statute:

- Conventional arbitration, rather than final offer arbitration, is the terminal procedure unless the parties agree to another procedure.
- Arbitrators are assigned by lot from the Commission's Special Panel of Interest Arbitrators, unless the parties agree upon an arbitrator from the Special Panel.
- An award must be issued within 120 days of an arbitrator's selection or assignment. The Commission may grant a 60-day extension or the parties may agree to an extension.
- The comprehensive list of factors that must be considered in deciding a dispute was amended to provide more specific direction to the arbitrator and the parties:
  - An award must indicate which criteria are relevant, explain why other criteria are not relevant, and analyze the evidence on each relevant factor.
  - The CAP law governing municipalities and counties, *N.J.S.A. 40A:4-45.1 et seq.*, must be considered in connection with two statutory criteria.
  - An arbitrator is required to consider, to the extent evidence is introduced, the impact of an award on the municipal or county purposes element of the local property tax, the impact of an award on each income sector of property taxpayers, and the governing body's ability to maintain, expand or initiate programs or services.

In addition, the Reform Act entrusted the Commission with several new responsibilities:

- The Commission is required to promulgate guidelines for determining comparability of jurisdictions.
- The Commission is required to conduct annual mandatory continuing education programs for arbitrators on such topics as employer budgeting and finance, public management and administration, employment trends and labor costs in the public sector, pertinent court decisions, and employment issues relating to law enforcement officers and firefighters.
- The Commission is required to perform, or cause to be performed, an annual survey of private sector wage increases for use by all interested parties in public sector wage negotiations.
- The Commission, rather than the Superior Court, has jurisdiction to decide appeals from interest arbitration awards.

The Reform Act also preserved a key feature of the predecessor statute. It retained a "mediation-arbitration" model where the assigned arbitrator is encouraged to assist the parties in voluntarily resolving their dispute even after the petition for interest arbitration is filed.

Shortly after the Reform Act went into effect, the Commission appointed a new Special Panel of Interest Arbitrators. Throughout the past fourteen years, the Commission has emphasized the importance of maintaining a highly-qualified panel of interest arbitrators and has conducted annual and supplemental continuing education programs for the Special Panel.

In implementing the statute, the Commission also adopted regulations (including the comparability guidelines referred to earlier), modified its computer program to provide for assignment of arbitrators by lot, and, as authorized by the Act, adopted a fee schedule that offsets some of the costs of administering the statute. The regulations were described in the Commission's 1998 report and were readopted,

with minor amendments, in July 2001 and again in July 2006. The regulations readopted in 2006 are included in the Appendix, Tab 2. A description of the Commission's computer program is included in the Appendix, Tab 4, along with a November 2009 recertification by the Commission's expert consultant, confirming that the program makes by-lot appointments in a random manner.

In connection with its statutory responsibility to administer the Reform Act, the Commission values input from members of the interest arbitration community. During the past fourteen years, Commission staff have had an ongoing dialogue with arbitrators and a broad range of employee and employer representatives about their experiences under the Reform Act. As an outgrowth of these discussions, the Commission initiated its online information data base and increased its emphasis on the voluntary police and fire mediation program – initiatives that are described on pages 11-13 of this report. The Commission plans to continue this dialogue with the interest arbitration community.

In April 2007, the Reform Act was amended to add a ninth factor to the arbitral analysis required by section 16g: an interest arbitrator must consider the limits on property tax levies imposed by *N.J.S.A. 40A:4-45.45*.

### **Special Panel of Interest Arbitrators**

One of the Commission's most important responsibilities under the Reform Act is maintaining a panel of highly qualified and experienced interest arbitrators. The Reform Act makes it critical for the Commission to have an extremely competent

panel, because the Reform Act fundamentally changed the manner in which interest arbitrators are selected to hear cases. As noted, the statute requires that if the parties cannot agree on an arbitrator, the Commission will assign an arbitrator by lot from its Special Panel of Interest Arbitrators. *N.J.S.A. 34:13A-16e(1)*. 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 concluded that the Special Panel should be composed of only those labor relations neutrals who, in the judgment of the Commission, have the demonstrated ability and experience to mediate and decide the most demanding interest arbitration matters in the most professional, competent and neutral manner. Thus, Commission rules 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 (Appendix, Tab 2; *N.J.A.C. 19:16-5.15*).

In February 1996, the Commission appointed a panel of 17 interest arbitrators who met these criteria. Panel members serve for three-year terms and are eligible for reappointment. Since 1996, 17 highly qualified and experienced arbitrators have been added to the Special Panel and eight arbitrators have retired or resigned. The

current panel consists of 25 members. In March 2011, the Commission will consider the reappointment of Special Panel members to new three-year terms.

Overall, the Special Panel's performance during the last fourteen years has met the high standards set by the Commission, with arbitrators settling many complex disputes and issuing extensive, well-reasoned awards in numerous other cases. The Commission appointed two new members in August 2007, one new member in March 2008, and continues to be attentive to opportunities to add new Special Panel members who meet the Commission's high standards.

### **Continuing Education Programs for Special Panel Members**

As part of its responsibility to administer the Reform Act, the Commission has conducted regular continuing education programs for the Special Panel, 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 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.

Subsequent programs have built on the foundation established by these initial programs. Several programs have included presentations by experts who advised panel members of recent statutory and regulatory developments with respect to



negotiations and interest arbitration. Several programs have also included arbitrator roundtable and panel discussions, where Special Panel members had the opportunity to discuss among themselves mediation techniques; approaches to opinion writing; and pertinent issues arising with respect to particular types of interest arbitration proposals.

The Commission's most recent programs have focused on budgetary, pension, and health 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 and they examined the amendment requiring arbitrators to consider the new property tax limits. A pension expert also 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 2007 program also included a review of recent legislative changes concerning the State Health Benefits Program (SHBP), along with a review of the procedural and substantive requirements that pertain to participating SHBP employers. The 2008 program included a presentation on constructing municipal budgets within spending and tax levy caps, and the impact of those caps on employment levels, wages, and benefits along with an update on health benefits, pension contributions, State aid, and accounting issues. The 2009 program included a presentation on local government budgets; levy caps; the cap base; pensions; and revenue issues including ratables,

collections and the State deficit. The arbitrators were also instructed in decision writing best practices.

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

### **Private Sector Wage Report**

In May 1996, the Commission arranged to have the New Jersey Department of Labor and Workforce Development, Division of Labor Market and Demographic Research (NJLWD), prepare the annual private sector wage report required by the Reform Act, *N.J.S.A. 34:13A-16.6*. The first report, prepared in September 1996, shows calendar year changes, through December 31, 1995, in the average private sector wages of individuals covered under the State's unemployment insurance system. Statistics are broken down by county and include a statewide average. Subsequent reports include the same information for calendar years 1996 through 2008.<sup>1</sup> In addition, for calendar years 1997 through 2008, the reports also show changes in average wages for such major industry groups as construction, manufacturing, transportation, wholesale and retail trade, services, finance and

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<sup>1</sup>The most recent annual report, prepared in September 2009 and included in the Appendix, Tab 3, reflects wage figures for calendar years 2007 and 2008.

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 2009 reports describes the system and how it differs from its predecessor, the 1987 Standard Industrial Classification System.

## **RECENT 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 to enable them to effectively participate in the interest arbitration process. In 2000, all interest arbitration awards issued after January 1996 were posted on the Commission's website, as were the Commission's interest arbitration appeal decisions. In 2006, 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. In cooperation with the Rutgers School of Management and Labor Relations Library, the Commission continues to add older contracts to the online data base. There are currently nearly 10,000 contracts online. The Commission will also

explore other ways to expand parties' access to information that will assist them in negotiations and interest arbitration.

### **Voluntary Mediation Program for Police and Fire Contract Negotiations**

Throughout its administration of the Reform Act, the Commission has encouraged strong mediation efforts by interest arbitrators, believing that a voluntary settlement is often a quicker and less expensive way to arrive at a successor agreement than interest arbitration. In addition, the parties have more control over a mediated settlement than an interest arbitration award.

Many members of the interest arbitration community, in the course of their ongoing dialogue with Commission staff, expressed their preference for voluntarily resolving contract negotiations. Accordingly, the Commission undertook outreach efforts to encourage parties to consider participating in its mediation program for police and fire contract negotiations. A mediator is assigned before contract expiration and the Commission, rather than the parties, pay for the services. The mediator assigned is an experienced, capable neutral, but is most likely not one of those individuals who is routinely selected in interest arbitration proceedings.

As noted, 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 January 2006, thirty-two uniformed service negotiations units have tried conventional mediation. Settlements were reached in seventeen cases, interest arbitration was requested in six cases, and negotiations are continuing in the remaining cases. Settlements were typically achieved within two or three months of the request for mediation.

This program has been significantly curtailed since November 2009 due to budget cuts absorbed by PERC.

## **INTEREST ARBITRATION PETITIONS**

### **AND**

## **AWARDS UNDER THE REFORM ACT**

### **Statistical Overview**

The following statistics reflect the number of petitions filed, arbitrators appointed and awards issued under the Reform Act:

<b>Calendar Year</b>															
	<b>Total Since 1/10/96</b>	<b>1996</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>
Interest Arbitration Petitions Filed	1342	133	131	121	138	106	81	89	120	102	113	104	104	104	117
Interest Arbitrators Appointed*	1236	140	128	117	124	80	76	79	101	95	107	82	107	100	114
Number of Arbitrators Selected By Mutual Agreement	1098	83	96	94	114	74	73	77	99	95	106	81	106	99	112
Number of Arbitrators Appointed By Lot	138	57	32	23	10	6	3	2	2	0	1	1	1	1	2

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

Calendar Year															
	Total Since 1/10/96	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Interest Arbitration Awards Issued Under The New Statute	256	7*	36^	41	25	24	17	16	23	27	11	13	16	15	19
Terminal Procedure Used in Awards Issued Under the New Statute															
Conventional	248	7	35	39	25	23	17	16	22	26	11	12	15	15	18
Final Offer	8	0	1	2	0	1	0	0	1	1	0	1	1	0	1

\*There were 21 awards issued in calendar year 1996, 14 of which were issued under the predecessor statute.

^There were 37 awards issued in calendar year 1997, one of which was issued under the predecessor statute.

These figures illustrate the trends noted at the outset of this report. First, the number of filings is lower than under the predecessor statute. On average, approximately 200 petitions were filed annually during the eighteen years the predecessor statute was in effect. By contrast, the number of petitions filed during the past fourteen years ranged from 81 to 138, with calendar years 2001 and 2002 having the lowest number of annual filings – 81 and 89, respectively. In 2003, filings increased to 120 and in 2004 and 2005, the number of filings was 102 and 113,

respectively. In 2006 and 2007, 104 petitions were filed each year. 2008 and 2009 have shown a slight increase in filings, up from 104 in 2008 to 117 in 2009.

In addition, arbitrator appointment figures for the last fourteen years show a solidification of the trend of the parties mutually selecting an arbitrator. The mutual selection rates for the past fourteen years are:

1996	59%
1997	75%
1998	80%
1999	92%
2000	92%
2001	96%
2002	97%
2003	98%
2004	100%
2005	99%
2006	99%
2007	99%
2008	99%
2009	99%

Thus, throughout the past fourteen years, parties in a substantial majority of cases have mutually selected the arbitrator, and from 1999 through 2009, they have done so in virtually all cases. If the parties do not agree on an arbitrator, the Commission will assign an arbitrator by lot.

The comparatively low number of awards issued each year from 1997 through 2009 indicates that the parties are reaching settlements in many cases, often with the assistance of the interest arbitrator functioning as a mediator. The average number of awards issued annually from 1997 through 2009 (20) is significantly lower than the average number of awards (74) issued each year from 1978 through 1995, and also lower than the average number (39), issued annually from 1993 through 1995, the



three-year period immediately preceding the Reform Act's passage. While statistics for the past several years show an inevitable variation in the annual number of awards, the figures also represent a trend toward a lower number of annual awards than in the initial years of the Reform Act. For example, while 37 awards were issued in 1997 and 41 in 1998, only 16 awards were issued in 2007, 15 in 2008, and 16 in 2009.

This Report contains a 17-year analysis of salary awards (included in the Appendix at Tab 5), showing that for the three calendar years preceding the adoption of the Reform Act and for the first two years it was in place, there was a decline in the average annual salary increases awarded. The average salary increase awarded in 1993 was 5.65%, as compared with 5.01% in 1994; 4.52% in 1995; 4.24% in 1996; and 3.63% in 1997. For awards issued from 1998 through 2009, the average annual awarded salary increases fell within a very narrow range – from 3.64% to 4.05%. See Appendix, Tab 5, pp. 1-2. The increases for 1993 through 2009 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%

The salary increase analysis also includes information on reported voluntary settlements – settlements in cases in which a petition for interest arbitration was filed, an arbitrator was appointed, and an arbitrator reported to the Commission the terms of the settlement. These settlements reflect a decline in average salary increases from 1993 through 1999. The average salary increase for reported voluntary settlements was 5.56% for 1993, as compared with 4.98% for 1994; 4.59% for 1995; 4.19% for 1996; 3.95% for 1997; 3.77% for 1998 and 3.71% for 1999. The average salary increase for reported voluntary settlements rose slightly in 2000, 2001, and 2002, with increases of 3.87%, 3.91% and 4.05%, respectively. For 2003 through 2005, the average reported voluntary settlement declined somewhat from the 2002 figure, to 4.01%, 3.91% and 3.94%, respectively. Settlements in 2006 averaged 4.09% and have declined annually to 3.60% in 2009. The reported voluntary settlements for 1993 through 2009 are:

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

## **INTEREST ARBITRATION APPEALS**

The following statistics pertain to interest arbitration appeals filed since the 1996 adoption of the Reform Act through December 31, 2009.

Number of Appeals Filed with the Commission	51
Number of Appeals Withdrawn	20
Number of Awards Affirmed	17
Number of Awards Affirmed with Modification	2
Number of Awards Vacated and Remanded	14
Leave to Appeal Denied	3
Number of Appeals Pending before Commission	1
Number of Appeals to Appellate Division	5 <sup>2</sup>
Number of Appeals Pending before Appellate Division	1
Number of Appeals to Supreme Court	1
Number of Appeals Pending before Supreme Court	0

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

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<sup>2</sup>Two of the five appeals were withdrawn before the cases were briefed and thus no court decisions were issued.

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, the Commission decided between zero and four appeals per year. In 2009, there was an increase in the number of appeals filed from two in 2008 to five in 2009. The Commission issued one decision in 2008 and four decisions in 2009. One appeal was withdrawn and one appeal is pending.

Overall, 17 awards have been affirmed by the Commission and two awards have been affirmed with a modification – including one case where the modification was reversed by the Courts. Of the 14 awards that were vacated and remanded, two were remanded to a new arbitrator and 12 were remanded to the original arbitrator. In the first of the cases remanded to the original arbitrator, the parties reached a settlement after the remand and the arbitrator did not issue a new award. In five other remands, the original arbitrator issued a new award that was not appealed by either party. In the seventh remand, the first arbitrator issued a new award that was appealed to the Commission and affirmed. In the eighth remand, the original arbitrator issued a new award that was appealed to the Commission and vacated. The case was consolidated with a subsequent interest arbitration proceeding involving the same parties, in which a different arbitrator had already been appointed. That arbitrator issued an award in the consolidated proceeding that was not appealed by either party.

The ninth and tenth remands involved the same case. The initial award was appealed by the employer and vacated and remanded to the original arbitrator. The award on remand was again appealed by the employer and, in the second appeal, the

award was vacated and remanded to a new arbitrator. The new arbitrator issued an award that was also appealed, this time by the union. That award was affirmed by the Commission.

The eleventh remand involved an appeal by the union. The award was vacated and remanded to the original arbitrator. The award on remand was again appealed by the union and was affirmed by the Commission.

The twelfth remand involved an appeal by the employer. The award on remand was again appealed by the employer and was affirmed by the Commission.

The thirteenth and fourteenth remands involved appeals by the employers. The awards were vacated and remanded to the original arbitrators. Awards on remand in those cases have not yet been issued by the arbitrators.

In addition to the decisions reviewing final interest arbitration awards, the Commission denied three motions for leave to file a notice of appeal after the deadline set by the Reform Act. There have also been five requests for special permission to appeal an interest arbitrator's interim procedural ruling, all of which were denied.

Two of the Commission's interest arbitration decisions have been reviewed by the Courts. *Teaneck Tp. and Teaneck FMBA Local No. 42*<sup>3</sup> and *Somerset Cty. Sheriff's Office and FOP Lodge 39*.<sup>4</sup> *Teaneck* is described in the 2006 Biennial Report and the Court decisions in *Teaneck* and *Somerset* are included in the

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<sup>3</sup>P.E.R.C. No. 2000-33, 25 *NJPER* 450 (¶30199 1999), aff'd in part, rev'd and remanded in part, 353 *N.J. Super.* 289 (App. Div. 2002), aff'd o.b. 177 *N.J.* 560 (2003).

<sup>4</sup>P.E.R.C. No. 2007-33, 32 *NJPER* 372 (¶56 2006), aff'd 34 *NJPER* 21 (¶8 App. Div. 2008).

Appendix, Tab 7. The Commission's decision in *Somerset* was affirmed by the Appellate Division. In *Somerset*, the Commission had affirmed an award involving a unit of Sheriff's Officers. The employer appealed the arbitrator's salary ruling asserting that he gave undue controlling weight to evidence of the County's internal settlement patterns. The employer also asserted that the arbitrator did not properly calculate the total net economic changes for each year of the agreement. The Commission concluded that the arbitrator had reasonably determined that the County's own pattern of settlement with its four other law enforcement units warranted a similar salary award for the fifth unit of law enforcement officers involved in the case. The law enforcement officers in all five units performed coordinated and integrated work. The Commission also held that the arbitrator satisfied his obligations under *N.J.S.A. 34:13A-16d(2)* to determine that the total net annual economic changes for each year of the agreement are reasonable. The Court held that the Commission made a rational policy judgment in finding that an employer's settlement pattern with similar employee units is an important consideration in applying the statutory criteria and it accepted the determination of the arbitrator and the Commission that Sheriff's Officers performed work comparable to other law enforcement units.

An appeal of another decision is now pending in the Appellate Division<sup>5</sup>.

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<sup>5</sup> *Borough of Fort Lee*, P.E.R.C. No. 2010-17, 35 *NJPER* 352 (¶118 2009), App. Div. No. A-1212-09T1.

## **CONCLUSION**

The Reform Act has been in place for fourteen years and there have been no significant problems in its implementation. The Commission is not recommending any statutory changes. In administering the Act, the Commission plans to continue to encourage voluntary settlements by emphasizing strong mediation efforts by interest arbitrators and offering a pre-arbitration mediation program, as funding permits. It will also continue to maintain a high quality Special Panel of Interest Arbitrators; provide panel members with pertinent continuing education; and communicate with arbitrators, public employers, and majority representatives concerning their experiences under the Act.

## APPENDIX

### TAB

<b>Police and Fire Public Interest Arbitration Reform Act <i>P.L.</i>, 1995, c. 425</b>	1
<b>Interest Arbitration Regulations <i>N.J.A.C.</i> 19:16</b>	2
<b>Private Sector Wage Reports</b>	3
<b>Description and Certification of Computer Program for Random Assignment of Arbitrators By Lot</b>	4
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## **Police and Fire Public Interest Arbitration Reform Act**

### **34:13A-14. Findings, declaration relative to compulsory arbitration procedure.**

The Legislature finds and declares:

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

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

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

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

L. 1977, c. 85, s. 1, eff. May 10, 1977. Amended by L. 1995, c. 425, s. 2, eff. Jan. 10, 1996.

### **34:13A-14a. Short title.**

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

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

### **34:13A-15. Definitions.**

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

"Public police department" means any police department or organization of a municipality, county or park, or the State, or any

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

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

### **34:13A-16. Negotiations between public fire, police department and exclusive representative; binding 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.

(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 fact-finding with recommendation for settlement of all issues in dispute unless the parties reach a voluntary settlement prior to the issuance of the fact finder'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 fact-finding agree to fact-finding on permissive subjects of negotiation. In the event of a continuing failure to resolve an impasse by means of the procedure set forth in this paragraph, and notwithstanding the fact that such procedures have not been exhausted, the parties shall notify the commission, at a time and in a manner prescribed by the commission, as to whether or not they have agreed upon a terminal procedure for resolving the issues in dispute. Any terminal procedure mutually agreed upon by the parties shall be reduced to writing, provide for finality in resolving the issues in dispute, and shall be submitted to the commission for approval.

(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.

Within 10 days of the receipt of the notice by the non-petitioning party, the parties shall notify the commission as to whether or not they have agreed upon a terminal procedure for resolving the issues in dispute. Any terminal procedure mutually agreed upon by the parties shall be reduced to writing, provide for finality in resolving the issues in dispute, and shall be submitted to the commission for approval. If the parties fail to agree on a terminal procedure, they shall be subject to the provisions of subsection d. of this section.

c. Terminal procedures that are approvable include, but shall not be limited to the following:

(1) Conventional arbitration of all unsettled items.

(2) Arbitration under which the award by an arbitrator or panel of arbitrators is confined to a choice between (a) the last offer of the employer and (b) the last offer of the employees' representative, as a single package.

(3) Arbitration under which the award is confined to a choice between (a) the last offer of the employer and (b) the last offer of the employees' representative, on each issue in dispute, with the decision on an issue-by-issue basis.

(4) If there is a factfinder's report with recommendations on the issues in dispute, the parties may agree to arbitration under which the award would be confined to a choice among three positions: (a) the last offer of the employer as a single package, (b) the last offer of the employees' representative as a single package, or (c) the factfinder's recommendations as a single package.

(5) If there is a factfinder's report with a recommendation on each of the issues in dispute, the parties may agree to arbitration under which the award would be confined to a choice on each issue from among three positions: (a) the last offer of the employer on the issue, (b) the employee representative's last offer on the issue, or (c) the factfinder's recommendation on the issue.

(6) Arbitration under which the award on the economic issues in dispute is confined to a choice between (a) the last offer of the employer on the economic issues as a single package and (b) the employee representative's last offer on the economic issues as a single package; and, on any noneconomic issues in dispute, the award is confined to a choice between (a) the last offer of the employer on each issue in dispute and (b) the employee representative's last offer on that issue.

d. The following procedure shall be utilized if parties fail to agree on a terminal procedure for the settlement of an impasse dispute:

(1) In the event of a failure of the parties to agree upon an acceptable terminal procedure the parties shall separately so notify the commission in writing, indicating all issues in dispute and the reasons for their inability to agree on the procedure. The substance of a written notification shall not provide the basis for any delay in effectuating the provisions of this subsection.

(2) Upon receipt of such notification from either party or on the commission's own motion, the procedure to provide finality

for 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 separately determine whether the total net annual economic changes for each year of the agreement are reasonable under the eight statutory criteria set forth in subsection g. of this section.

e. (1) The commission shall take measures to assure the impartial selection of an arbitrator or arbitrators from its special panel of arbitrators. Unless the parties, in a time and manner prescribed by the commission, mutually agree upon the selection of an arbitrator from the commission's special panel of arbitrators and so notify the commission in writing of that selection, the assignment of any arbitrator for the purposes of this act shall be the responsibility of the commission, independent of and without any participation by either of the parties. The commission shall select the arbitrator for assignment by lot.

In any proceeding where an arbitrator selected by mutual agreement is unable to serve, the two parties shall be afforded an opportunity to select a replacement. If the two parties are unable to mutually agree upon the selection of a replacement within a time period prescribed by the commission, the commission shall select the replacement in the manner hereinafter provided.

In any proceeding where an assigned arbitrator is unable to serve or, pursuant to the preceding paragraph, the two parties are unable to mutually agree upon a replacement, the commission shall assign a replacement arbitrator. The assignment shall be the responsibility of the commission, independent of and without any participation by either of the parties. The commission shall select the replacement arbitrator for assignment by lot.

(2) 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.

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.

f. (1) At a time prescribed by the commission, the parties shall submit to the arbitrator or tripartite panel of arbitrators 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. The commission shall promulgate rules and procedures governing the submission of the offers required under this paragraph, including when those offers shall be deemed final, binding and irreversible.

(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 or panel of arbitrators may mediate or assist the parties in reaching a mutually agreeable settlement.

(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 120 days of the selection of the arbitrator by the mutual agreement of both parties or the commission's assignment of that arbitrator or panel of arbitrators, as the case may be, pursuant to paragraph (1) of subsection e. of this section; provided, however, the arbitrator or panel of arbitrators, for good cause, may petition the commission for an extension of not more than 60 days. The two parties, by mutual consent, may agree to an extension. The parties shall notify the arbitrator and the commission of any such agreement in writing. The notice shall set forth the specific date on which the extension shall expire. Any arbitrator or panel of arbitrators violating the provisions of this paragraph may be subject to the commission's powers under paragraph (2) of subsection e. of this section. The decision shall be final and binding upon the parties and shall be irreversible, except:

(a) Within 14 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. An aggrieved party may appeal a decision of the commission to the Appellate Division of the Superior Court.

(b) 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.

(6) The parties shall bear the costs of arbitration subject to a fee schedule approved by the commission.

g. The arbitrator or panel of arbitrators 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:

(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 and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take into account, to the extent that evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element or, in the case of a county, the county purposes element, required to fund the employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers of the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in a proposed local budget.

(7) The cost of living.

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

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

h. A mediator, factfinder, or arbitrator while functioning in a mediatory capacity shall not be required to disclose any files, records, reports, documents, or other papers classified as confidential received or prepared by him or to testify with regard

to mediation, conducted by him under this act on behalf of any party to any cause pending in any type of proceeding under this act. Nothing contained herein shall exempt such an individual from disclosing information relating to the commission of a crime.

L. 1977, c. 85, s. 1. Amended L. 1995, c. 425, s. 3; L. 1997, c. 183; L. 2007, c. 62, s. 14, eff. April 3, 2007.

#### **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-17. Powers of arbitrator.**

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

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

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

The arbitrator shall not issue any finding, opinion or order regarding the issue of whether or not a public employer shall remain as a participant in the New Jersey State Health Benefits Program or any governmental retirement system or pension fund,

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

L. 1977, c. 85, s. 5, eff. May 10, 1977. Amended by L. 1997, c. 330, s. 4, eff. June 1, 1998.

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

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

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

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

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

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

## CHAPTER 16

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

#### Authority

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

#### Source and Effective Date

R.2006 d.286, effective July 14, 2006.  
See: 38 N.J.R. 1561(a), 38 N.J.R. 3184(b).

#### Executive Order No. 66(1978) Expiration Date

Chapter 16, Negotiations, Impasse Procedures and Compulsory Interest Arbitration of Labor Disputes in Public Fire and Police Departments, expires on July 14, 2011.

#### Chapter Historical Note

Chapter 16, Negotiations, Impasse Procedures and Compulsory Interest Arbitration of Labor Disputes in Public Fire and Police Departments, was filed and became effective prior to September 1, 1969. Chapter 16, Negotiations, Impasse Procedures and Compulsory Interest Arbitration of Labor Disputes in Public Fire and Police Departments, was repealed by R.1977 d.272, effective August 2, 1977. See: 9 N.J.R. 298(a), 9 N.J.R. 448(a). Chapter 16, Negotiations, Impasse Procedures and Compulsory Interest Arbitration of Labor Disputes in Public Fire and Police Departments, was adopted as new rules by R.1977 d.349, effective September 16, 1977. See: 9 N.J.R. 350(a), 9 N.J.R. 497(a). Pursuant to Executive Order No. 66(1978), Chapter 16, Negotiations, Impasse Procedures and Compulsory Interest Arbitration of Labor Disputes in Public Fire and Police Departments, was readopted as R.1986 d.355, effective August 7, 1986. See: 18 N.J.R. 1358(a), 18 N.J.R. 1839(a). Pursuant to Executive Order No. 66(1978), Chapter 16, Negotiations, Impasse Procedures and Compulsory Interest Arbitration of Labor Disputes in Public Fire and Police Departments, was readopted as R.1991 d.425, effective July 17, 1991. See: 23 N.J.R. 1296(b), 23 N.J.R. 2525(a). Subchapter 8, Appeals, was adopted as R.1996 d.240, effective May 20, 1996. See: 28 N.J.R. 1493(a), 28 N.J.R. 2567(a). Pursuant to Executive Order No. 66(1978), Chapter 16, Negotiations, Impasse Procedures and Compulsory Interest Arbitration of Labor Disputes in Public Fire and Police Departments, was readopted as R.1996 d.365, effective July 12, 1996. See: 28 N.J.R. 2801(a), 28 N.J.R. 4598(a). Pursuant to Executive Order No. 66(1978), Chapter 16, Negotiations, Impasse Procedures and Compulsory Interest Arbitration of Labor Disputes in Public Fire and Police Departments, was readopted as R.2001 d.215, effective June 4, 2001. See: 33 N.J.R. 1170(a), 33 N.J.R. 2282(a). Chapter 16, Negotiations, Impasse Procedures and Compulsory Interest Arbitration of Labor Disputes in Public Fire and Police

Departments, was readopted by R.2006 d.286, effective July 14, 2006. See: Source and Effective Date. See, also, section annotation.

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## SUBCHAPTER 1. PURPOSE OF PROCEDURES

### 19:16-1.1 Purpose of procedures

(a) The rules of this chapter provide for implementation of the Police and Fire Public Interest Arbitration Reform Act, P.L. 1995, c.425, an Act which provides for compulsory interest arbitration of labor disputes in public fire and police departments and supplements the New Jersey Employer-Employee Relations Act, as amended N.J.S.A. 34:13A-1.1 et seq.

(b) N.J.S.A. 34:13A-5.4(e) provides that the Commission shall adopt such rules as may be required to regulate the time of commencement of negotiations and of institution of impasse procedures, and section 8 of the Police and Fire Public Interest Arbitration Reform Act provides that the Commission shall adopt rules and regulations to effectuate the purposes of that Act. Further, N.J.S.A. 34:13A-16(a) and (b) provide that whenever negotiations between a public fire or police department and an exclusive representative concerning the terms and conditions of employment shall reach an impasse, the Commission is empowered upon the request of either party or upon its own motion to provide mediation to effect a voluntary resolution of the impasse, and in the event of a failure to resolve the impasse by mediation, to invoke fact-finding with recommendations for settlement at the request of either party.

(c) Additionally, the act provides for the submission of issues in dispute either to a mutually agreed and approved final and binding arbitration procedure or conventional arbitration, as set forth in N.J.S.A. 34:13A-16d(2).

(d) Accordingly, the provisions of this chapter establish a mandatory time period for the commencement of negotiations and for institution of impasse procedures, including compulsory interest arbitration of unresolved impasses and appeals of arbitration awards. Also provided is a procedure for Commission determination of disputes regarding the identification of issues as economic or non-economic.

Amended by R.1996 d.240, effective May 20, 1996.

See: 28 N.J.R. 1493(a), 28 N.J.R. 2567(a).

Added references to the Act and in (d) inserted "and appeals of arbitration awards".

Amended by R.2001 d.215, effective July 2, 2001.

See: 33 N.J.R. 1170(a), 33 N.J.R. 2282(a).

In (c), substituted "conventional arbitration, as" for "the final offer procedure".

### 19:16-2.1 Commencement of negotiations

(a) The parties shall commence negotiations for a new or successor agreement, or in the case of an agreed reopener provision, shall commence negotiations pursuant to such reopener provision, at least 120 days prior to the day on which their collective negotiations agreement is to expire. The parties shall meet at least three times during that 120-day period. The first of those three meetings shall take place no later than the 90th day prior to the day on which their collective negotiations agreement is to expire. 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 negotiations agreement is to expire. A violation of these requirements shall constitute an unfair practice and the violator shall be subject to an interim relief order requiring such negotiations and any other relief the Commission deems appropriate. The foregoing provisions shall not preclude the parties from agreeing to the automatic renewal of a collective negotiations agreement unless either party shall have notified the other party of its intention to terminate or modify the agreement.

(b) The party initiating negotiations shall, no later than 15 days prior to the commencement date of negotiations required by this subchapter, notify the other party in writing of its intention to commence negotiations on such date, and shall simultaneously file with the Commission a copy of such notification. Forms for filing such petitions will be supplied upon request. Address such requests to: Public Employment Relations Commission, PO Box 429, Trenton, NJ 08625-0429.

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

Amended by R.1996 d.240, effective May 20, 1996.

See: 28 N.J.R. 1493(a), 28 N.J.R. 2567(a).

Rewrote (a).

### 19:16-3.1 Initiation of mediation

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

and request shall be filed, and shall be signed and dated and shall contain the following information:

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

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

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

4. The dates and duration of negotiations sessions;

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

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

7. Whether the request is a joint request;

8. A detailed statement of the facts giving rise to the request, including all issues in dispute, identifying the issues as economic or noneconomic within the meaning of N.J.S.A. 34:13A-16(f)(2); and

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

(b) A blank form for filing a request for mediation will be supplied upon request. Address requests to: Public Employment Relations Commission, PO Box 429, Trenton, New Jersey 08625-0429.

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

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

Amended by R.1996 d.365, effective October 21, 1996.  
See: 28 N.J.R. 2801(a), 28 N.J.R. 4598(a).

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

The mediator appointed pursuant to the subchapter may be a member of the Commission, an officer of the Commission, a member of the Commission's mediation panel, or any other appointee, all of whom shall be considered officers of the Commission for the purpose of assisting the parties to effect a voluntary settlement. The parties may jointly request the appointment of a particular mediator, but the Director of Conciliation shall have the authority to appoint a mediator without regard to the parties' joint request. If an appointed mediator cannot proceed pursuant to the appointment, another mediator shall be appointed. The appointment of a mediator pursuant to this subchapter shall not be reviewable in any other proceeding before the Commission.

Amended by R.1996 d.365, effective October 21, 1996.  
See: 28 N.J.R. 2801(a), 28 N.J.R. 4598(a).

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

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

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

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

Amended by R.1991 d.425, effective August 19, 1991.  
See: 23 N.J.R. 1296(b), 23 N.J.R. 2525(a).

Reference to the New Jersey Employer-Employee Relations Act added.  
Amended by R.1996 d.365, effective October 21, 1996.  
See: 28 N.J.R. 2801(a), 28 N.J.R. 4598(a).

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

(a) The mediator shall submit one or more confidential reports to the Director of Conciliation which shall, in general, be limited to the following:

1. A statement of the dates and duration of the meetings which have been held and their participants;

2. A brief description of the unresolved issues which existed at the beginning of the mediation effort;



3. A statement of the issues which have been resolved through mediation;

4. A statement of the issues which are still unresolved if any; and

5. A statement setting forth any other relevant information in connection with the mediator's involvement in the performance of his or her functions.

Amended by R.1996 d.365, effective October 21, 1996.  
See: 28 N.J.R. 2801(a), 28 N.J.R. 4598(a).

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

(a) If the parties fail to resolve the impasse through mediation, the public employer, the employee representative, or the parties jointly may request the Director of Conciliation, in writing, to invoke fact-finding and upon receipt of such request, fact-finding with recommendations for settlement shall be invoked. An original and four copies of such request shall be filed with the Director of Conciliation, together with proof of service upon the other party. The request shall be signed and dated and shall contain the following information:

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

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

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

4. The name of the mediator;

5. The number and duration of mediation sessions;

6. The date of the last mediation effort;

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

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

9. Whether the request is a joint request;

10. A detailed statement of the facts giving rise to the request, including all issues in dispute, identifying the issues as economic or noneconomic within the meaning of N.J.S.A. 34:13A-16(f)(2); and

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

(b) A blank form for filing a request for fact-finding will be supplied upon request. Address requests to: Public Employment Relations Commission, PO Box 429, Trenton, New Jersey 08625-0429.

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

1. Any additional unresolved issues to be submitted to the fact-finder;

2. A statement as to whether it disputes the identification of any issues as economic or noneconomic;

3. A statement as to whether it refuses to submit any of the issues listed on the request to fact-finding on the ground that such issue is not within the required scope of negotiations; and

4. Any other relevant information with respect to the nature of the impasse.

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

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

Amended by R.1996 d.365, effective October 21, 1996.  
See: 28 N.J.R. 2801(a), 28 N.J.R. 4598(a).

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

(a) Upon the invocation of fact-finding pursuant to this subchapter, the Director of Conciliation shall communicate

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

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

Amended by R.1996 d.365, effective October 21, 1996.  
See: 28 N.J.R. 2801(a), 28 N.J.R. 4598(a).

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

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

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

(c) Information disclosed by a party to a fact-finder while functioning in a mediatory capacity shall not be divulged by the fact-finder voluntarily or by compulsion. All files, records, reports, documents or other papers received or prepared by a fact-finder while serving in a mediatory capacity shall be classified as confidential. The fact-finder shall not produce any confidential records of, or

testify in regard to, any mediation conducted by him or her, on behalf of any party in any type of proceeding under the New Jersey Employer-Employee Relations Act, as amended, including, but not limited to, unfair practice proceedings under N.J.A.C. 19:14.

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

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

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

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

Amended by R.1991 d.425, effective August 19, 1991.

See: 23 N.J.R. 1296(b), 23 N.J.R. 2525(a).

Reference to the New Jersey Employer-Employee Relations Act added.

Amended by R.1996 d.240, effective May 20, 1996.

See: 28 N.J.R. 1493(a), 28 N.J.R. 2567(a).

Deleted provisions relating to costs.

Amended by R.1996 d.365, effective October 21, 1996.

See: 28 N.J.R. 2801(a), 28 N.J.R. 4598(a).

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

The provisions in this subchapter relate to notification requirements, compulsory interest arbitration proceedings and the designation of arbitrators to resolve impasses in collective negotiations involving public employers and exclusive employee representatives of public fire and police departments.

#### **19:16-5.2 Initiation of compulsory interest arbitration; motion to dismiss**

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

1. In the event of a continuing impasse following receipt of a fact-finder's findings of fact and recommended terms of settlement, a petition requesting that an impasse be resolved through compulsory interest arbitration may be filed by an employee representative and/or public employer. Forms for filing such petitions will be supplied upon request. Address such requests to: Public Employment Relations Commission, PO Box 429, Trenton, NJ 08625-0429.

2. On or after the date on which their collective negotiations agreement expires, and notwithstanding N.J.A.C. 19:16-3.1 and 4.1, either party may file a petition with the Director of Arbitration requesting the initiation of compulsory interest arbitration.

3. On or after the expiration of a collective negotiations agreement, in the event of an impasse and notwithstanding the failure of either party to initiate impasse procedures or compulsory interest arbitration, the Commission or the Director of Arbitration may invoke compulsory interest arbitration.

(b) A non-petitioning party may, within 14 days of receiving the Director of Arbitration's notice of filing, N.J.A.C. 19:16-5.3, file a motion to dismiss the petition on the grounds that the unit is not entitled to compulsory arbitration under N.J.S.A. 34:13A-15. The motion shall be filed with the Chair, who may refer it to the Commission or a Commission designee. Absent an extension of time, the filing of a motion to dismiss shall not toll the time periods set forth in N.J.A.C. 19:16-5.5.

Amended by R.1996 d.240, effective May 20, 1996.

See: 28 N.J.R. 1493(a), 28 N.J.R. 2567(a).

Provided for a petition for arbitration in place of a terminal procedure agreement.

Amended by R.2001 d.215, effective July 2, 2001.

See: 33 N.J.R. 1170(a), 33 N.J.R. 2282(a).

Added (b).

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

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

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

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

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

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

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

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

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

8. Whether the request is a joint request;

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

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

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

(c) In the absence of a joint petition, the Director of Arbitration shall, upon receipt of the petition, send a notice of filing to the non-petitioning party advising it of the time period for responding to the petition.

Recodified from 19:16-5.4 and amended by R.1996 d.240, effective May 20, 1996.

See: 28 N.J.R. 1493(a), 28 N.J.R. 2567(a).

Section was "Notification requirement".

Amended by R.1996 d.365, effective October 21, 1996.

See: 28 N.J.R. 2801(a), 28 N.J.R. 4598(a).

Amended by R.2001 d.215, effective July 2, 2001.

See: 33 N.J.R. 1170(a), 33 N.J.R. 2282(a).

Added (c).

### **19:16-5.4 Notification of terminal procedure agreement**

(a) Within 17 days after the filing of a joint petition or the receipt of the notice of filing by the non-petitioning party, the parties shall notify the Director of Arbitration as to whether or not they have agreed upon a terminal procedure which provides for finality in resolving all issues in dispute pursuant to N.J.S.A. 34:13A-16.

(b) If the parties have agreed upon a terminal procedure, the procedure shall be reduced to writing and shall be submitted to the Director of Arbitration for approval. The Director of Arbitration, within 10 days of receipt of the submission of a mutually agreed upon terminal procedure, shall notify the parties as to whether such procedure has been approved.

(c) If the parties have failed to agree upon a terminal procedure, each party shall file a statement with the Director

of Arbitration, within 17 days after the joint filing or receipt of the notice of filing, indicating the reasons for its inability to agree on a procedure. The failure of a party to submit such a statement or the substance of the statement shall not provide a basis for any delay in effectuating the provisions of this subchapter.

(d) At any time before the arbitrator takes testimony or evidence, the parties may submit a mutually agreed-upon modification of the terminal procedure to the Director of Arbitration for approval. At any time after the arbitrator takes testimony or evidence, but before the close of the hearing, the parties may submit an agreed-upon modification of the terminal procedure to the assigned arbitrator for approval.

New Rule, R.1996 d.240, effective May 20, 1996.

See: 28 N.J.R. 1493(a), 28 N.J.R. 2567(a).

Former N.J.A.C. 19:16-5.4 "Contents of the notification or petition requesting the initiation of compulsory interest arbitration", recodified to 19:16-5.3.

Amended by R.2001 d.215, effective July 2, 2001.

See: 33 N.J.R. 1170(a), 33 N.J.R. 2282(a).

In (a), substituted "17" for "10" and "the notice of filing" for "a petition"; in (c), substituted "17" for "10", inserted "joint" preceding "filing or receipt", and substituted "notice of filing" for "petition".

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

(a) In the absence of a joint petition requesting the initiation of compulsory interest arbitration, the non-petitioning party shall file within 14 days of receipt of a notice of filing, a statement of response setting forth the following:

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

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

(c) Where a dispute exists with regard to whether an unresolved issue is within the required scope of negotiations, the party asserting that an issue is not within the required scope of negotiations shall file with the Commission a petition for scope of negotiations determination pursuant to N.J.A.C. 19:13. This petition must be filed within: 14 days of the filing of a joint petition; 14 days of receipt of the Director of Arbitration's notice of filing; or five days of receipt of the response to the petition requesting the initiation of compulsory interest arbitration. The failure of a party to file a petition for scope of negotiations determination shall be deemed to constitute an agreement to submit all unresolved issues to compulsory interest arbitration.

(d) Where a dispute exists regarding the identification of an issue as economic or noneconomic, the party contesting the identification of the issue shall file with the Commission a petition for issue definition determination. This petition must be filed within 14 days of receipt of the notice of filing of the petition requesting the initiation of compulsory interest arbitration or within five days after receipt of the response to the petition requesting the initiation of compulsory interest arbitration. The failure of a party to file a petition for issue definition determination shall be deemed to constitute an agreement to submit all unresolved issues to compulsory interest arbitration.

Amended by R.1996 d.240, effective May 20, 1996.

See: 28 New Jersey Register 1493(a), 28 New Jersey Register 2567(a). Rewrote (a).

Amended by R.1996 d.365, effective October 21, 1996.

See: 28 New Jersey Register 2801(a), 28 New Jersey Register 4598(a).

Amended by R.2001 d.215, effective July 2, 2001.

See: 33 New Jersey Register 1170(a), 33 New Jersey Register 2282(a).

In (a), substituted "14" for "seven" and "notice of filing" for "petition"; in (c), substituted "N.J.A.C. 19:13" for "chapter 13 of these rules", substituted "14" for "10" and inserted "the notice of filing of" in the second sentence; in (d), substituted "14" for "10" and inserted "the notice of filing of" in the second sentence.

Amended by R.2006 d.286, effective August 7, 2006.

See: 38 N.J.R. 1561(a), 38 N.J.R. 3184(b).

Rewrote (c).

#### **19:16-5.6 Appointment of an arbitrator or panel of arbitrators**

(a) The Commission shall maintain a special panel of interest arbitrators. Members of this panel shall be appointed for three-year terms following a screening process as set forth in N.J.S.A. 34:13A-16(e) and pursuant to the standards set forth in N.J.A.C. 19:16-5.15. Reappointments to the panel shall also be contingent upon a similar screening process. The arbitrators appointed pursuant to this subchapter shall be from this special panel. All arbitrators appointed by the Commission shall be considered officers of the Commission while performing duties pursuant to this subchapter. The Commission may suspend, remove, or otherwise discipline an arbitrator for violating the Police and Fire Public Interest Arbitration Reform Act or for good cause in accordance with the procedures set forth at N.J.A.C. 19:16-5.16. Any arbitrator who fails to attend the

Commission's annual continuing education program under section 4 of the Police and Fire Public Interest Arbitration Reform Act may be removed from the special panel. Any arbitrator who fails to participate in the continuing education program for two consecutive years shall be removed.

(b) Within 17 days of the filing of a joint petition, or a non-petitioning party's receipt of a notice of filing, the parties shall notify the Director of Arbitration in writing of any mutual agreement to select an arbitrator from the special panel of arbitrators. The parties may also jointly request the appointment of a particular arbitrator who is not a member of the Commission's special panel, and the Director of Arbitration may approve the appointment of that arbitrator to the special panel for that particular arbitration.

(c) In the event that the parties have agreed to a tripartite panel of arbitrators, each party shall communicate in writing to the Director of Arbitration indicating the name, address and telephone number of the arbitration representative designed to the panel. In all such circumstances, the arbitrator appointed by the Director of Arbitration from the Commission's special panel of interest arbitrators shall serve as chairman of the arbitration panel. The arbitration representatives designated by each of the parties need not be members of the Commission's special panel, and shall not be considered officers of the Commission.

(d) Unless an arbitrator has been mutually selected by the parties, the Director of Arbitration shall select the arbitrator by lot. Once such selection has been made by the Director, the parties may not mutually select a different arbitrator.

(e) If an arbitrator selected by mutual agreement is unable to serve and the parties are unable to mutually agree on a replacement arbitrator within 10 days of the date the arbitrator became unable to serve, the Director of Arbitration shall select the replacement by lot.

(f) If an arbitrator assigned by lot is unable to serve and the parties are unable to agree on a replacement arbitrator within 10 days of the date the arbitrator became unable to serve, the Director of Arbitration shall select the replacement arbitrator by lot.

(g) Any motion to disqualify an interest arbitrator shall be filed with the Commission, together with proof of service of a copy on the other party and the arbitrator. Any response to such motion shall be filed with the Commission within five days of service of the motion, together with proof of service of a copy on the other party and the arbitrator. The Chairman or some other Commission designee shall then either decide the motion or refer it to the arbitrator or the full Commission.

Amended by R.1996 d.240, effective May 20, 1996.  
See: 28 N.J.R. 1493(a), 28 N.J.R. 2567(a).

Rewrote section.

Amended by R.1996 d.326, effective July 15, 1996.

See: 28 N.J.R. 2346(a), 28 N.J.R. 3618(a).

Amended by R.1997 d.152, effective April 7, 1997.

See: 29 N.J.R. 105(a), 29 N.J.R. 1399(a).

In (a), inserted references to N.J.A.C. 19:16-5.15 and 19:16-5.16.

Amended by R.2001 d.215, effective July 2, 2001.

See: 33 N.J.R. 1170(a), 33 N.J.R. 2282(a).

In (b), substituted "17" for "10", inserted "joint" preceding "petition", and inserted "or a non-petitioning party's receipt of a notice of filing," preceding "the parties shall".

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

(a) The conduct of the arbitration proceeding by an arbitrator or panel of arbitrators shall be under the exclusive jurisdiction and control of the arbitrator or arbitrators.

(b) The appointed arbitrator or panel of arbitrators may mediate or assist the parties in reaching a mutually agreeable settlement at any time throughout formal arbitration proceedings.

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

(d) The arbitrator may administer oaths, conduct hearings, and require the attendance of such witnesses and the production of such books, papers, contracts, agreements, and documents as the arbitrator may deem material to a just determination of the issues in dispute, and for such purpose may issue subpoenas and shall entertain any motions to quash such subpoenas. Any hearings conducted shall not be public unless all parties agree to have them public.

(e) Unless a terminal procedure has been mutually agreed to by the parties and approved by the Director of Arbitration, the procedure to provide finality for the resolution of unsettled issues shall be conventional arbitration. The arbitrator shall separately determine whether the total net annual economic changes for each year of the agreement are reasonable under the eight statutory criteria set forth in N.J.S.A. 34:13A-16g.

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

before hearing. At least 10 days before the hearing, the parties shall submit to the arbitrator or tripartite panel of arbitrators and to each other their final offers on each economic and noneconomic 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. Upon taking testimony or evidence, the arbitrator shall notify the parties that their offers shall be deemed final, binding and irreversible unless the arbitrator approves an agreement between the parties to permit revisions before the close of the hearing.

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

(h) The arbitrator shall be permitted to take evidence, but shall not render a decision on any issue which is the subject of a petition for a scope of negotiations determination filed with the Commission or on any issue which is the subject of an issue definition proceeding pursuant to N.J.A.C. 19:16-6.

(i) The arbitrator shall have the authority to grant adjournments for good cause shown upon either party's application or the arbitrator's own motion.

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

(k) The parties, at the discretion of the arbitrator, may file post-hearing briefs. The arbitrator, after consultation with the parties, shall have the authority to set a time period for the submission of briefs, but that period shall not exceed 30 days from the close of the hearing. Briefs shall be submitted to the arbitrator along with submission of proof of service on all parties. The parties shall not be permitted to introduce any new factual material in the post-hearing briefs, except upon special permission of the arbitrator.

Amended by R.1986, d.355, effective September 8, 1986.

See: 18 N.J.R. 1358(a), 18 N.J.R. 1839(a).

Deleted text in (a) "issue definition pursuant" and substituted "issue definition proceeding pursuant"; also added to (k) "but brief period ... of the hearing."

Petition for Rulemaking: Petitioner proposes that interest arbitration proceedings be public upon request of either the public employer or majority representative.

See: 21 N.J.R. 3567(a), 21 N.J.R. 3677(a), 22 N.J.R. 260(a).

Amended by R.1990 d.221, effective May 7, 1990.

See: 22 N.J.R. 330(a), 22 N.J.R. 1380(a).

Arbitrator's consent to public hearing removed.

Amended by R.1991 d.425, effective August 19, 1991.

See: 23 N.J.R. 1296(b), 23 N.J.R. 2525(a).

Reference to the New Jersey Employer-Employee Relations Act added.

Amended by R.1996 d.240, effective May 20, 1996.

See: 28 N.J.R. 1493(a), 28 N.J.R. 2567(a).

Rewrote (e), and in (f) added provision for agreements before the close of the hearing.

Amended by R.1996 d.365, effective October 21, 1996.

See: 28 N.J.R. 2801(a), 28 N.J.R. 4598(a).

Amended by R.2001 d.215, effective July 2, 2001.

See: 33 N.J.R. 1170(a), 33 N.J.R. 2282(a). In (d), inserted "and shall entertain any motions to quash such subpoenas"; in (f), substituted "binding" for "finding"; in (h), amended the N.J.A.C. reference.

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

A stenographic record shall not be a procedural requirement for the conduct of a hearing. However, any party shall have the right to a stenographic record taken of the arbitration proceeding. The arrangements for a stenographic record must be made by the requesting party after the appointment of the arbitrator. The cost of such record shall be paid by the party requesting it or divided equally between the parties if both make such a request. If a stenographic record is requested by either or both parties, the party or parties making the request shall provide at its/their cost a copy of a transcript to the arbitrator.

Amended by R.1996 d.365, effective October 21, 1996.

See: 28 N.J.R. 2801(a), 28 N.J.R. 4598(a).

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

If the impasse is not otherwise resolved, the arbitrator or arbitrators shall decide the dispute and issue a written opinion and award within 120 days of the Director of Arbitration's assignment of that arbitrator. The arbitrator or panel of arbitrators, for good cause, may petition the Director of Arbitration for an extension of not more than 60 days. The arbitrator shall notify the parties in writing of such a petition and the Director shall notify the parties and the arbitrator in writing of whether the petition has been granted or denied. The two parties, by mutual consent, may agree to an extension. The parties shall notify the arbitrator and the Director of any such agreement in writing. The notice shall set forth the specific date on which the extension shall expire. Any arbitrator or panel of arbitrators violating the provisions of this section may be subject to suspension, removal or discipline under N.J.A.C. 19:16-5.6. 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 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. The opinion and award shall set forth the reasons for the result reached. Copies of the opinion and award shall be submitted directly to the Director of Arbitration who will then serve the parties simultaneously.

Amended by R.1986 d.355, effective September 8, 1986.

See: 18 N.J.R. 1358(a), 18 N.J.R. 1839(a).

Deleted "as expeditiously as possible after the closing of hearing" and substituted "within 45 days after the filing of briefs"; also deleted served simultaneously on the parties of the commission" and substituted "submitted directly to ... the parties simultaneously."

Amended by R.1996 d.240, effective May 20, 1996.

See: 28 N.J.R. 1493(a), 28 N.J.R. 2567(a).

Rewrote section.

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

The arbitrator shall be guided by the objectives and principles set forth in the "Code of Professional Responsibility for Arbitrators of Labor-Management Disputes" of the National Academy of Arbitrators, the American Arbitration Association, and the Federal Mediation and Conciliation Service.

Amended by R.1996 d.365, effective October 21, 1996.

See: 28 N.J.R. 2801(a), 28 N.J.R. 4598(a).

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

(a) The costs of services performed by the arbitrator shall be borne equally by the parties in accordance with the following fee schedule:

1. For arbitrators assigned by lot, pursuant to N.J.S.A. 34:13A-16e(1), the fee shall be \$1,000.00 per day;

2. For arbitrators mutually selected by the parties, the fee shall be the per diem rate set by the arbitrator for conducting grievance arbitrations and on file with the Director of Arbitration on the date of the mutual selection.

(b) Should the parties use an arbitration panel with an appointee of each of the parties, as permitted by N.J.A.C. 19:16-5.6(c), each appointee's fee shall be paid by the party making the appointment. The costs of the services of the special panel member who chairs the panel shall be borne equally by the parties. The fee for the chair of the panel shall be borne equally by the parties. The fee for the chair of the panel shall be as set forth in (a)1 or 2 above, depending on whether the arbitrator is assigned by lot or mutually selected by the parties.

Amended by R.1998 d.156, effective April 6, 1998.

See: 30 N.J.R. 29(a), 30 N.J.R. 1303(a).

Rewrote the section.

Amended by R.2005 d.96, effective March 21, 2005.

See 36 N.J.R. 5238(a), 37 N.J.R. 940(a).

In (a), substituted "\$1,000" for "\$800.00" in 1 and rewrote 2.

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

At the time a joint petition to initiate interest arbitration is filed pursuant to N.J.A.C. 19:16-5.2, each party shall pay a \$150.00 fee. If the petition is filed by one party only, then the petitioning party shall pay a \$150.00 fee upon filing the petition and the non-petitioning party shall pay a \$150.00 fee upon filing its response to the petition pursuant to

N.J.A.C. 19:16-5.5. Fees shall be paid by checks made payable to the "State of New Jersey"; purchase orders may be submitted.

New Rule, R.1996 d.275, effective June 17, 1996.

See: 28 N.J.R. 1610(a), 28 N.J.R. 3174(a).

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

At the time a party files a notice of appeal of an interest arbitration award with the Commission, the appealing party shall pay a \$135.00 fee. At the time a party files a notice of cross-appeal of an interest arbitration award with the Commission, the cross-appealing party shall pay a \$135.00 fee. At the time a party files with the Commission a request for special permission to appeal an interlocutory order or ruling, the party shall pay a \$25.00 fee. Fees shall be paid by checks made payable to the "State of New Jersey"; purchase orders may be submitted.

New Rule, R.1996 d.275, effective June 17, 1996.

See: 28 N.J.R. 1610(a), 28 N.J.R. 3174(a).

Amended by R.1997 d.221, effective May 19, 1997.

See: 29 N.J.R. 857(a), 29 N.J.R. 2467(c).

Amended the section name and inserted the third sentence.

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

(a) N.J.S.A. 34:13A-16g identifies eight 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.S.A. 34:13A-16g(2)(c) lists as a factor "public employment in the same or similar comparable jurisdictions...." Subsection a of section 5 of P.L. 1995, c.425 requires that the Commission promulgate guidelines for determining the comparability of jurisdictions for the purposes of paragraph (2)(c) of subsection g.

(b) The guidelines set forth in (c) and (d) below are intended to assist the parties and the arbitrator in focusing on the types of evidence that may support comparability arguments. The guidelines are intended to be instructive but not exhaustive. The arbitrator shall consider any and all evidence submitted pursuant to the comparability guidelines and shall apply these guidelines in addressing the comparability criterion.

1. The Public Employment Relations Commission recognizes that the extent to which a party to an arbitration proceeding asserts that comparisons to public employment in the same or similar comparable jurisdictions are relevant to that proceeding is a matter to be determined by that party. The Commission also recognizes that it is the responsibility of each party to submit evidence and argument with respect to the weight to be accorded any such evidence.

2. The Commission further recognizes that it is the arbitrator's responsibility to consider all the evidence submitted and to determine the weight of any evidence submitted based upon the guidelines in (c) and (d) below and to determine the relevance or lack of relevance of comparability in relationship to all eight factors set forth in N.J.S.A. 34:13A-16g. Promulgation of these guidelines is not intended to require that any party submit evidence on all or any of the elements set forth in (c) and (d) below or assert that the comparability factor should or should not be deemed relevant or accorded any particular weight in any arbitration proceeding. Nothing in this section shall preclude the arbitrator from supplementing the factual record by issuing subpoenas to require the attendance of witnesses and the production of documents. Nor does anything in this section prevent the arbitrator from requesting the parties to supplement their presentations in connection with this factor or any other factor set forth in the law.

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

1. Wages, salaries, hours and conditions of employment of law enforcement officers and firefighters;

2. Wages, salaries, hours and conditions of employment of non-uniformed employees in negotiations units;

3. Wages, salaries, hours and conditions of employment of employees not in negotiations units;

4. History of negotiations:

i. Relationships concerning wages, salaries, hours and conditions of employment of employees in police and fire units; and

ii. History of differentials between uniformed and non-uniformed employees;

5. Pattern of salary and benefit changes; and

6. Any other considerations deemed relevant by the arbitrator.

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

1. Geographic:

i. Neighboring or overlapping jurisdictions;

ii. Nearby jurisdictions;

iii. Size; and

iv. Nature of employing entity.

2. Socio-economic considerations:

i. Size, density, and characteristics of population;

ii. Per capita income;

iii. Average household income;

iv. Average property values;

v. Gain or loss of assessed value;

vi. Ratable increases/decreases from year to year;

vii. Tax increases/decreases over last few years;

viii. Cost-of-living (locally);

ix. Size and composition of police force or fire department;

x. Nature of services provided;

xi. Crime rate;

xii. Violent crime rate;

xiii. Fire incident rate; and

xiv. Fire crime rate.

3. Financial considerations:

i. Revenue:

(1) Taxes:

(A) School;

(B) County;

(C) Municipal;

(D) Special district;

(E) State equalization valuation and

ratio; and

(F) Other taxes;

(2) Tax base/ratables;

(3) Equalized tax rate;

(4) Tax collections;



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

iii. Trends in revenues and expenditures;

4. Compensation and other conditions of employment:

- i. Relative rank within jurisdictions asserted to be comparable;
- ii. Wage and salary settlements of uniformed employees;

iii. Wage and salary settlements of non-uniformed employees in negotiations units;

iv. Wage and salary settlements of employees not in negotiations units;

v. Top step salaries;

vi. Overall compensation:

- (1) Wage and salaries;
- (2) Longevity;
- (3) Holidays;
- (4) Vacations;
- (5) Uniform allowance;
- (6) Medical and hospitalization benefits;
- (7) Overtime;
- (8) Leaves of absence;
- (9) Pensions; and
- 10) Other retiree benefits;

vii. Work schedules;

viii. Work hours;

ix. Workload:

- (1) Number of calls or runs per officer; and
- (2) Other relevant standards for measuring workload; and

x. Other conditions of employment; and

5. Any other comparability considerations deemed relevant by the arbitrator.

New Rule, R.1996 d.327, effective July 15, 1996.  
See: 28 N.J.R. 2347(a), 28 N.J.R. 3618(b).

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

(a) Because any special panel member may be assigned by lot to the most demanding and complex interest arbitration matter, appointments to the special panel will be limited to those labor relations neutrals who, in the Commission's expert judgment, have the demonstrated ability to mediate the most complex labor relations disputes

and resolve the most demanding interest arbitration matters in the most professional, competent and neutral manner. No applicant shall have any right or expectation to be appointed or reappointed to the special panel.

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

1. Ability to write a well-reasoned decision consistent with applicable legal standards and within statutory deadlines;

2. Knowledge of labor relations, governmental and fiscal principles relevant to dispute settlement and interest arbitration proceedings;

3. Substantial experience both as a mediator and arbitrator; and

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

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

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

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

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

i. To satisfy this consideration, an applicant shall have the equivalent of three years of mediation and/or

fact-finding experience and shall have performed assignments in a superior manner. Special emphasis will be given to New Jersey public sector assignments.

3. Demonstrated experience as a public or private sector grievance arbitrator involving the ability to decide complex and difficult labor relations issues in a fair and objective manner. Experience shall be evaluated by a review of the cases where an applicant served as a grievance arbitrator and the quality of the applicant's work product in those cases.

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

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

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

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

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

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

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

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

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

1. The issuance of well-reasoned, legally sound, and timely awards;

2. Compliance with statutory standards and deadlines; case law requirements; agency regulations, rules, policies, administrative memoranda, and reporting procedures; and

3. Any other applicable requirements.

(f) An applicant for reappointment shall also have abided by the Code of Professional Responsibility for Interest Arbitrators adopted by the New Jersey Public Employment Relations Commission; the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes adopted by the National Academy of Arbitrators, American Arbitration Association, and Federal Mediation and Conciliation Service; and the Code of Professional Conduct for Labor Mediators adopted by the Association of Labor Relations Agencies and the Federal Mediation and Conciliation Service. An applicant for reappointment shall also have attended the Commission's continuing education programs, as directed, per N.J.S.A. 34:13A-16.1.

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

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

1. Served as an advocate for labor or management in the public or private sector;

2. Been elected or appointed to a political office or a governing body; or

3. Has served in a partisan political capacity.

New Rule, R.1997 d.152, effective April 7, 1997.  
See: 29 N.J.R. 105(a), 29 N.J.R. 1399(a).

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

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

(b) If it appears that suspension, removal, or discipline may be warranted, the Director of Conciliation and Arbitration shall provide a written statement to the arbitrator specifying the reasons for the action being considered. The

arbitrator shall have an opportunity to submit a prompt written response to the Director. The arbitrator shall also be given an opportunity to meet with the Director to discuss the matter.

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

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

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

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

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

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

New Rule, R.1997 d.152, effective April 7, 1997.  
See: 29 N.J.R. 105(a), 29 N.J.R. 1399(a).

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

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

(b) A request for special permission to appeal shall be filed in writing within five days from the service of written rulings or statements of oral rulings, and shall briefly state the grounds for granting special permission to appeal and the grounds for reversing or modifying the ruling or order in question. An original and nine copies of the request shall be filed with the Chair, together with the \$25.00 fee required

under N.J.A.C. 19:16-5.13 and proof of service of a copy of the request on all other parties and the arbitrator assigned to the case. A party opposing the request may file an original and nine copies of a statement in opposition within five days of service on it of the request for special permission to appeal and shall briefly state the grounds for denying special permission to appeal and the grounds for affirming the ruling or order in question. An original and nine copies of the statement shall be filed with the Chair, together with proof of service of a copy on all other parties and the arbitrator assigned to the case.

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

New Rule, R.1997 d.221, effective May 19, 1997.  
See: 29 N.J.R. 857(a), 29 N.J.R. 2467(c).

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

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

The purpose of this subchapter is to provide an expeditious procedure for the resolution of disputes as to whether an issue is an economic or a noneconomic issue as defined in N.J.S.A. 34:13A-16(f)(2).

### **19:16-6.2 Procedure**

(a) Whenever there is a dispute between the parties as to whether an issue is an economic or a noneconomic issue, either party or the parties jointly may file with the Commission a petition for issue definition determination. A blank form for filing a request for issue definition will be supplied upon request. Address requests to: Public Employment Relations Commission, PO Box 429, Trenton, New Jersey 08625-0429.

(b) An original and four copies of such a petition together with proof of service upon the other party shall be filed with the Commission and shall be signed and dated and shall contain the following information:

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

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

telephone number of any attorney/consultant representing the exclusive representative;

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

4. A listing of the item or items on which there is a dispute as to the definition of the issue or issues as economic or noneconomic issues.

5. A brief or statement in lieu of brief indicating the arguments relied upon to support the definition of the disputed issue or issues favored by the party filing the petition.

6. A list of any other actions before the Commission or any other administrative agency, arbitrator or court which the petitioner(s) knows about and which involve the same or similar issues;

7. Whether the request is a joint request.

(c) The party opposing the definition of the disputed issue or issues set forth in the petition may submit to the Commission within 10 days of receipt of the petition its position with respect to each disputed issue or issues, together with a brief or statement in lieu of brief to support its position. Failure to submit such a response shall be deemed to indicate acceptance of the issue definition advanced by the petitioner. A copy of the response must be served on the petitioner and proof of such service must be filed with the Commission.

(d) The parties may jointly submit a petition for issue definition determination along with their briefs or statements in lieu of briefs.

(e) To expedite the resolution of a petition for issue definition determination, determinations pursuant to this proceeding normally will be made on the basis of written submissions without a hearing. However, a hearing may be requested by one or both of the parties or the Chairman or such other Commission designee. A request for a hearing shall be made in writing and shall be submitted no later than five days after receipt of the position of the party opposing the definition of the disputed issue or issues set forth in the petition. Failure to submit such a request shall be deemed to constitute a waiver of the right to a hearing. A request for a hearing shall not be used for the purposes of delay.

(f) Based upon the parties' submissions, the Chairman or other such Commission designee shall render a written determination which classifies the disputed issue or issues as economic or noneconomic issues as defined in N.J.S.A. 34:13A-16(f)2.

(g) Determination pursuant to this subchapter shall not be reviewable in any proceeding before this Commission.

Amended by R.1986 d.355, effective September 8, 1986.  
See: 18 N.J.R. 1358(a), 18 N.J.R. 1839(a).  
Amended by R.1996 d.365, effective October 21, 1996.  
See: 28 N.J.R. 2801(a), 28 N.J.R. 4598(a).

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

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

The failure to submit any notification, petition, statement or other document as set forth in these rules shall not provide the basis for any delay in these proceedings, nor shall it otherwise prevent or preclude the resolution of a dispute through compulsory interest arbitration pursuant to this chapter.

## **SUBCHAPTER 8. APPEALS**

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

(a) Within 14 days after receiving an award forwarded by the Director of Arbitration, an aggrieved party may file an original and nine copies of a notice of appeal to the Commission, together with the \$135.00 fee required under N.J.A.C. 19:16-5.13.

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

2. If a stenographic record of the hearing was prepared, the appellant shall provide a copy of the transcript to the Commission.

3. Filings shall be accompanied by proof of service of a copy on the other party.

4. The appellant shall also file a copy of the notice on the arbitrator.

5. Within 14 days after filing a notice of appeal, the appellant shall file an original and nine copies of a brief in support of the appeal, together with proof of service of a copy on the other party. The appellant shall simultaneously file an original and nine copies of an appendix containing those parts of the record the appellant considers necessary to the proper consideration of the issues, including such parts as the appellant should reasonably assume will be relied upon by the respondent in meeting the issues raised.

(b) Within seven days after the service of an appeal, the respondent may file a notice of cross-appeal to the Commission, together with the \$135.00 fee required under N.J.A.C. 19:16-5.13.

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

2. Filings shall be accompanied by proof of service of a copy on the other party.

3. The cross-appellant shall also file a copy of the notice of cross-appeal on the arbitrator.

4. Within 14 days after filing a notice of cross-appeal, the cross-appellant shall file an original and nine copies of a brief in support of the cross-appeal and in response to the appeal, together with proof of service of a copy on the other party. The respondent/cross-appellant may also file an original and nine copies of an appendix containing those parts of the record not included in the appellant's appendix that the respondent/cross-appellant considers necessary to the proper consideration of the issues.

(c) Where no cross-appeal is being filed, within seven days after the service of a brief in support of the appeal, the respondent shall file an original and nine copies of an answering brief limited to the issues raised in the appeal and the brief in support of the appeal. The respondent may also file an original and nine copies of an appendix containing those parts of the record not included in the appellant's appendix that the respondent considers necessary to the proper consideration of the issues. Filings shall be accompanied by proof of service of a copy on the other party.

(d) Where a cross-appeal has been filed, within seven days after the service of the brief in support of the cross-appeal, the appellant/cross-respondent may file an original and nine copies of an answering brief limited to the issues raised in the cross-appeal and the brief in support of the cross-appeal. The appellant/cross-respondent may also file an appendix containing those parts of the record not included in any earlier appendix that the appellant/cross-respondent considers necessary to the proper consideration of the issues raised in the cross-appeal. Filing shall be accompanied by the proof of service of a copy on the other party.

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

Amended by R.2001 d.215, effective July 2, 2001.  
See: 33 N.J.R. 1170(a), 33 N.J.R. 2282(a).

In (a) and (b), inserted ", together with the \$135.00 fee required under N.J.A.C. 19:16-5.13" in the introductory paragraphs.

**19:16-8.2 Oral argument**

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

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

The Commission may affirm, modify, correct or vacate the award or may, at its discretion, remand the award to the same arbitrator or to another arbitrator for reconsideration. If the parties are unable to agree upon a replacement arbitrator within 10 days of the remand order, the arbitrator shall be selected by lot.



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

P. O. BOX 429  
TRENTON, NEW JERSEY 08625-0429

ADMINISTRATION/LEGAL  
(609) 292-9830

CONCILIATION/ARBITRATION  
(609) 292-9898

UNFAIR PRACTICE/REPRESENTATION  
(609) 292-6780

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

FAX: (609) 777-0089

September 29, 2009

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 2007 and 2008. 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 2007 and 2008. 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. Prior NJLWD Reports had used the 1987 Standard Industrial Classification (SIC) system to assign and tabulate such data. The attached document from the NJLWD website describes NAICS and explains the major differences. Also attached is a document explaining "covered employment" for purposes of the New Jersey Unemployment Compensation Law.

Further information compiled by NJLWD can be obtained at its website:  
[www.state.nj.us/labor](http://www.state.nj.us/labor).

**NEW JERSEY  
AVERAGE ANNUAL WAGES  
FOR JOBS COVERED BY UNEMPLOYMENT INSURANCE  
BY NAICS INDUSTRY SECTOR  
2007 and 2008**

NAICS Industry Sector	2007	2008	Net Change	% Change
Total Private Sector *	\$53,594	\$54,932	\$1,338	2.5%
Utilities	\$89,002	\$96,973	\$7,971	9.0%
Construction	\$57,490	\$60,376	\$2,886	5.0%
Manufacturing	\$69,627	\$70,757	\$1,130	1.6%
Wholesale Trade	\$72,079	\$73,631	\$1,552	2.2%
Retail Trade	\$29,944	\$29,748	-\$196	-0.7%
Transportation/Warehousing	\$46,278	\$46,959	\$681	1.5%
Information	\$80,532	\$82,974	\$2,442	3.0%
Finance/Insurance	\$98,729	\$101,502	\$2,773	2.8%
Real Estate/Rental/Leasing	\$54,322	\$53,039	-\$1,283	-2.4%
Professional/Technical Services	\$83,305	\$85,671	\$2,366	2.8%
Management of Companies/Enterprises	\$121,395	\$124,405	\$3,010	2.5%
Administrative/Waste Services	\$35,972	\$37,321	\$1,349	3.8%
Educational Services	\$41,454	\$42,118	\$664	1.6%
Health Care/Social Assistance	\$44,989	\$46,693	\$1,704	3.8%
Arts/Entertainment/Recreation	\$30,090	\$32,979	\$2,889	9.6%
Accommodation/Food Service	\$20,532	\$20,743	\$211	1.0%
Other Services **	\$32,480	\$33,039	\$559	1.7%
Total Government	\$55,287	\$57,180	\$1,893	3.4%
Federal Government	\$68,361	\$68,127	-\$234	-0.3%
State Government	\$57,845	\$61,187	\$3,342	5.8%
Local Government	\$52,452	\$54,237	\$1,785	3.4%
TOTAL	\$53,856	\$55,282	\$1,426	2.6%

\* 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/lmi14/index.html>



**PRIVATE SECTOR  
AVERAGE ANNUAL WAGES  
FOR JOBS COVERED BY UNEMPLOYMENT INSURANCE  
BY COUNTY  
2007 AND 2008**

County	2007	2008	% Change
Atlantic	\$ 36,526	\$ 37,335	2.2%
Bergen	\$ 56,587	\$ 57,591	1.8%
Burlington	\$ 46,028	\$ 47,223	2.6%
Camden	\$ 44,492	\$ 45,366	2.0%
Cape May	\$ 28,804	\$ 29,645	2.9%
Cumberland	\$ 36,024	\$ 37,064	2.9%
Essex	\$ 55,879	\$ 56,379	0.9%
Gloucester	\$ 38,667	\$ 39,967	3.4%
Hudson	\$ 63,720	\$ 66,899	5.0%
Hunterdon	\$ 55,180	\$ 54,292	-1.6%
Mercer	\$ 56,357	\$ 60,066	6.6%
Middlesex	\$ 55,573	\$ 56,736	2.1%
Monmouth	\$ 45,732	\$ 46,673	2.1%
Morris	\$ 65,963	\$ 67,307	2.0%
Ocean	\$ 34,638	\$ 34,936	0.9%
Passaic	\$ 44,471	\$ 45,258	1.8%
Salem	\$ 46,094	\$ 48,601	5.4%
Somerset	\$ 74,219	\$ 77,011	3.8%
Sussex	\$ 37,024	\$ 37,620	1.6%
Union	\$ 58,552	\$ 59,243	1.2%
Warren	\$ 41,963	\$ 43,319	3.2%
Total			
Private Sector*	\$ 53,594	\$ 54,932	2.5%

\* 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

## **Technical Note for Nonagricultural Wage and Salary Employment/Hours and Earnings Estimates**

### **Estimation Procedure**

Nonagricultural wage and salary data for the State of New Jersey and major labor areas are estimated by procedures developed by the U.S. Department of Labor. Preliminary monthly estimates are based on reports submitted by a sample of New Jersey employers. The estimates are benchmarked each year based on more complete and accurate counts of data, which are obtained primarily from employer reports required by the State's unemployment insurance system. Revisions due to the new 2008 benchmark have been made to statewide not seasonally adjusted estimates back to 2006. In addition, revisions back to 2006 were made in the Atlantic City, Edison, Newark, Trenton and Bergen-Hudson-Passaic Labor Areas. The employment data are grouped by industry according to the 2007 North American Industry Classification System (NAICS).

### **The Sum of Labor Areas Compared to Statewide (Not Seasonally Adjusted Series)**

The sum of labor areas, not seasonally adjusted estimates, may not precisely equal the State total because each area estimate is independently computed.

### **Historical Comparability**

Estimates of nonfarm payroll employment by industry, produced from the Current Employment Statistics (CES) program, were converted from the 1987 Standard Industrial Classification (SIC) system to the 2002 North American Industry Classification System (NAICS) in January 2003. The NAICS conversion resulted in major changes to most of the previously published SIC-based series in the private sector. The CES program converted to the NAICS 2007 industry coding structure in early 2008.

NAICS estimates are published at the supersector, sector and lower levels. The supersector level roughly corresponds to the division level breakout previously available under the SIC.

NAICS is a production-oriented approach to categorize industries as opposed to the SIC focus on the products or services produced. This approach yields significantly different industry groupings than under SIC. For example, the NAICS supersector industry information brings together businesses that turn information into a commodity with businesses that distribute the commodity and businesses that provide information services. Under SIC, these establishments would have been spread across manufacturing, communications, business services and amusement services. Other industries, while keeping the same name, such as manufacturing, differ significantly. Previously, a manufacturing headquarters was classified under SIC in manufacturing; in NAICS, it is classified under management of companies and enterprises, a NAICS service-providing sector. For this reason, manufacturing represents a smaller share of the economy under NAICS than under SIC.

Upon converting from the SIC system to NAICS, historical time series for not seasonally adjusted employment were reconstructed on NAICS-based classifications of industries. The reconstructed series run from 1990 until 2002. Starting with 2003, historical NAICS-based employment series are the result of applying CES procedures for monthly estimating and annual benchmarking. The complete historical record of employment series now runs continuously from 1990 until 2008. This information may be obtained from our website at <http://lwd.dol.state.nj.us/labor/lpa>. Hours and earnings data are available back to 2001.

With the introduction of the 2006 benchmark, series breaks that had existed in the historical employment series record for New Jersey and its substate areas from 1990 until 2002 were eliminated. (A series break is any lasting change in the estimated level of a time series resulting from a non-economic event such as an area redefinition or an industry coding error.) These breaks were mostly artifacts of the reconstruction process during the conversion to NAICS or due to area redefinition based on the 2000 Census, or a combination at the time both were implemented beginning with 2003 employment estimates.

Where known series breaks existed in the previous historical tables, they were notated to let the data user know that data prior to the break were not comparable to the data after the break. Under the policy of eliminating series breaks, the complete set of historical tables from 1990 now through 2008 reissued with the 2008 benchmark allows the user to make comparisons on a continuous basis over this period.

This new policy to eliminate breaks is a recommendation of the CES Policy Council to be adopted by all States, and it is comparable to the BLS policy in effect for the CES national series. Currently, BLS does not maintain any national CES series with breaks.

### **Seasonally Adjusted Series**

Seasonally adjusted statewide estimates for supersector and sector nonfarm all-employee series have been revised back to January 2004 due to the introduction of revised seasonal factors that now incorporate employment changes through 2008. Seasonally adjusted estimates are not available at this time for labor areas.

### **Further Information**

Users also should review the March 2003 issue of Economic Indicators for additional information on NAICS changes and the March 2009 issue for additional benchmarking information.

Users needing further information on these estimates should contact Stephen Bamgbade at (609) 777-4503. Users may also write to the following address: N.J. Department of Labor and Workforce Development, Labor Market and Demographic Research, Current Employment Statistics, Labor Building, P.O. Box 935, Trenton, N.J. 08625. If you have access to the Internet, you may find it useful to download the current and recent years of nonagricultural wage and salary employment data. The Internet address for the Labor Planning and Analysis Web Site is <http://lwd.dol.state.nj.us/labor/lpa>.

N.J. Department of Labor and Workforce Development  
Labor Planning and Analysis  
Labor Market & Demographic Research  
Bureau of Labor Force Statistics  
Current Employment Statistics

April 22, 2009

## **APPENDIX**

### **Explanation of "Covered Employment"**

The covered employment data illustrated in this report refer to the workers of employers subject to the New Jersey Unemployment Compensation Law. Basically, this includes employing units which in either the current or the preceding calendar year paid remuneration for employment in the amount of \$1,000.00 or more.

The term "employment" does not include the following:

1. Agricultural labor performed prior to January 1, 1978 or agricultural labor performed after December 31, 1977 in employing units not meeting specific remunerative or employment level requirements;
2. Domestic service performed in a private home prior to January 1, 1978 or domestic service performed in a private home after December 31, 1977 where an employing unit paid cash remuneration of less than \$1,000.00 for such service in every quarter in the current or preceding calendar year;
3. Service performed by an individual in the employ of his/her son or daughter, or his/her father or mother;
4. Service performed in the employ of state hospitals or state institutions of higher learning prior to January 1, 1978;
5. Service performed in the employ of this State or any of its political divisions prior to January 1, 1978;
6. Service performed in the employ of any other states or their political subdivisions exempt from the Federal Unemployment Tax Act;
7. Service performed in the employ of the United States Government or of an instrumentality of the United States, unless the Congress of the United States permits coverage;

8. Services performed in the employ of fraternal beneficiary societies, orders or associations operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system and providing for the payment of life, sick, accident, or other benefits to the members of such society, order or association, or their dependents;
9. Services performed as a member of the board of directors, board of trustees, a board of managers, or a committee of any bank, building and loan, or savings and loan association, incorporated or organized under the laws of this State or the United States where such services do not constitute the principal employment of the individual;
10. Service with respect to which unemployment compensation is payable under an unemployment insurance program established by an act of Congress;
11. Service performed by agents of mutual fund brokers or dealers in the sale of mutual funds or other securities, by agents of insurance companies, exclusive of industrial insurance agents, or by agents of investment companies, if the compensation to such agents for such services is wholly on a commission basis;
12. Services performed by real estate salespersons or brokers who are compensated wholly on a commission basis;
13. Services performed in the employ of a veterans' organization chartered by an act of Congress or of any auxiliary thereof, no part of the net earnings of which organization, or auxiliary thereof, insures to the benefit of any private shareholder or individual;
14. Service performed for or in behalf of the owner or operator of any theater, ballroom, amusement hall or other place of entertainment, not in excess of 10 weeks in any calendar year for the same owner or operator, by any leader or musician of a band or orchestra, commonly called a "name band", entertainer, vaudeville artist, actor, actress, singer or other entertainers;
15. Services performed after January 1, 1973 by an individual for a labor union organization, known and recognized as a union local, as a member of a committee or committees reimbursed by the union local for time lost from regular employment, or as a part-time officer of a union local and the remuneration for such services is less
16. Services performed in a sale or distribution of merchandise by home-to-home salespersons or in-the-home demonstra-

tors whose remuneration consists wholly of commissions or commissions and bonuses;

17. Service performed in the employ of a foreign government, including service as a consular, nondiplomatic representative, or other officer or employee;
18. Service performed in the employ of an instrumentality wholly owned by a foreign government if a reciprocal exemption is granted by that government;
19. Service in the employ of an international organization entitled to enjoy the privileges, exemptions and immunities under the International Organization Immunities Act;
20. Service covered by an election duly approved by an agency charged with the administration of any other state or Federal Unemployment Compensation or Employment Security Law;
21. Service in a school, college, or university by a student or by the spouse of a student, if the spouse is advised that the employment is part of a program of financial aid for the student;
22. Service performed by an individual under the age of 22 enrolled at a nonprofit or public educational institution as part of a work-study program, if the institution certified the employee as a participant in the program;
23. Service performed in the employ of a hospital as a student nurse, or intern, or by a patient of the hospital;
24. Services performed in the employ of a church or convention of association of churches, or an organization operated primarily for religious purposes;
25. Services performed by a duly ordained, commissioned, or a licensed minister of a church in the exercise of his/her ministry or by a member of a religious order in the exercise of duties required by such order;
26. Service performed by an individual in the exercise of duties as an elected official, member of a legislative body, or a member of the Judiciary, of a state or political subdivision;

27. Service performed by an individual in the exercise of duties as a member of the State National Guard or Air National Guard, or as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood or similar emergency;
28. Service performed by an individual in the exercise of duties in a position which, under or pursuant to the laws of New Jersey, is designated as a major nontenure policymaking position;
29. Services performed by an individual receiving rehabilitation or remunerative work in a facility conducted for the purpose of carrying out a program of rehabilitation;
30. Services performed by an individual receiving work-relief or work-training as part of an unemployment work-relief or work-training program;
31. Service performed by an inmate of a custodial or penal institution;
32. Service performed in the employ of a elementary or secondary school operating under a church charter.

.....

Statements included here are intended for general information and do not have the effect of law or regulation.  
For a complete description of exemptions with caveats, please see New Jersey Unemployment Compensation Law  
R.S. 43:21-19(i)(7).



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

P. O. BOX 429  
TRENTON, NEW JERSEY 08625-0429

ADMINISTRATION/LEGAL  
(609) 292-9830

CONCILIATION/ARBITRATION  
(609) 292-9898

UNFAIR PRACTICE/REPRESENTATION  
(609) 292-6780

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

FAX: (609) 777-0089

September 15, 2008

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 2006 and 2007. 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 2006 and 2007. 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. Prior NJLWD Reports had used the 1987 Standard Industrial Classification (SIC) system to assign and tabulate such data. The attached document from the NJLWD website describes NAICS and explains that "[d]ue to major differences in NAICS and SIC structures . . . data for 2001 and forward is not comparable to the SIC-based data for earlier years." The document also states that the new industrial groupings used by NAICS better reflect the workings of the U.S. and New Jersey economies. Also attached is a document explaining "covered employment" for purposes of the New Jersey Unemployment Compensation Law.

Further information compiled by NJLWD can be obtained at its website: [www.state.nj.us/labor](http://www.state.nj.us/labor) under Statistics & Analysis/New Jersey's Economy.



**NEW JERSEY  
AVERAGE ANNUAL WAGES  
FOR JOBS COVERED BY UNEMPLOYMENT INSURANCE  
BY NAICS INDUSTRY SECTOR  
2006 and 2007**

NAICS Industry Sector	2006	2007	Net Change	% Change
Total Private Sector *	\$51,381	\$53,594	\$2,213	4.3%
Utilities	\$86,929	\$89,002	\$2,073	2.4%
Construction	\$54,961	\$57,490	\$2,529	4.6%
Manufacturing	\$65,148	\$69,627	\$4,479	6.9%
Wholesale Trade	\$69,087	\$72,079	\$2,992	4.3%
Retail Trade	\$29,304	\$29,944	\$640	2.2%
Transportation/Warehousing	\$44,538	\$46,278	\$1,740	3.9%
Information	\$76,593	\$80,532	\$3,939	5.1%
Finance/Insurance	\$92,785	\$98,729	\$5,944	6.4%
Real Estate/Rental/Leasing	\$51,961	\$54,322	\$2,361	4.5%
Professional/Technical Services	\$79,261	\$83,305	\$4,044	5.1%
Management of				
Companies/Enterprises	\$113,686	\$121,395	\$7,709	6.8%
Administrative/Waste Services	\$35,291	\$35,972	\$681	1.9%
Educational Services	\$40,195	\$41,454	\$1,259	3.1%
Health Care/Social Assistance	\$43,874	\$44,989	\$1,115	2.5%
Arts/Entertainment/Recreation	\$30,141	\$30,090	-\$51	-0.2%
Accommodation/Food Service	\$19,951	\$20,532	\$581	2.9%
Other Services **	\$32,144	\$32,480	\$336	1.0%
Total Government	\$53,118	\$55,287	\$2,169	4.1%
Federal Government	\$64,970	\$68,361	\$3,391	5.2%
State Government	\$55,113	\$57,845	\$2,732	5.0%
Local Government	\$50,657	\$52,452	\$1,795	3.5%
TOTAL	\$51,650	\$53,856	\$2,206	4.3%

\* 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.wnjin.state.nj.us/OneStopCareerCenter/LaborMarketInformation/lmi14/index.html>

**PRIVATE SECTOR  
AVERAGE ANNUAL WAGES  
FOR JOBS COVERED BY UNEMPLOYMENT INSURANCE  
BY COUNTY  
2006 AND 2007**

County	2006	2007	% Change
Atlantic	\$ 35,457	\$ 36,526	3.0%
Bergen	\$ 53,935	\$ 56,587	4.9%
Burlington	\$ 44,259	\$ 46,028	4.0%
Camden	\$ 42,326	\$ 44,492	5.1%
Cape May	\$ 28,516	\$ 28,804	1.0%
Cumberland	\$ 34,736	\$ 36,024	3.7%
Essex	\$ 53,842	\$ 55,879	3.8%
Gloucester	\$ 37,929	\$ 38,667	1.9%
Hudson	\$ 60,338	\$ 63,720	5.6%
Hunterdon	\$ 55,135	\$ 55,180	0.1%
Mercer	\$ 53,756	\$ 56,357	4.8%
Middlesex	\$ 54,354	\$ 55,573	2.2%
Monmouth	\$ 44,071	\$ 45,732	3.8%
Morris	\$ 63,635	\$ 65,963	3.7%
Ocean	\$ 34,154	\$ 34,638	1.4%
Passaic	\$ 43,842	\$ 44,471	1.4%
Salem	\$ 44,342	\$ 46,094	4.0%
Somerset	\$ 70,418	\$ 74,219	5.4%
Sussex	\$ 36,341	\$ 37,024	1.9%
Union	\$ 54,697	\$ 58,552	7.0%
Warren	\$ 40,391	\$ 41,963	3.9%
Total			
Private Sector*	\$ 51,381	\$ 53,594	4.3%

\* 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.wnjin.state.nj.us/OneStopCareerCenter/LaborMarketInformation/lmi14/index.htm>

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



## Labor Planning and Analysis

### New Jersey's Many Faces

Demographic Data

### New Jersey's Economy

Economic Data

### New Jersey of Tomorrow

Data Projections

### LMI Press Releases and

Publications

### Other Labor Program Data

### Related LMI Links

### Helpful Software

### LMI A to Z

### Labor Market Information

Email List

## EMPLOYMENT & WAGE DATA

This directory contains tabulations of employment and wage data for employers covered under the New Jersey Unemployment Compensation Law. Employment and wage information up to and including year 2000 data are provided under the 1987 Standard Industrial Classification System (SIC).

Beginning with the release of 2001 annual and 2002 quarterly data the Department has switched to the 2002 version of the North American Industry Classification System (NAICS) as the basis for the assignment and tabulation of economic data by industry. NAICS is the product of a cooperative effort on the part of statistical agencies of the United States, Canada and Mexico. NAICS provides a common and consistent classification system for the three countries. [Due to major differences in NAICS and SIC structures however, data for 2001 and earlier forward is not comparable to the SIC-based data for earlier years.

NAICS uses a production-oriented approach to categorize economic units. Units with similar production processes are classified in the same industry. NAICS focuses on how products and services are created, as opposed to the SIC focus on what is produced. This approach yields significantly different industry groupings than those produced by the SIC approach.

NAICS provides data users with new industrial groupings that better reflect the workings of the US and New Jersey economies and will allow for the improved measurement of new industries. For example, a new industry sector called Information brings together units that turn information into a commodity and units that distribute the commodity and units that provide information services. Information's major components are publishing, broadcasting, telecommunications, information services, and data processing. Under the old system, these units were spread across the manufacturing, communications, business services, and amusement services groups. Another new sector of interest is Professional, Scientific, and Technical Services. This sector is comprised of establishments engaged in activities where human capital is the major input.

Some industry sectors such as Construction will show little employment difference in the migration from SIC to the NAICS system. However, sectors such as Manufacturing is likely to show a significant change. For example, companies in the pharmaceutical industry have been classified in Manufacturing under SIC, whether or not the locations were engaged in manufacturing production. Under NAICS, employment at pharmaceutical corporate headquarters, will now become part of a new service-providing sector, Management of Companies and Enterprises, while employment at pharmaceutical research and development facilities will become part of

Professional, Scientific and Technical Services sector. While the shift of employment to these new sectors will result in lower manufacturing employment numbers under NAICS, the level of overall total industry employment would remain the same.

Users interested in more information about NAICS can access the Bureau of Labor Statistics Web site at <http://www.bls.gov/bls/naics.htm> or the Bureau of Economic Analysis Web site at <http://www.bea.gov/epcd/www/naics.html>. The NAICS manual is available from the National Technical Information Service at <http://www.ntis.gov/products/bestsellers/naics.asp>.

**For more information on these files, contact William Saley at (609) 558-5586.**

**Quarterly Data:** Statewide NAICS at the sector, 3-digit and 4-digit County at the NAICS sector level.

**Fourth Quarter 2007:**

Choose an Area      All Areas in Excel Format

**Third Quarter 2007:**

Choose an Area      All Areas in Excel Format

**Second Quarter 2007:**

Choose an Area      All Areas in Excel Format

**First Quarter 2007:**

Choose an Area      All Areas in Excel Format

**Fourth Quarter 2006:**

Choose an Area      All Areas in Excel Format

**Third Quarter 2006:**

Choose an Area      All Areas in Excel Format

**Second Quarter 2006:**

Choose an Area      All Areas in Excel Format

**First Quarter 2006:**

Choose an Area      All Areas in Excel Format

**Historical Quarterly Data**

Fourth Quarter 2005	All Areas in Excel Format
Third Quarter 2005	All Areas in Excel Format
Second Quarter 2005	All Areas in Excel Format
First Quarter 2005	All Areas in Excel Format
Fourth Quarter 2004	All Areas in Excel Format
Third Quarter 2004	All Areas in Excel Format
Second Quarter 2004	All Areas in Excel Format

First Quarter 2004	All Areas in Excel Format
Fourth Quarter 2003	All Areas in Excel Format
Third Quarter 2003	All Areas in Excel Format
Second Quarter 2003	All Areas in Excel Format
First Quarter 2003	All Areas in Excel Format
Fourth Quarter 2002	All Areas in Excel Format

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**Note:** Due to a change in the processing of employer information from the unemployment insurance system, the increase in the number of employers that have not been classified by industry has been elevated since 1999. Many of these unclassified employers represent new businesses or employers that have undergone organizational change. Therefore, industry breakdowns of units, employment and wages, especially in industries where many new employers are likely to be concentrated, may be somewhat understated.

NAICS-based first quarter 2002 data are expected to be available in the first half of 2003.

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### **BUSINESS EMPLOYMENT DYNAMICS (BED) <sup>NEW!</sup>**

Business Employment Dynamics (BED) statistics measure change in employment at the private business establishment level from the first month of one quarter to the third month of the next. In the BED data series, these changes can come about in one of four ways. **Gross job gains** are defined as increases in employment resulting from expansion of employment at existing establishments **or** from the opening of new establishments. **Gross job losses** are defined as declines in employment at existing establishments **or** from the closing of establishments. The difference between the number of gross jobs gained and the number of gross jobs lost is the net change in employment.

The data series on Business Employment Dynamics are derived from the Quarterly Census of Employment and Wages (QCEW), also known as the ES-202 program. This program is a quarterly census of all establishments covered under state and federal unemployment insurance programs, representing about 98 percent of employment on nonfarm payrolls.

BED data also have a more limited scope than the Quarterly Census of Employment and Wages (QCEW) data. The data in this series, in contrast to the QCEW data, exclude government employees, private households (NAICS 814110), and establishments with zero employment. Please see the technical notes for further information.

BED Data by State (Bureau of Labor Statistics)

#### **BED Data for New Jersey:**

**Charts:**

- Chart 1. Private sector gross job gains and gross job losses, seasonally adjusted
- Chart 2. Components of private sector gross job gains and gross job losses, seasonally adjusted
- Chart 3. Private sector gross job gains and gross job losses as a percent of total employment, seasonally adjusted

**Tables:**

- Table 1. Private sector gross job gains and job losses, seasonally adjusted
- Table 2. Private sector gross job gains and job losses, not seasonally adjusted
- Table 3. Private sector gross job gains and losses as a percent of total employment, seasonally adjusted
- Table 4. Private sector gross job gains and losses as a percent of total employment, not seasonally adjusted
- Table 5. Number of private sector establishments by direction of employment change, seasonally adjusted
- Table 6. Number of private sector establishments by direction of employment change, not seasonally adjusted
- Table 7. Private sector establishments by direction of employment change as a percent of total establishments, seasonally adjusted
- Table 8. Private sector establishments by direction of employment change as a percent of total establishments, not seasonally adjusted

**Trends in Employment and Wages Covered by Unemployment Insurance (NAICS based): 2003****Employment and Wages by Industry: 2003**

New Jersey	Excel
Atlantic County	Excel
Bergen County	Excel
Burlington County	Excel

**State:**

Private Sector Establishments by Employment Size Group & Sector	Excel
Private Sector Employment by Employment Size Group & Sector	Excel
Private Sector Total Wages by Employment Size Group & Sector	Excel

**County:**

Private Sector Establishments by Employment Size Group	Excel
Private Sector Establishment Employment by Employment Size Group	Excel
Private Sector Total Wages by Employment Size Group	Excel

**Municipal Annual Reports:**

	Private and
--	-------------

2006	Government
2005	Private and Government
2004	Private and Government

### **New Jersey employment & wages, annual municipality report sector (NAICS based):2003**

Choose a County  (Excel format)

All Areas in Excel Format

### **Historical Municipality Reports (SIC based):**

1999 Private (Excel)                      Government (Excel)

1998 Private and Government

1997 Private and Government

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**The following are downloadable compressed (ZIPPED) files. They c**  
**employment and wages covered by unemployment insurance for a**  
**Jersey, its 21 counties and its 566 municipalities as of the third qu**  
**1991 through 2001. The data are available at the two and four digit**  
**Standard Industrial Classification levels. The files have been comp**  
**using PKZIP. You will need PKUNZIP 2.04 or higher to uncompress**

### **Historical Data:**

Trends in Employment and Wages Covered by Unemployment Insuranc  
Trends in Employment and Wages Covered by Unemployment Insuranc  
Trends in Employment and Wages Covered by Unemployment Insuranc  
Trends in Employment and Wages Covered by Unemployment Insuranc  
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Trends in Employment and Wages Covered by Unemployment Insuranc  
Trends in Employment and Wages Covered by Unemployment Insuranc  
Trends in Employment and Wages Covered by Unemployment Insuranc

### **Publication:**

**Trends in Employment and Wages Covered by Unemployment Insu**  
**(NAICS based): 2002 (Publication in Adobe Acrobat PDF format (697 k**

**Trends in Employment and Wages Covered by Unemployment Insu**  
**(NAICS based): 2001 (Publication in Adobe Acrobat PDF format (1,197**

### **State Data:**

4-Digit Standard Industrial Classification - 1993  
4-Digit Standard Industrial Classification - 1994  
4-Digit Standard Industrial Classification - 1995  
4-Digit Standard Industrial Classification - 1996

4-Digit Standard Industrial Classification - 1997  
4-Digit Standard Industrial Classification - 1998  
4-Digit Standard Industrial Classification - 1999

**County Data:**

4-Digit Standard Industrial Classification - 1993  
4-Digit Standard Industrial Classification - 1994  
4-Digit Standard Industrial Classification - 1995  
4-Digit Standard Industrial Classification - 1996  
4-Digit Standard Industrial Classification - 1997  
4-Digit Standard Industrial Classification - 1998  
4-Digit Standard Industrial Classification - 1999

**Municipal Data:**

2-Digit Standard Industrial Classification - 1993  
4-Digit Standard Industrial Classification - 1993  
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4-Digit Standard Industrial Classification - 1997  
2-Digit Standard Industrial Classification - 1998  
4-Digit Standard Industrial Classification - 1998  
2-Digit Standard Industrial Classification - 1999  
4-Digit Standard Industrial Classification - 1999

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**Standard Industrial Classification (SIC) codes**

Standard Industrial Classification Short Titles

**North American Industry Classification System (NAICS) codes**

North American Industry Classification Short Titles (2002)

*Updated: August 1, 2008*

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## **APPENDIX**

### **Explanation of "Covered Employment"**

The covered employment data illustrated in this report refer to the workers of employers subject to the New Jersey Unemployment Compensation Law. Basically, this includes employing units which in either the current or the preceding calendar year paid remuneration for employment in the amount of \$1,000.00 or more.

The term "employment" does not include the following:

1. Agricultural labor performed prior to January 1, 1978 or agricultural labor performed after December 31, 1977 in employing units not meeting specific remunerative or employment level requirements;
2. Domestic service performed in a private home prior to January 1, 1978 or domestic service performed in a private home after December 31, 1977 where an employing unit paid cash remuneration of less than \$1,000.00 for such service in every quarter in the current or preceding calendar year;
3. Service performed by an individual in the employ of his/her son or daughter, or his/her father or mother;
4. Service performed in the employ of state hospitals or state institutions of higher learning prior to January 1, 1978;
5. Service performed in the employ of this State or any of its political divisions prior to January 1, 1978;
6. Service performed in the employ of any other states or their political subdivisions exempt from the Federal Unemployment Tax Act;
7. Service performed in the employ of the United States Government or of an instrumentality of the United States, unless the Congress of the United States permits coverage;

8. Services performed in the employ of fraternal beneficiary societies, orders or associations operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system and providing for the payment of life, sick, accident, or other benefits to the members of such society, order or association, or their dependents;
9. Services performed as a member of the board of directors, board of trustees, a board of managers, or a committee of any bank, building and loan, or savings and loan association, incorporated or organized under the laws of this State or the United States where such services do not constitute the principal employment of the individual;
10. Service with respect to which unemployment compensation is payable under an unemployment insurance program established by an act of Congress;
11. Service performed by agents of mutual fund brokers or dealers in the sale of mutual funds or other securities, by agents of insurance companies, exclusive of industrial insurance agents, or by agents of investment companies, if the compensation to such agents for such services is wholly on a commission basis;
12. Services performed by real estate salespersons or brokers who are compensated wholly on a commission basis;
13. Services performed in the employ of a veterans' organization chartered by an act of Congress or of any auxiliary thereof, no part of the net earnings of which organization, or auxiliary thereof, insures to the benefit of any private shareholder or individual;
14. Service performed for or in behalf of the owner or operator of any theater, ballroom, amusement hall or other place of entertainment, not in excess of 10 weeks in any calendar year for the same owner or operator, by any leader or musician of a band or orchestra, commonly called a "name band", entertainer, vaudeville artist, actor, actress, singer or other entertainers;
15. Services performed after January 1, 1973 by an individual for a labor union organization, known and recognized as a union local, as a member of a committee or committees reimbursed by the union local for time lost from regular employment, or as a part-time officer of a union local and the remuneration for such services is less
16. Services performed in a sale or distribution of merchandise by home-to-home salespersons or in-the-home demonstra-

tors whose remuneration consists wholly of commissions or commissions and bonuses;

17. Service performed in the employ of a foreign government, including service as a consular, nondiplomatic representative, or other officer or employee;
18. Service performed in the employ of an instrumentality wholly owned by a foreign government if a reciprocal exemption is granted by that government;
19. Service in the employ of an international organization entitled to enjoy the privileges, exemptions and immunities under the International Organization Immunities Act;
20. Service covered by an election duly approved by an agency charged with the administration of any other state or Federal Unemployment Compensation or Employment Security Law;
21. Service in a school, college, or university by a student or by the spouse of a student, if the spouse is advised that the employment is part of a program of financial aid for the student;
22. Service performed by an individual under the age of 22 enrolled at a nonprofit or public educational institution as part of a work-study program, if the institution certified the employee as a participant in the program;
23. Service performed in the employ of a hospital as a student nurse, or intern, or by a patient of the hospital;
24. Services performed in the employ of a church or convention of association of churches, or an organization operated primarily for religious purposes;
25. Services performed by a duly ordained, commissioned, or a licensed minister of a church in the exercise of his/her ministry or by a member of a religious order in the exercise of duties required by such order;
26. Service performed by an individual in the exercise of duties as an elected official, member of a legislative body, or a member of the Judiciary, of a state or political subdivision;

27. Service performed by an individual in the exercise of duties as a member of the State National Guard or Air National Guard, or as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood or similar emergency;
28. Service performed by an individual in the exercise of duties in a position which, under or pursuant to the laws of New Jersey, is designated as a major nontenure policymaking position;
29. Services performed by an individual receiving rehabilitation or remunerative work in a facility conducted for the purpose of carrying out a program of rehabilitation;
30. Services performed by an individual receiving work-relief or work-training as part of an unemployment work-relief or work-training program;
31. Service performed by an inmate of a custodial or penal institution;
32. Service performed in the employ of a elementary or secondary school operating under a church charter.

\*\*\*\*\*

Statements included here are intended for general information and do not have the effect of law or regulation.  
For a complete description of exemptions with caveats, please see New Jersey Unemployment Compensation Law  
R.S. 43:21-19(i)(7).



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

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

September 21, 2007

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 2005 and 2006. 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 2005 and 2006. 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. Prior NJLWD Reports had used the 1987 Standard Industrial Classification (SIC) system to assign and tabulate such data. The attached document from the NJLWD website describes NAICS and explains that "[d]ue to major differences in NAICS and SIC structures . . . data for 2001 and forward is not comparable to the SIC-based data for earlier years." The document also states that the new industrial groupings used by NAICS better reflect the workings of the U.S. and New Jersey economies. Also attached is a document explaining "covered employment" for purposes of the New Jersey Unemployment Compensation Law.

Further information compiled by NJLWD can be obtained at its website: [www.state.nj.us/labor](http://www.state.nj.us/labor) under Statistics & Analysis/New Jersey's Economy.

**NEW JERSEY  
AVERAGE ANNUAL WAGES  
FOR JOBS COVERED BY UNEMPLOYMENT INSURANCE  
BY NAICS INDUSTRY SECTOR  
2005 and 2006**

NAICS Industry Sector	2005	2006	Net Change	% Change
Total Private Sector *	\$49,108	\$51,381	\$2,273	4.6%
Utilities	\$84,978	\$86,929	\$1,951	2.3%
Construction	\$52,479	\$54,961	\$2,482	4.7%
Manufacturing	\$60,953	\$65,148	\$4,195	6.9%
Wholesale Trade	\$66,403	\$69,087	\$2,684	4.0%
Retail Trade	\$28,592	\$29,304	\$712	2.5%
Transportation/Warehousing	\$43,925	\$44,538	\$613	1.4%
Information	\$71,851	\$76,593	\$4,742	6.6%
Finance/Insurance	\$87,390	\$92,785	\$5,395	6.2%
Real Estate/Rental/Leasing	\$48,177	\$51,961	\$3,784	7.9%
Professional/Technical Services	\$75,125	\$79,261	\$4,136	5.5%
Management of				
Companies/Enterprises	\$113,192	\$113,686	\$494	0.4%
Administrative/Waste Services	\$33,989	\$35,291	\$1,302	3.8%
Educational Services	\$38,667	\$40,195	\$1,528	4.0%
Health Care/Social Assistance	\$42,560	\$43,874	\$1,314	3.1%
Arts/Entertainment/Recreation	\$26,446	\$30,141	\$3,695	14.0%
Accommodation/Food Service	\$19,319	\$19,951	\$632	3.3%
Other Services **	\$31,521	\$32,144	\$623	2.0%
Total Government	\$51,380	\$53,118	\$1,738	3.4%
Federal Government	\$60,973	\$64,970	\$3,997	6.6%
State Government	\$53,974	\$55,113	\$1,139	2.1%
Local Government	\$49,027	\$50,657	\$1,630	3.3%
TOTAL	\$49,461	\$51,650	\$2,189	4.4%

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

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

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

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

**PRIVATE SECTOR  
AVERAGE ANNUAL WAGES  
FOR JOBS COVERED BY UNEMPLOYMENT INSURANCE  
BY COUNTY  
2005 AND 2006**

County	2005	2006	% Change
Atlantic	\$ 34,418	\$ 35,457	3.0%
Bergen	\$ 51,841	\$ 53,935	4.0%
Burlington	\$ 42,779	\$ 44,259	3.5%
Camden	\$ 40,573	\$ 42,326	4.3%
Cape May	\$ 27,975	\$ 28,516	1.9%
Cumberland	\$ 33,217	\$ 34,736	4.6%
Essex	\$ 51,776	\$ 53,842	4.0%
Gloucester	\$ 36,082	\$ 37,929	5.1%
Hudson	\$ 56,628	\$ 60,338	6.6%
Hunterdon	\$ 52,437	\$ 55,135	5.1%
Mercer	\$ 51,107	\$ 53,756	5.2%
Middlesex	\$ 51,242	\$ 54,354	6.1%
Monmouth	\$ 42,608	\$ 44,071	3.4%
Morris	\$ 60,831	\$ 63,635	4.6%
Ocean	\$ 33,074	\$ 34,154	3.3%
Passaic	\$ 43,773	\$ 43,842	0.2%
Salem	\$ 44,045	\$ 44,342	0.7%
Somerset	\$ 65,241	\$ 70,418	7.9%
Sussex	\$ 34,631	\$ 36,341	4.9%
Union	\$ 52,230	\$ 54,697	4.7%
Warren	\$ 42,510	\$ 40,391	-5.0%
Total			
Private Sector*	\$ 49,108	\$ 51,381	4.6%

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

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

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



## Labor Planning and Analysis

### New Jersey's Many Faces

Demographic Data

### New Jersey's Economy

Economic Data

### New Jersey of Tomorrow

Data Projections

### LMI Press Releases and Publications

### Other Labor Program Data

### Related LMI Links

### Helpful Software

### LMI A to Z

### Labor Market Information

Email List

## EMPLOYMENT & WAGE DATA

This directory contains tabulations of employment and wage data for employers covered under the New Jersey Unemployment Compensation Law.

Employment and wage information up to and including year 2000 data are provided under the 1987 Standard Industrial Classification System (SIC).

Beginning with the release of 2001 annual and 2002 quarterly data the program has switched to the 2002 version of the North American Industry Classification System (NAICS) as the basis for the assignment and tabulation of 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. NAICS provides a common and consistent classification system for the three countries. Due to major differences in NAICS and SIC structures however, data for 2001 and forward is not comparable to the SIC-based data for earlier years.

NAICS uses a production-oriented approach to categorize economic units. Units with similar production processes are classified in the same industry. NAICS focuses on how products and services are created, as opposed to the SIC focus on what is produced. This approach yields significantly different industry groupings than those produced by the SIC approach.

NAICS provides data users with new industrial groupings that better reflect the workings of the US and New Jersey economies and will allow for the improved measurement of new industries. For example, a new industry sector called Information brings together units that turn information into a commodity with units that distribute the commodity and units that provide information services. Information's major components are publishing, broadcasting, telecommunications, information services, and data processing. Under the SIC system, these units were spread across the manufacturing, communications, business services, and amusement services groups. Another new sector of interest is Professional, Scientific, and Technical Services. This sector is comprised of establishments engaged in activities where human capital is the major input.

Some industry sectors such as Construction will show little employment difference in the migration from SIC to the NAICS system. However, an industry such as Manufacturing is likely to show a significant change. For example, companies in the pharmaceutical industry have been classified in Manufacturing under SIC, whether or not the locations were engaged in actual manufacturing production. Under NAICS, employment at pharmaceutical corporate headquarters, will now become part of a new service-providing sector Management of Companies and Enterprises, while employment at pharmaceutical research and development facilities will become part of the



Professional, Scientific and Technical Services sector. While the shift of employment to these new sectors will result in lower manufacturing employment numbers under NAICS, the level of overall total industry employment would remain the same.

Users interested in more information about NAICS can access the Bureau of Labor Statistics Web site at <http://www.bls.gov/bls/naics.htm> or the Bureau of the Census Web site at <http://www.census.gov/epcd/www/naics.html>. The 2002 NAICS manual is available from the National Technical Information Service at <http://www.ntis.gov/products/bestsellers/naics.asp>.

**For more information on these files, contact William Saley at (609)984-5586.**

**Quarterly Data:** Statewide NAICS at the sector, 3-digit and 4-digit level.  
County at the NAICS sector level.

**Fourth Quarter 2006:**

All Areas in Excel Format

**Third Quarter 2006:**

All Areas in Excel Format

**Second Quarter 2006:**

All Areas in Excel Format

**First Quarter 2006:**

All Areas in Excel Format

**Fourth Quarter 2005:**

All Areas in Excel Format

**Third Quarter 2005:**

All Areas in Excel Format

**Second Quarter 2005:**

All Areas in Excel Format

**First Quarter 2005:**

All Areas in Excel Format

**Fourth Quarter 2004:**

All Areas in Excel Format

**Historical Quarterly Data**

Third Quarter 2004 All Areas in Excel Format

Second Quarter 2004 All Areas in Excel Format

First Quarter 2004 All Areas in Excel Format

Fourth Quarter 2003	All Areas in Excel Format
Third Quarter 2003	All Areas in Excel Format
Second Quarter 2003	All Areas in Excel Format
First Quarter 2003	All Areas in Excel Format
Fourth Quarter 2002	All Areas in Excel Format

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**Note:** Due to a change in the processing of employer information from the unemployment insurance system, the increase in the number of employers that have not been classified by industry has been elevated since 1999. Many of these unclassified employers represent new businesses or employers who have undergone organizational change. Therefore, industry breakdowns of units, employment and wages, especially in industries where many new employers are likely to be concentrated, may be somewhat understated.

NAICS-based first quarter 2002 data are expected to be available in the spring of 2003.

---

#### **Trends in Employment and Wages Covered by Unemployment Insurance (NAICS based): 2003**

##### **Employment and Wages by Industry: 2003**

New Jersey	Excel
Atlantic County	Excel
Bergen County	Excel
Burlington County	Excel

##### **State:**

Private Sector Establishments by Employment Size Group & Sector	Excel
Private Sector Employment by Employment Size Group & Sector	Excel
Private Sector Total Wages by Employment Size Group & Sector	Excel

##### **County:**

Private Sector Establishments by Employment Size Group	Excel
Private Sector Establishment Employment by Employment Size Group	Excel
Private Sector Total Wages by Employment Size Group	Excel

---

#### **Municipal Annual Reports:**

##### **New Jersey employment & wages, annual municipality report by sector (NAICS based): 2003**

(Excel format)

All Areas in Excel Format

##### **Historical Municipality Reports (SIC based):**

1999 Private (Excel)	Government (Excel)
1998 Private and Government	
1997 Private and Government	

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The following are downloadable compressed (ZIPPED) files. They contain employment and wages covered by unemployment insurance for all New Jersey, its 21 counties and its 566 municipalities as of the third quarter for 1991 through 2001. The data are available at the two and four digit

**Standard Industrial Classification levels. The files have been compressed using PKZIP. You will need PKUNZIP 2.04 or higher to uncompress them.**

**Historical Data:**

Trends in Employment and Wages Covered by Unemployment Insurance: 1991  
 Trends in Employment and Wages Covered by Unemployment Insurance: 1992  
 Trends in Employment and Wages Covered by Unemployment Insurance: 1993  
 Trends in Employment and Wages Covered by Unemployment Insurance: 1994  
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 Trends in Employment and Wages Covered by Unemployment Insurance: 2000  
 Trends in Employment and Wages Covered by Unemployment Insurance: 2001  
 Trends in Employment and Wages Covered by Unemployment Insurance: 2002

**Publication:**

**Trends in Employment and Wages Covered by Unemployment Insurance (NAICS based): 2002** (Publication in Adobe Acrobat PDF format (697 KB))

**Trends in Employment and Wages Covered by Unemployment Insurance (NAICS based): 2001** (Publication in Adobe Acrobat PDF format (1,197 KB))

**State Data:**

4-Digit Standard Industrial Classification - 1993  
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 4-Digit Standard Industrial Classification - 1998

2-Digit Standard Industrial Classification - 1999  
4-Digit Standard Industrial Classification - 1999

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### **Standard Industrial Classification (SIC) codes**

Standard Industrial Classification Short Titles

### **North American Industry Classification System (NAICS) codes**

North American Industry Classification Short Titles (2002)

*Updated: July 26, 2007*

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3. Service performed by an individual in the employ of his/her son or daughter, or his/her father or mother;
4. Service performed in the employ of state hospitals or state institutions of higher learning prior to January 1, 1978;
5. Service performed in the employ of this State or any of its political divisions prior to January 1, 1978;
6. Service performed in the employ of any other states or their political subdivisions exempt from the Federal Unemployment Tax Act;
7. Service performed in the employ of the United States Government or of an instrumentality of the United States, unless the Congress of the United States permits coverage;

8. Services performed in the employ of fraternal beneficiary societies, orders or associations operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system and providing for the payment of life, sick, accident, or other benefits to the members of such society, order or association, or their dependents;
9. Services performed as a member of the board of directors, board of trustees, a board of managers, or a committee of any bank, building and loan, or savings and loan association, incorporated or organized under the laws of this State or the United States where such services do not constitute the principal employment of the individual;
10. Service with respect to which unemployment compensation is payable under an unemployment insurance program established by an act of Congress;
11. Service performed by agents of mutual fund brokers or dealers in the sale of mutual funds or other securities, by agents of insurance companies, exclusive of industrial insurance agents, or by agents of investment companies, if the compensation to such agents for such services is wholly on a commission basis;
12. Services performed by real estate salespersons or brokers who are compensated wholly on a commission basis;
13. Services performed in the employ of a veterans' organization chartered by an act of Congress or of any auxiliary thereof, no part of the net earnings of which organization, or auxiliary thereof, insures to the benefit of any private shareholder or individual;
14. Service performed for or in behalf of the owner or operator of any theater, ballroom, amusement hall or other place of entertainment, not in excess of 10 weeks in any calendar year for the same owner or operator, by any leader or musician of a band or orchestra, commonly called a "name band", entertainer, vaudeville artist, actor, actress, singer or other entertainers;
15. Services performed after January 1, 1973 by an individual for a labor union organization, known and recognized as a union local, as a member of a committee or committees reimbursed by the union local for time lost from regular employment, or as a part-time officer of a union local and the remuneration for such services is less
16. Services performed in a sale or distribution of merchandise by home-to-home salespersons or in-the-home demonstra-

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17. Service performed in the employ of a foreign government, including service as a consular, nondiplomatic representative, or other officer or employee;
18. Service performed in the employ of an instrumentality wholly owned by a foreign government if a reciprocal exemption is granted by that government;
19. Service in the employ of an international organization entitled to enjoy the privileges, exemptions and immunities under the International Organization Immunities Act;
20. Service covered by an election duly approved by an agency charged with the administration of any other state or Federal Unemployment Compensation or Employment Security Law;
21. Service in a school, college, or university by a student or by the spouse of a student, if the spouse is advised that the employment is part of a program of financial aid for the student;
22. Service performed by an individual under the age of 22 enrolled at a nonprofit or public educational institution as part of a work-study program, if the institution certified the employee as a participant in the program;
23. Service performed in the employ of a hospital as a student nurse, or intern, or by a patient of the hospital;
24. Services performed in the employ of a church or convention of association of churches, or an organization operated primarily for religious purposes;
25. Services performed by a duly ordained, commissioned, or a licensed minister of a church in the exercise of his/her ministry or by a member of a religious order in the exercise of duties required by such order;
26. Service performed by an individual in the exercise of duties as an elected official, member of a legislative body, or a member of the Judiciary, of a state or political subdivision;

27. Service performed by an individual in the exercise of duties as a member of the State National Guard or Air National Guard, or as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood or similar emergency;
28. Service performed by an individual in the exercise of duties in a position which, under or pursuant to the laws of New Jersey, is designated as a major nontenure policymaking position;
29. Services performed by an individual receiving rehabilitation or remunerative work in a facility conducted for the purpose of carrying out a program of rehabilitation;
30. Services performed by an individual receiving work-relief or work-training as part of an unemployment work-relief or work-training program;
31. Service performed by an inmate of a custodial or penal institution;
32. Service performed in the employ of a elementary or secondary school operating under a church charter.

\*\*\*\*\*

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For a complete description of exemptions with caveats, please see New Jersey Unemployment Compensation Law  
R.S. 43:21-19(i)(7).





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

P. O. BOX 429  
TRENTON, NEW JERSEY 08625-0429

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(609) 292-8780

*For Courier Delivery*  
495 WEST STATE STREET  
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FAX: (609) 777-0089

August 28, 2006

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 2004 and 2005. 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.

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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. Prior NJLWD Reports had used the 1987 Standard Industrial Classification (SIC) system to assign and tabulate such data. The attached document from the NJLWD website describes NAICS and explains that "[d]ue to major differences in NAICS and SIC structures . . . data for 2001 and forward is not comparable to the SIC-based data for earlier years." The document also states that the new industrial groupings used by NAICS better reflect the workings of the U.S. and New Jersey economies. Also attached is a document explaining "covered employment" for purposes of the New Jersey Unemployment Compensation Law.

Further information compiled by NJLWD can be obtained at its website: [www.state.nj.us/labor](http://www.state.nj.us/labor) under Statistics & Analysis/New Jersey's Economy.

**NEW JERSEY**  
**AVERAGE ANNUAL WAGES**  
**FOR JOBS COVERED BY UNEMPLOYMENT INSURANCE**  
**BY NAICS INDUSTRY SECTOR**  
**2004 and 2005**

NAICS Industry Sector	2004	2005	Net Change	% Change
Total Private Sector *	\$47,639	\$49,108	\$1,469	3.1%
Utilities	\$80,081	\$84,978	\$4,897	6.1%
Construction	\$51,349	\$52,479	\$1,130	2.2%
Manufacturing	\$59,203	\$60,953	\$1,750	3.0%
Wholesale Trade	\$64,847	\$66,403	\$1,556	2.4%
Retail Trade	\$28,411	\$28,592	\$181	0.6%
Transportation/Warehousing	\$42,099	\$43,925	\$1,826	4.3%
Information	\$72,531	\$71,851	-\$680	-0.9%
Finance/Insurance	\$82,611	\$87,390	\$4,779	5.8%
Real Estate/Rental/Leasing	\$47,642	\$48,177	\$535	1.1%
Professional/Technical Services	\$72,691	\$75,125	\$2,434	3.3%
Management of				
Companies/Enterprises	\$102,037	\$113,192	\$11,155	10.9%
Administrative/Waste Services	\$32,280	\$33,989	\$1,709	5.3%
Educational Services	\$37,445	\$38,667	\$1,222	3.3%
Health Care/Social Assistance	\$41,587	\$42,560	\$973	2.3%
Arts/Entertainment/Recreation	\$26,591	\$26,446	-\$145	-0.5%
Accommodation/Food Service	\$18,926	\$19,319	\$393	2.1%
Other Services **	\$30,574	\$31,521	\$947	3.1%
Total Government	\$50,421	\$51,380	\$959	1.9%
Federal Government	\$59,407	\$60,973	\$1,566	2.6%
State Government	\$54,351	\$53,974	-\$377	-0.7%
Local Government	\$47,713	\$49,027	\$1,314	2.8%
TOTAL	\$48,069	\$49,461	\$1,392	2.9%

\* 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:  
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**PRIVATE SECTOR  
AVERAGE ANNUAL WAGES  
FOR JOBS COVERED BY UNEMPLOYMENT INSURANCE  
BY COUNTY  
2004 AND 2005**

County	2004	2005	% Change
Atlantic	\$ 33,294	\$ 34,418	3.4%
Bergen	\$ 50,295	\$ 51,841	3.1%
Burlington	\$ 41,518	\$ 42,779	3.0%
Camden	\$ 38,922	\$ 40,573	4.2%
Cape May	\$ 27,236	\$ 27,975	2.7%
Cumberland	\$ 33,126	\$ 33,217	0.3%
Essex	\$ 51,021	\$ 51,776	1.5%
Gloucester	\$ 35,091	\$ 36,082	2.8%
Hudson	\$ 53,607	\$ 56,628	5.6%
Hunterdon	\$ 51,678	\$ 52,437	1.5%
Mercer	\$ 49,084	\$ 51,107	4.1%
Middlesex	\$ 50,877	\$ 51,242	0.7%
Monmouth	\$ 41,623	\$ 42,608	2.4%
Morris	\$ 58,593	\$ 60,831	3.8%
Ocean	\$ 32,033	\$ 33,074	3.2%
Passaic	\$ 41,295	\$ 43,773	6.0%
Salem	\$ 44,579	\$ 44,045	-1.2%
Somerset	\$ 62,888	\$ 65,241	3.7%
Sussex	\$ 33,619	\$ 34,631	3.0%
Union	\$ 50,242	\$ 52,230	4.0%
Warren	\$ 40,746	\$ 42,510	4.3%
Total			
Private Sector*	\$ 47,639	\$ 49,108	3.1%

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

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Source: QCEW (formerly ES-202) Program, New Jersey Department of Labor & Workforce Develop

# New Jersey Department of Labor and Workforce Development

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## Labor Planning and Analysis

### EMPLOYMENT & WAGE DATA

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#### New Jersey of Tomorrow

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NAICS uses a production-oriented approach to categorize economic units. Units with similar production processes are classified in the same industry. NAICS focuses on how products and services are created, as opposed to the SIC focus on what is produced. This approach yields significantly different industry groupings than those produced by the SIC approach.

NAICS provides data users with new industrial groupings that better reflect the workings of the US and New Jersey economies and will allow for the improved measurement of new industries. For example, a new industry sector called Information brings together units that turn information into a commodity with units that distribute the commodity and units that provide information services. Information's major components are publishing, broadcasting, telecommunications, information services, and data processing. Under the SIC system, these units were spread across the manufacturing, communications, business services, and amusement services groups. Another new sector of interest is Professional, Scientific, and Technical Services. This sector is comprised of establishments engaged in activities where human capital is the major input.

Some industry sectors such as Construction will show little employment difference in the migration from SIC to the NAICS system. However, an industry such as Manufacturing is likely to show a significant change. For example, companies in the pharmaceutical industry have been classified in Manufacturing under SIC, whether or not the locations were engaged in actual manufacturing production. Under NAICS, employment at pharmaceutical corporate headquarters, will now become part of a new service-providing sector Management of Companies and Enterprises, while employment at pharmaceutical research and development facilities will become part of the Professional, Scientific and Technical Services sector. While the shift of employment to these new sectors will result in lower manufacturing employment numbers under NAICS, the level of overall total industry employment would remain the same.

Users interested in more information about NAICS can access the Bureau of Labor Statistics Web site at <http://www.bls.gov/bls/naics.htm> or the Bureau of the Census Web site at <http://www.census.gov/epcd/www/naics.html>. The 2002 NAICS manual is available from the National Technical Information Service at <http://www.ntis.gov/products/bestsellers/naics.asp>.

**For more information on these files, contact William Saley at (609)984-5586.**

**Quarterly Data:** Statewide NAICS at the sector, 3-digit and 4-digit level. County at the NAICS sector level.

**Fourth Quarter 2005:**

**NEW!**

All Areas in Excel Format

**Third Quarter 2005:**

All Areas in Excel Format

**Second Quarter 2005:**

All Areas in Excel Format

**First Quarter 2005:**

All Areas in Excel Format

**Fourth Quarter 2004:**

All Areas in Excel Format

**Historical Quarterly Data**

Third Quarter 2004	All Areas in Excel Format
Second Quarter 2004	All Areas in Excel Format
First Quarter 2004	All Areas in Excel Format
Fourth Quarter 2003	All Areas in Excel Format
Third Quarter 2003	All Areas in Excel Format
Second Quarter 2003	All Areas in Excel Format
First Quarter 2003	All Areas in Excel Format
Fourth Quarter 2002	All Areas in Excel Format

**Note:** Due to a change in the processing of employer information from the unemployment insurance system, the increase in the number of employers that have not been classified by industry has been elevated since 1999. Many of these unclassified employers represent new businesses or employers who have undergone organizational change. Therefore, industry breakdowns of units, employment and wages, especially in industries where many new employers are likely to be concentrated, may be somewhat understated.

NAICS-based first quarter 2002 data are expected to be available in the spring of 2003.

**Trends in Employment and Wages Covered by Unemployment Insurance (NAICS based): 2003**

**Employment and Wages by Industry: 2003**

New Jersey	Excel
Atlantic County	Excel
Bergen County	Excel
Burlington County	Excel

**State:**

Private Sector Establishments by Employment Size Group & Sector	Excel
Private Sector Employment by Employment Size Group & Sector	Excel
Private Sector Total Wages by Employment Size Group & Sector	Excel

**County:**

Private Sector Establishments by Employment Size Group	Excel
Private Sector Establishment Employment by Employment Size Group	Excel
Private Sector Total Wages by Employment Size Group	Excel

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**Municipal Annual Reports:****New Jersey employment & wages, annual municipality report by sector (NAICS based): 2003**

(Excel format)

All Areas in Excel Format

**Historical Municipality Reports (SIC based):**

1999 Private (Excel)      Government (Excel)  
 1998 Private and Government  
 1997 Private and Government

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**The following are downloadable compressed (ZIPPED) files. They contain employment and wages covered by unemployment insurance for all New Jersey, its 21 counties and its 566 municipalities as of the third quarter for 1991 through 2001. The data are available at the two and four digit Standard Industrial Classification levels. The files have been compressed using PKZIP. You will need PKUNZIP 2.04 or higher to uncompress them.**

**Historical Data:**

Trends in Employment and Wages Covered by Unemployment Insurance: 1991  
 Trends in Employment and Wages Covered by Unemployment Insurance: 1992  
 Trends in Employment and Wages Covered by Unemployment Insurance: 1993  
 Trends in Employment and Wages Covered by Unemployment Insurance: 1994  
 Trends in Employment and Wages Covered by Unemployment Insurance: 1995  
 Trends in Employment and Wages Covered by Unemployment Insurance: 1996  
 Trends in Employment and Wages Covered by Unemployment Insurance: 1997  
 Trends in Employment and Wages Covered by Unemployment Insurance: 1998

Trends in Employment and Wages Covered by Unemployment Insurance: 1999  
 Trends in Employment and Wages Covered by Unemployment Insurance: 2000  
 Trends in Employment and Wages Covered by Unemployment Insurance: 2001  
 Trends in Employment and Wages Covered by Unemployment Insurance: 2002

**Publication:**

**Trends in Employment and Wages Covered by Unemployment Insurance (NAICS based): 2002 (Publication in Adobe Acrobat PDF format (697 KB))**

**Trends in Employment and Wages Covered by Unemployment Insurance (NAICS based): 2001 (Publication in Adobe Acrobat PDF format (1,197 KB))**

**State Data:**

4-Digit Standard Industrial Classification - 1993  
 4-Digit Standard Industrial Classification - 1994  
 4-Digit Standard Industrial Classification - 1995  
 4-Digit Standard Industrial Classification - 1996  
 4-Digit Standard Industrial Classification - 1997  
 4-Digit Standard Industrial Classification - 1998  
 4-Digit Standard Industrial Classification - 1999

**County Data:**

4-Digit Standard Industrial Classification - 1993  
 4-Digit Standard Industrial Classification - 1994  
 4-Digit Standard Industrial Classification - 1995  
 4-Digit Standard Industrial Classification - 1996  
 4-Digit Standard Industrial Classification - 1997  
 4-Digit Standard Industrial Classification - 1998  
 4-Digit Standard Industrial Classification - 1999

**Municipal Data:**

2-Digit Standard Industrial Classification - 1993  
 4-Digit Standard Industrial Classification - 1993  
 2-Digit Standard Industrial Classification - 1994  
 4-Digit Standard Industrial Classification - 1994  
 2-Digit Standard Industrial Classification - 1995  
 4-Digit Standard Industrial Classification - 1995  
 2-Digit Standard Industrial Classification - 1996  
 4-Digit Standard Industrial Classification - 1996  
 2-Digit Standard Industrial Classification - 1997  
 4-Digit Standard Industrial Classification - 1997  
 2-Digit Standard Industrial Classification - 1998  
 4-Digit Standard Industrial Classification - 1998  
 2-Digit Standard Industrial Classification - 1999  
 4-Digit Standard Industrial Classification - 1999

**Standard Industrial Classification (SIC) codes**

Standard Industrial Classification Short Titles

**North American Industry Classification System (NAICS) codes**

North American Industry Classification Short Titles (2002)

*Updated: July 27, 2006*

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Last Updated: April 11, 2006

## **APPENDIX**

### **Explanation of "Covered Employment"**

The covered employment data illustrated in this report refer to the workers of employers subject to the New Jersey Unemployment Compensation Law. Basically, this includes employing units which in either the current or the preceding calendar year paid remuneration for employment in the amount of \$1,000.00 or more.

The term "employment" does not include the following:

1. Agricultural labor performed prior to January 1, 1978 or agricultural labor performed after December 31, 1977 in employing units not meeting specific remunerative or employment level requirements;
2. Domestic service performed in a private home prior to January 1, 1978 or domestic service performed in a private home after December 31, 1977 where an employing unit paid cash remuneration of less than \$1,000.00 for such service in every quarter in the current or preceding calendar year;
3. Service performed by an individual in the employ of his/her son or daughter, or his/her father or mother;
4. Service performed in the employ of state hospitals or state institutions of higher learning prior to January 1, 1978;
5. Service performed in the employ of this State or any of its political divisions prior to January 1, 1978;
6. Service performed in the employ of any other states or their political subdivisions exempt from the Federal Unemployment Tax Act;
7. Service performed in the employ of the United States Government or of an instrumentality of the United States, unless the Congress of the United States permits coverage;



8. Services performed in the employ of fraternal beneficiary societies, orders or associations operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system and providing for the payment of life, sick, accident, or other benefits to the members of such society, order or association, or their dependents;
9. Services performed as a member of the board of directors, board of trustees, a board of managers, or a committee of any bank, building and loan, or savings and loan association, incorporated or organized under the laws of this State or the United States where such services do not constitute the principal employment of the individual;
10. Service with respect to which unemployment compensation is payable under an unemployment insurance program established by an act of Congress;
11. Service performed by agents of mutual fund brokers or dealers in the sale of mutual funds or other securities, by agents of insurance companies, exclusive of industrial insurance agents, or by agents of investment companies, if the compensation to such agents for such services is wholly on a commission basis;
12. Services performed by real estate salespersons or brokers who are compensated wholly on a commission basis;
13. Services performed in the employ of a veterans' organization chartered by an act of Congress or of any auxiliary thereof, no part of the net earnings of which organization, or auxiliary thereof, insures to the benefit of any private shareholder or individual;
14. Service performed for or in behalf of the owner or operator of any theater, ballroom, amusement hall or other place of entertainment, not in excess of 10 weeks in any calendar year for the same owner or operator, by any leader or musician of a band or orchestra, commonly called a "name band", entertainer, vaudeville artist, actor, actress, singer or other entertainers;
15. Services performed after January 1, 1973 by an individual for a labor union organization, known and recognized as a union local, as a member of a committee or committees reimbursed by the union local for time lost from regular employment, or as a part-time officer of a union local and the remuneration for such services is less
16. Services performed in a sale or distribution of merchandise by home-to-home salespersons or in-the-home demonstra-

tors whose remuneration consists wholly of commissions or commissions and bonuses;

17. Service performed in the employ of a foreign government, including service as a consular, nondiplomatic representative, or other officer or employee;
18. Service performed in the employ of an instrumentality wholly owned by a foreign government if a reciprocal exemption is granted by that government;
19. Service in the employ of an international organization entitled to enjoy the privileges, exemptions and immunities under the International Organization Immunities Act;
20. Service covered by an election duly approved by an agency charged with the administration of any other state or Federal Unemployment Compensation or Employment Security Law;
21. Service in a school, college, or university by a student or by the spouse of a student, if the spouse is advised that the employment is part of a program of financial aid for the student;
22. Service performed by an individual under the age of 22 enrolled at a nonprofit or public educational institution as part of a work-study program, if the institution certified the employee as a participant in the program;
23. Service performed in the employ of a hospital as a student nurse, or intern, or by a patient of the hospital;
24. Services performed in the employ of a church or convention of association of churches, or an organization operated primarily for religious purposes;
25. Services performed by a duly ordained, commissioned, or a licensed minister of a church in the exercise of his/her ministry or by a member of a religious order in the exercise of duties required by such order;
26. Service performed by an individual in the exercise of duties as an elected official, member of a legislative body, or a member of the Judiciary, of a state or political subdivision;

27. Service performed by an individual in the exercise of duties as a member of the State National Guard or Air National Guard, or as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood or similar emergency;
28. Service performed by an individual in the exercise of duties in a position which, under or pursuant to the laws of New Jersey, is designated as a major nontenure policymaking position;
29. Services performed by an individual receiving rehabilitation or remunerative work in a facility conducted for the purpose of carrying out a program of rehabilitation;
30. Services performed by an individual receiving work-relief or work-training as part of an unemployment work-relief or work-training program;
31. Service performed by an inmate of a custodial or penal institution;
32. Service performed in the employ of a elementary or secondary school operating under a church charter.

\*\*\*\*\*

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September 28, 2005

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Manufacturing	\$56,079	\$59,203	\$3,124	5.6%
Wholesale Trade	\$64,280	\$64,847	\$567	0.9%
Retail Trade	\$28,135	\$28,411	\$276	1.0%
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Total Government	\$48,401	\$50,421	\$2,020	4.2%
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Source: ES-202 Report, New Jersey Department of Labor

# New Jersey Department of Labor and Workforce Development

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NAICS provides data users with new industrial groupings that better reflect the workings of the US and New Jersey economies and will allow for the improved measurement of new industries. For example, a new industry sector called Information brings together units that turn information into a commodity with units that distribute the commodity and units that provide information services. Information's major components are publishing, broadcasting,

telecommunications, information services, and data processing. Under the SIC system, these units were spread across the manufacturing, communications, business services, and amusement services groups. Another new sector of interest is Professional, Scientific, and Technical Services. This sector is comprised of establishments engaged in activities where human capital is the major input.

Some industry sectors such as Construction will show little employment difference in the migration from SIC to the NAICS system. However, an industry such as Manufacturing is likely to show a significant change. For example, companies in the pharmaceutical industry have been classified in Manufacturing under SIC, whether or not the locations were engaged in actual manufacturing production. Under NAICS, employment at pharmaceutical corporate headquarters, will now become part of a new service-providing sector Management of Companies and Enterprises, while employment at pharmaceutical research and development facilities will become part of the Professional, Scientific and Technical Services sector. While the shift of employment to these new sectors will result in lower manufacturing employment numbers under NAICS, the level of overall total industry employment would remain the same.


Users interested in more information about NAICS can access the Bureau of Labor Statistics Web site at <http://www.bls.gov/blis/naics.htm> or the Bureau of the Census Web site at <http://www.census.gov/epcd/www/naics.html>. The 2002 NAICS manual is available from the National Technical Information Service at <http://www.ntis.gov/products/bestsellers/naics.asp>.

**For more information on these files, contact William Saley at (609)984-5586.**

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**Quarterly Data:** Statewide NAICS at the sector, 3-digit and 4-digit level.  
County at the NAICS sector level.

**Fourth Quarter 2004:**

 All Areas in Excel Format

**Third Quarter 2004:**



## **APPENDIX**

### **Explanation of "Covered Employment"**

The covered employment data illustrated in this report refer to the workers of employers subject to the New Jersey Unemployment Compensation Law. Basically, this includes employing units which in either the current or the preceding calendar year paid remuneration for employment in the amount of \$1,000.00 or more.

The term "employment" does not include the following:

1. Agricultural labor performed prior to January 1, 1978 or agricultural labor performed after December 31, 1977 in employing units not meeting specific remunerative or employment level requirements;
2. Domestic service performed in a private home prior to January 1, 1978 or domestic service performed in a private home after December 31, 1977 where an employing unit paid cash remuneration of less than \$1,000.00 for such service in every quarter in the current or preceding calendar year;
3. Service performed by an individual in the employ of his/her son or daughter, or his/her father or mother;
4. Service performed in the employ of state hospitals or state institutions of higher learning prior to January 1, 1978;
5. Service performed in the employ of this State or any of its political divisions prior to January 1, 1978;
6. Service performed in the employ of any other states or their political subdivisions exempt from the Federal Unemployment Tax Act;
7. Service performed in the employ of the United States Government or of an instrumentality of the United States, unless the Congress of the United States permits coverage;

8. Services performed in the employ of fraternal beneficiary societies, orders or associations operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system and providing for the payment of life, sick, accident, or other benefits to the members of such society, order or association, or their dependents;
9. Services performed as a member of the board of directors, board of trustees, a board of managers, or a committee of any bank, building and loan, or savings and loan association, incorporated or organized under the laws of this State or the United States where such services do not constitute the principal employment of the individual;
10. Service with respect to which unemployment compensation is payable under an unemployment insurance program established by an act of Congress;
11. Service performed by agents of mutual fund brokers or dealers in the sale of mutual funds or other securities, by agents of insurance companies, exclusive of industrial insurance agents, or by agents of investment companies, if the compensation to such agents for such services is wholly on a commission basis;
12. Services performed by real estate salespersons or brokers who are compensated wholly on a commission basis;
13. Services performed in the employ of a veterans' organization chartered by an act of Congress or of any auxiliary thereof, no part of the net earnings of which organization, or auxiliary thereof, insures to the benefit of any private shareholder or individual;
14. Service performed for or in behalf of the owner or operator of any theater, ballroom, amusement hall or other place of entertainment, not in excess of 10 weeks in any calendar year for the same owner or operator, by any leader or musician of a band or orchestra, commonly called a "name band", entertainer, vaudeville artist, actor, actress, singer or other entertainers;
15. Services performed after January 1, 1973 by an individual for a labor union organization, known and recognized as a union local, as a member of a committee or committees reimbursed by the union local for time lost from regular employment, or as a part-time officer of a union local and the remuneration for such services is less
16. Services performed in a sale or distribution of merchandise by home-to-home salespersons or in-the-home demonstra-

tors whose remuneration consists wholly of commissions or commissions and bonuses;

17. Service performed in the employ of a foreign government, including service as a consular, nondiplomatic representative, or other officer or employee;
18. Service performed in the employ of an instrumentality wholly owned by a foreign government if a reciprocal exemption is granted by that government;
19. Service in the employ of an international organization entitled to enjoy the privileges, exemptions and immunities under the International Organization Immunities Act;
20. Service covered by an election duly approved by an agency charged with the administration of any other state or Federal Unemployment Compensation or Employment Security Law;
21. Service in a school, college, or university by a student or by the spouse of a student, if the spouse is advised that the employment is part of a program of financial aid for the student;
22. Service performed by an individual under the age of 22 enrolled at a nonprofit or public educational institution as part of a work-study program, if the institution certified the employee as a participant in the program;
23. Service performed in the employ of a hospital as a student nurse, or intern, or by a patient of the hospital;
24. Services performed in the employ of a church or convention of association of churches, or an organization operated primarily for religious purposes;
25. Services performed by a duly ordained, commissioned, or a licensed minister of a church in the exercise of his/her ministry or by a member of a religious order in the exercise of duties required by such order;
26. Service performed by an individual in the exercise of duties as an elected official, member of a legislative body, or a member of the Judiciary, of a state or political subdivision;

27. Service performed by an individual in the exercise of duties as a member of the State National Guard or Air National Guard, or as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood or similar emergency;
28. Service performed by an individual in the exercise of duties in a position which, under or pursuant to the laws of New Jersey, is designated as a major nontenure policymaking position;
29. Services performed by an individual receiving rehabilitation or remunerative work in a facility conducted for the purpose of carrying out a program of rehabilitation;
30. Services performed by an individual receiving work-relief or work-training as part of an unemployment work-relief or work-training program;
31. Service performed by an inmate of a custodial or penal institution;
32. Service performed in the employ of a elementary or secondary school operating under a church charter.

\*\*\*\*\*

Statements included here are intended for general information and do not have the effect of law or regulation.  
For a complete description of exemptions with caveats, please see New Jersey Unemployment Compensation Law  
R.S. 43:21-19(i)(7).



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

P. O. BOX 429  
TRENTON, NEW JERSEY 08625-0429

ADMINISTRATION/LEGAL  
(609) 292-9830

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(609) 292-9898

UNFAIR PRACTICE/REPRESENTATION  
(609) 292-6780

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

FAX: (609) 777-0089

September 8, 2004

Attached is a report of private sector wage changes compiled by the New Jersey Department of Labor ("NJDOL"). The first table shows changes in average wages in employment for major industry groups in New Jersey between 2002 and 2003. 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 2002 and 2003. 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. Prior NJDOL Reports had used the 1987 Standard Industrial Classification (SIC) system to assign and tabulate such data. The attached document from the NJDOL website describes NAICS and explains that "[d]ue to major differences in NAICS and SIC structures . . . data for 2001 and forward is not comparable to the SIC-based data for earlier years." The document also states that the new industrial groupings used by NAICS better reflect the workings of the U.S. and New Jersey economies. Also attached is a document explaining "covered employment" for purposes of the New Jersey Unemployment Compensation Law.

Further information compiled by NJDOL can be obtained at its website: [www.state.nj.us/labor](http://www.state.nj.us/labor) under Statistics & Analysis/New Jersey's Economy.

**NEW JERSEY  
AVERAGE ANNUAL WAGES  
FOR JOBS COVERED BY UNEMPLOYMENT INSURANCE  
BY NAICS INDUSTRY SECTOR  
2002 and 2003**

NAICS Industry Sector	2002	2003	Net Change	% Change
Total Private Sector *	\$44,879	\$45,979	\$1,100	2.5%
Utilities	\$73,861	\$77,159	\$3,298	4.5%
Construction	\$50,348	\$50,366	\$18	0.0%
Manufacturing	\$53,124	\$56,079	\$2,955	5.6%
Wholesale Trade	\$61,762	\$64,280	\$2,518	4.1%
Retail Trade	\$27,627	\$28,135	\$508	1.8%
Transportation/Warehousing	\$38,853	\$39,935	\$1,082	2.8%
Information	\$67,745	\$68,866	\$1,121	1.7%
Finance/Insurance	\$76,893	\$78,219	\$1,326	1.7%
Real Estate/Rental/Leasing	\$41,717	\$43,083	\$1,366	3.3%
Professional/Technical Services	\$68,300	\$69,469	\$1,169	1.7%
Management of Companies/Enterprises	\$85,222	\$95,017	\$9,795	11.5%
Administrative/Waste Services	\$29,887	\$30,877	\$990	3.3%
Educational Services	\$38,323	\$40,249	\$1,926	5.0%
Health Care/Social Assistance	\$38,449	\$39,684	\$1,235	3.2%
Arts/Entertainment/Recreation	\$26,732	\$27,429	\$697	2.6%
Accommodation/Food Service	\$18,122	\$18,426	\$304	1.7%
Other Services **	\$28,520	\$29,130	\$610	2.1%
Total Government	\$46,929	\$48,401	\$1,472	3.1%
Federal Government	\$53,328	\$55,756	\$2,428	4.6%
State Government	\$50,091	\$51,343	\$1,252	2.5%
Local Government	\$44,812	\$46,236	\$1,424	3.2%
TOTAL	\$45,187	\$46,349	\$1,162	2.6%

\* 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.wnjin.state.nj.us/OneStopCareerCenter/LaborMarketInformation/lmi14/index.html>

**PRIVATE SECTOR  
AVERAGE ANNUAL WAGES  
FOR JOBS COVERED BY UNEMPLOYMENT INSURANCE  
BY COUNTY  
2002 AND 2003**


County	2002	2003	% Change
Atlantic	\$ 31,354	\$ 32,234	2.8%
Bergen	\$ 47,397	\$ 48,895	3.2%
Burlington	\$ 39,465	\$ 40,094	1.6%
Camden	\$ 36,347	\$ 38,256	5.3%
Cape May	\$ 25,098	\$ 26,037	3.7%
Cumberland	\$ 31,234	\$ 31,821	1.9%
Essex	\$ 46,696	\$ 48,076	3.0%
Gloucester	\$ 32,768	\$ 33,324	1.7%
Hudson	\$ 49,658	\$ 50,285	1.3%
Hunterdon	\$ 48,603	\$ 48,688	0.2%
Mercer	\$ 46,007	\$ 47,000	2.2%
Middlesex	\$ 47,757	\$ 49,565	3.8%
Monmouth	\$ 39,800	\$ 40,826	2.6%
Morris	\$ 55,079	\$ 56,173	2.0%
Ocean	\$ 29,743	\$ 30,752	3.4%
Passaic	\$ 38,426	\$ 39,709	3.3%
Salem	\$ 42,392	\$ 42,881	1.2%
Somerset	\$ 58,775	\$ 62,327	6.0%
Sussex	\$ 31,857	\$ 32,971	3.5%
Union	\$ 47,740	\$ 48,300	1.2%
Warren	\$ 37,788	\$ 39,842	5.4%
Total			
Private Sector*	\$ 44,879	\$ 45,979	2.5%

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

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Source: QCEW Report, New Jersey Department of Labor

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**New Jersey**  
**Department of Labor and Workforce Development**

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**New Jersey's Economy**  
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**New Jersey of Tomorrow**  
Data Projections

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**Other Labor Program Data**

**Related LMI Links**

**Helpful Software**

**LMI A to Z**

**Labor Market Information**  
Email List

## EMPLOYMENT & WAGE DATA

This directory contains tabulations of employment and wage data for employers covered under the New Jersey Unemployment Compensation Law. Employment and wage information up to and including year 2000 data are provided under the 1987 Standard Industrial Classification System (SIC).

Beginning with the release of 2001 annual and 2002 quarterly data the program has switched to the 2002 version of the North American Industry Classification System (NAICS) as the basis for the assignment and tabulation of 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. NAICS provides a common and consistent classification system for the three countries. Due to major differences in NAICS and SIC structures however, data for 2001 and forward is not comparable to the SIC-based data for earlier years.

NAICS uses a production-oriented approach to categorize economic units.

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Some industry sectors such as Construction will show little employment difference in the migration from SIC to the NAICS system. However, an industry such as Manufacturing is likely to show a significant change. For example, companies in the pharmaceutical industry have been classified in Manufacturing under SIC, whether or not the locations were engaged in actual manufacturing production. Under NAICS, employment at pharmaceutical corporate headquarters, will now become part of a new service-providing sector Management of Companies and Enterprises, while employment at pharmaceutical research and development facilities will become part of the Professional, Scientific and Technical Services sector. While the shift of employment to these new sectors will result in lower manufacturing employment numbers under NAICS, the level of overall total industry employment would remain the same.

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**For more information on these files, contact William Saley at (609)984-5586.**

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**Quarterly Data:** Statewide NAICS at the sector, 3-digit and 4-digit level.  
County at the NAICS sector level.

**Fourth Quarter 2003:**



All Areas in Excel Format

**Third Quarter 2003:**

### **Explanation of "Covered Employment"**

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10. Service with respect to which unemployment compensation is payable under an unemployment insurance program established by an act of Congress;
11. Service performed by agents of mutual fund brokers or dealers in the sale of mutual funds or other securities, by agents of insurance companies, exclusive of industrial insurance agents, or by agents of investment companies, if the compensation to such agents for such services is wholly on a commission basis;
12. Services performed by real estate salespersons or brokers who are compensated wholly on a commission basis;
13. Services performed in the employ of a veterans' organization chartered by an act of Congress or of any auxiliary thereof, no part of the net earnings of which organization, or auxiliary thereof, insures to the benefit of any private shareholder or individual;
14. Service performed for or in behalf of the owner or operator of any theater, ballroom, amusement hall or other place of entertainment, not in excess of 10 weeks in any calendar year for the same owner or operator, by any leader or musician of a band or orchestra, commonly called a "name band", entertainer, vaudeville artist, actor, actress, singer or other entertainers;
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19. Service in the employ of an international organization entitled to enjoy the privileges, exemptions and immunities under the International Organization Immunities Act;
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22. Service performed by an individual under the age of 22 enrolled at a nonprofit or public educational institution as part of a work-study program, if the institution certified the employee as a participant in the program;
23. Service performed in the employ of a hospital as a student nurse, or intern, or by a patient of the hospital;
24. Services performed in the employ of a church or convention of association of churches, or an organization operated primarily for religious purposes;
25. Services performed by a duly ordained, commissioned, or a licensed minister of a church in the exercise of his/her ministry or by a member of a religious order in the exercise of duties required by such order;
26. Service performed by an individual in the exercise of duties as an elected official, member of a legislative body, or a member of the Judiciary, of a state or political subdivision;

27. Service performed by an individual in the exercise of duties as a member of the State National Guard or Air National Guard, or as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood or similar emergency;
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29. Services performed by an individual receiving rehabilitation or remunerative work in a facility conducted for the purpose of carrying out a program of rehabilitation;
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Statements included here are intended for general information and do not have the effect of law or regulation.  
For a complete description of exemptions with caveats, please see New Jersey Unemployment Compensation Law  
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P. O. BOX 429  
TRENTON, NEW JERSEY 08625-0429

ADMINISTRATION/LEGAL  
(609) 292-9830

CONCILIATION/ARBITRATION  
(609) 292-9898

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(609) 292-6780

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

FAX: (609) 777-0089

September 10, 2003

Attached is a report of private sector wage changes compiled by the New Jersey Department of Labor ("NJDOL"). The first table shows changes in average wages in employment for major industry groups in New Jersey. 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. 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.

Please note that the first table in this report reflects a change in the method for assigning and tabulating economic data by industry from the 1987 Standard Industrial Classification (SIC) system to the North American Industry Classification System (NAICS). NAICS is the product of a cooperative effort on the part of the statistical agencies of the United States, Canada, and Mexico. The attached document from the NJDOL website describes NAICS and explains that "[d]ue to major differences in NAICS and SIC structures . . . data for 2001 and forward is not comparable to the SIC-based data for earlier years." The document also states that the new industrial groupings used by NAICS better reflect the workings of the U.S. and New Jersey economies.

Further information compiled by NJDOL can be obtained at its website: [www.state.nj.us/labor](http://www.state.nj.us/labor) under Statistics & Analysis/New Jersey's Economy.

**NEW JERSEY**  
**AVERAGE ANNUAL WAGES**  
**FOR JOBS COVERED BY UNEMPLOYMENT INSURANCE**  
**BY NAICS INDUSTRY SECTOR**  
**2001 and 2002**

NAICS Industry Sector	2001	2002	Net Change	% Change
Total Private Sector *	\$44,153	\$44,879	\$726	1.6%
Utilities	\$72,460	\$73,861	\$1,401	1.9%
Construction	\$49,875	\$50,348	\$473	0.9%
Manufacturing	\$51,632	\$53,124	\$1,492	2.9%
Wholesale Trade	\$59,977	\$61,762	\$1,785	3.0%
Retail Trade	\$26,832	\$27,627	\$795	3.0%
Transportation/Warehousing	\$37,890	\$38,853	\$963	2.5%
Information	\$65,535	\$67,745	\$2,210	3.4%
Finance/Insurance	\$75,309	\$76,893	\$1,584	2.1%
Real Estate/Rental/Leasing	\$40,061	\$41,717	\$1,656	4.1%
Professional/Technical Services	\$67,795	\$68,300	\$505	0.7%
Management of				
Companies/Enterprises	\$85,201	\$85,222	\$21	0.0%
Administrative/Waste Services	\$29,180	\$29,887	\$707	2.4%
Educational Services	\$37,964	\$38,323	\$359	0.9%
Health Care/Social Assistance	\$37,222	\$38,449	\$1,227	3.3%
Arts/Entertainment/Recreation	\$26,220	\$26,732	\$512	2.0%
Accommodation/Food Service	\$17,860	\$18,122	\$262	1.5%
Other Services **	\$27,899	\$28,520	\$621	2.2%
Total Government	\$45,303	\$46,929	\$1,626	3.6%
Federal Government	\$49,186	\$53,328	\$4,142	8.4%
State Government	\$47,920	\$50,091	\$2,171	4.5%
Local Government	\$43,714	\$44,812	\$1,098	2.5%
TOTAL	\$44,322	\$45,187	\$865	2.0%

\* 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.

**PRIVATE SECTOR  
AVERAGE ANNUAL WAGES  
FOR JOBS COVERED BY UNEMPLOYMENT INSURANCE  
BY COUNTY  
2001 AND 2002**


County	2001	2002	% Change
Atlantic	\$ 30,674	\$ 31,354	2.2%
Bergen	\$ 46,992	\$ 47,397	0.9%
Burlington	\$ 38,558	\$ 39,465	2.4%
Camden	\$ 35,212	\$ 36,347	3.2%
Cape May	\$ 24,103	\$ 25,098	4.1%
Cumberland	\$ 30,148	\$ 31,234	3.6%
Essex	\$ 45,869	\$ 46,696	1.8%
Gloucester	\$ 32,118	\$ 32,768	2.0%
Hudson	\$ 47,857	\$ 49,658	3.8%
Hunterdon	\$ 48,209	\$ 48,603	0.8%
Mercer	\$ 45,218	\$ 46,007	1.7%
Middlesex	\$ 47,921	\$ 47,757	-0.3%
Monmouth	\$ 39,585	\$ 39,800	0.5%
Morris	\$ 54,788	\$ 55,079	0.5%
Ocean	\$ 28,919	\$ 29,743	2.8%
Passaic	\$ 37,966	\$ 38,426	1.2%
Salem	\$ 40,693	\$ 42,392	4.2%
Somerset	\$ 56,777	\$ 58,775	3.5%
Sussex	\$ 31,314	\$ 31,857	1.7%
Union	\$ 46,134	\$ 47,740	3.5%
Warren	\$ 36,290	\$ 37,788	4.1%
Total			
Private Sector*	\$ 44,153	\$ 44,879	1.6%

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


Source: ES-202 Report, New Jersey Department of Labor



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## EMPLOYMENT & WAGE DATA

This directory contains tabulations of employment and wage data for employers covered under the New Jersey Unemployment Compensation Law. Employment and wage information up to and including year 2000 data are provided under the 1987 Standard Industrial Classification System (SIC).

Beginning with the release of 2001 annual and 2002 quarterly data the program has switched to the 2002 version of the North American Industry Classification System (NAICS) as the basis for the assignment and tabulation of 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. NAICS provides a common and consistent classification system for the three countries. Due to major differences in NAICS and SIC structures however, data for 2001 and forward is not comparable to the SIC-based data for earlier years.

NAICS uses a production-oriented approach to categorize economic units. Units with similar production processes are classified in the same industry. NAICS focuses on how products and services are created, as opposed to the SIC focus on what is produced. This approach yields significantly different industry groupings than those produced by the SIC approach.

NAICS provides data users with new industrial groupings that better reflect the workings of the US and New Jersey economies and will allow for the improved measurement of new industries. For example, a new industry sector called Information brings together units that turn information into a commodity with units that distribute the commodity and units that provide information services. Information's major components are publishing, broadcasting,

telecommunications, information services, and data processing. Under the SIC system, these units were spread across the manufacturing, communications, business services, and amusement services groups. Another new sector of interest is Professional, Scientific, and Technical Services. This sector is comprised of establishments engaged in activities where human capital is the major input.

Some industry sectors such as Construction will show little employment difference in the migration from SIC to the NAICS system. However, an industry such as Manufacturing is likely to show a significant change. For example, companies in the pharmaceutical industry have been classified in Manufacturing under SIC, whether or not the locations were engaged in actual manufacturing production. Under NAICS, employment at pharmaceutical corporate headquarters, will now become part of a new service-providing sector Management of Companies and Enterprises, while employment at pharmaceutical research and development facilities will become part of the Professional, Scientific and Technical Services sector. While the shift of employment to these new sectors will result in lower manufacturing employment numbers under NAICS, the level of overall total industry employment would remain the same.

Users interested in more information about NAICS can access the Bureau of Labor Statistics Web site at <http://www.bls.gov/bls/naics.htm> or the Bureau of the Census Web site at <http://www.census.gov/epcd/www/naics.html>. The 2002 NAICS manual is available from the National Technical Information Service at <http://www.ntis.gov/products/bestsellers/naics.asp>.

**For more information on these files, contact William Saley at (609)984-5586.**

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**Quarterly Data:** Statewide NAICS at the sector, 3-digit and 4-digit level.  
County at the NAICS sector level.

**Fourth Quarter 2002:** NEW!

All Areas in Excel Format

**Third Quarter 2002:**

All Areas in Excel Format

## Explanation of "Covered Employment"

The covered employment data illustrated in this report refer to the workers of employers subject to the New Jersey Unemployment Compensation Law. Basically, this includes employing units which in either the current or the preceding calendar year paid remuneration for employment in the amount of \$1,000.00 or more.

The term "employment" does not include the following:

1. Agricultural labor performed prior to January 1, 1978 or agricultural labor performed after December 31, 1977 in employing units not meeting specific remunerative or employment level requirements;
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3. Service performed by an individual in the employ of his/her son or daughter, or his/her father or mother.
4. Service performed in the employ of state hospitals or state institutions of higher learning prior to January 1, 1978.
5. Service performed in the employ of this State or any of its political divisions prior to January 1, 1978.
6. Service performed in the employ of any other states or their political subdivisions exempt from the Federal Unemployment Tax Act;
7. Service performed in the employ of the United States Government or of an instrumentality of the United States, unless the Congress of the United States permits coverage.

8. Services performed in the employ of fraternal beneficiary societies, orders or associations operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system and providing for the payment of life, sick, accident, or other benefits to the members of such society, order or association, or their dependents;
9. Services performed as a member of the board of directors, board of trustees, a board of managers, or a committee of any bank, building and loan, or savings and loan association, incorporated or organized under the laws of this State or the United States where such services do not constitute the principal employment of the individual;
10. Service with respect to which unemployment compensation is payable under an unemployment insurance program established by an act of Congress;
11. Service performed by agents of mutual fund brokers or dealers in the sale of mutual funds or other securities, by agents of insurance companies, exclusive of industrial insurance agents, or by agents of investment companies, if the compensation to such agents for such services is wholly on a commission basis;
12. Services performed by real estate salespersons or brokers who are compensated wholly on a commission basis.
13. Services performed in the employ of a veterans' organization chartered by an act of Congress or of any auxiliary thereof, no part of the net earnings of which organization, or auxiliary thereof, insures to the benefit of any private shareholder or individual;
14. Service performed for or in behalf of the owner or operator of any theater, ballroom, amusement hall or other place of entertainment, not in excess of 10 weeks in any calendar year for the same owner or operator, by any leader or musician of a band or orchestra, commonly called a "name band", entertainer, vaudeville artist, actor, actress, singer or other entertainers;
15. Services performed after January 1, 1973 by an individual for a labor union organization, known and recognized as a union local, as a member of a committee or committees reimbursed by the union local for time lost from regular employment, or as a part-time officer of a union local and the remuneration for such services is less than \$1,000.00 in a calendar year.

16. Services performed in a sale or distribution of merchandise by home-to-home salespersons or in-the-home demonstrators whose remuneration consists wholly of commissions or commissions and bonuses.
17. Service performed in the employ of a foreign government, including service as a consular, nondiplomatic representative, or other officer or employee.
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19. Service in the employ of an international organization entitled to enjoy the privileges, exemptions and immunities under the International Organization Immunities Act;
20. Service covered by an election duty approved by an agency charged with the administration of any other state or Federal Unemployment Compensation or Employment Security Law;
21. Service in a school, college, or university by a student or by the spouse of a student, if the spouse is advised that the employment is part of a program of financial aid for the student;
22. Service performed by an individual under the age of 22 enrolled at a nonprofit or public educational institution as part of a work-study program, if the institution certified the employee as a participant in the program;
23. Service performed in the employ of a hospital as a student nurse, or intern, or by a patient of the hospital;
24. Services performed in the employ of a church or convention of association of churches, or an organization operated primarily for religious purposes;
25. Services performed by a duly ordained, commissioned, or a licensed minister of a church in the exercise of his/her ministry or by a member of a religious order in the exercise of duties required by such order;
26. Service performed by an individual in the exercise of duties as an elected official, member of a legislative body, or a member of the Judiciary, of a state or political subdivision.

27. Service performed by an individual in the exercise of duties as a member of the State National Guard or Air National Guard, or as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood or similar emergency;
28. Service performed by an individual in the exercise of duties in a position which, under or pursuant to the laws of New Jersey, is designated as a major nontenure policymaking position;
29. Services performed by an individual receiving rehabilitation or remunerative work in a facility conducted for the purpose of carrying out a program of rehabilitation;
30. Services performed by an individual receiving work-relief or work-training as part of an unemployment work-relief or work-training program;
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For a complete description of exemptions with caveats, please see New Jersey Unemployment Compensation Law  
R.S. 43:21-19(i)(7).



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

PO Box 429  
TRENTON, NEW JERSEY 08625-0429

ADMINISTRATION/LEGAL  
(609) 292-9830

CONCILIATION/ARBITRATION  
(609) 292-9898

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(609) 292-6780

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

FAX: (609) 777-0089

August 30, 2002

Attached is a report of private sector wage changes compiled by the New Jersey Department of Labor ("NJDOL"). The first table shows changes in average wages in employment for major industry groups in New Jersey. 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. 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.

Further information compiled by NJDOL can be obtained at its website:  
[www.state.nj.us/labor](http://www.state.nj.us/labor) under Services/New Jersey Data/Labor Market Information.

**NEW JERSEY  
AVERAGE ANNUAL WAGES  
FOR JOBS COVERED BY UNEMPLOYMENT INSURANCE  
BY MAJOR INDUSTRY DIVISION  
2000 and 2001**

Major Industry Division	2000	2001	% Change
Total Private Sector *	\$43,638	\$44,153	1.2%
Construction	\$46,410	\$49,627	6.9%
Manufacturing	\$59,173	\$55,833	-5.6%
Transportation/ Communications/ Public Utilities	\$51,047	\$50,850	-0.4%
Wholesale Trade	\$57,682	\$58,929	2.2%
Retail Trade	\$21,738	\$22,618	4.0%
Finance/Insurance/ Real Estate	\$69,128	\$70,130	1.4%
Services	\$39,383	\$41,120	4.4%
Total Government	\$43,867	\$45,304	3.3%
Federal Government	\$47,472	\$49,186	3.6%
State Government	\$45,526	\$47,920	5.3%
Local Government	\$42,612	\$43,714	2.6%
TOTAL	\$43,671	\$44,322	1.5%

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

Source: ES-202 report, New Jersey Department of Labor



**PRIVATE SECTOR  
AVERAGE ANNUAL WAGES  
FOR JOBS COVERED BY UNEMPLOYMENT INSURANCE  
BY COUNTY  
2000 AND 2001**

County	2000	2001	% Change
Atlantic	\$ 29,189	\$ 30,674	5.1%
Bergen	\$ 46,572	\$ 46,992	0.9%
Burlington	\$ 37,337	\$ 38,558	3.3%
Camden	\$ 33,872	\$ 35,212	4.0%
Cape May	\$ 23,402	\$ 24,103	3.0%
Cumberland	\$ 29,424	\$ 30,148	2.5%
Essex	\$ 43,959	\$ 45,869	4.3%
Gloucester	\$ 30,924	\$ 32,118	3.9%
Hudson	\$ 48,010	\$ 47,857	-0.3%
Hunterdon	\$ 50,300	\$ 48,209	-4.2%
Mercer	\$ 43,331	\$ 45,218	4.4%
Middlesex	\$ 46,742	\$ 47,921	2.5%
Monmouth	\$ 38,939	\$ 39,585	1.7%
Morris	\$ 62,154	\$ 54,788	-11.9%
Ocean	\$ 28,277	\$ 28,919	2.3%
Passaic	\$ 36,663	\$ 37,966	3.6%
Salem	\$ 40,210	\$ 40,693	1.2%
Somerset	\$ 55,856	\$ 56,777	1.6%
Sussex	\$ 31,483	\$ 31,314	-0.5%
Union	\$ 45,165	\$ 46,134	2.1%
Warren	\$ 34,541	\$ 36,290	5.1%
Total			
Private Sector*	\$ 43,638	\$ 44,153	1.2%

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

Source: ES-202 Report, New Jersey Department of Labor

### **Explanation of "Covered Employment"**

The covered employment data illustrated in this report refer to the workers of employers subject to the New Jersey Unemployment Compensation Law. Basically, this includes employing units which in either the current or the preceding calendar year paid remuneration for employment in the amount of \$1,000.00 or more.

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5. Service performed in the employ of this State or any of its political divisions prior to January 1, 1978;
6. Service performed in the employ of any other states or their political subdivisions exempt from the Federal Unemployment Tax Act;
7. Service performed in the employ of the United States Government or of an instrumentality of the United States, unless the Congress of the United States permits coverage;

8. Services performed in the employ of fraternal beneficiary societies, orders or associations operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system and providing for the payment of life, sick, accident, or other benefits to the members of such society, order or association, or their dependents;
9. Services performed as a member of the board of directors, board of trustees, a board of managers, or a committee of any bank, building and loan, or savings and loan association, incorporated or organized under the laws of this State or the United States where such services do not constitute the principal employment of the individual;
10. Service with respect to which unemployment compensation is payable under an unemployment insurance program established by an act of Congress;
11. Service performed by agents of mutual fund brokers or dealers in the sale of mutual funds or other securities, by agents of insurance companies, exclusive of industrial insurance agents, or by agents of investment companies, if the compensation to such agents for such services is wholly on a commission basis;
12. Services performed by real estate salespersons or brokers who are compensated wholly on a commission basis;
13. Services performed in the employ of a veterans' organization chartered by an act of Congress or of any auxiliary thereof, no part of the net earnings of which organization, or auxiliary thereof, insures to the benefit of any private shareholder or individual;
14. Service performed for or in behalf of the owner or operator of any theater, ballroom, amusement hall or other place of entertainment, not in excess of 10 weeks in any calendar year for the same owner or operator, by any leader or musician of a band or orchestra, commonly called a "name band", entertainer, vaudeville artist, actor, actress, singer or other entertainers;
15. Services performed after January 1, 1973 by an individual for a labor union organization, known and recognized as a union local, as a member of a committee or committees reimbursed by the union local for time lost from regular employment, or as a part-time officer of a union local and the remuneration for such services is less than \$1,000.00 in a calendar year.

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20. Service covered by an election duly approved by an agency charged with the administration of any other state or Federal Unemployment Compensation or Employment Security Law;
21. Service in a school, college, or university by a student or by the spouse of a student, if the spouse is advised that the employment is part of a program of financial aid for the student;
22. Service performed by an individual under the age of 22 enrolled at a nonprofit or public educational institution as part of a work-study program, if the institution certified the employee as a participant in the program;
23. Service performed in the employ of a hospital as a student nurse, or intern, or by a patient of the hospital;
24. Services performed in the employ of a church or convention of association of churches, or an organization operated primarily for religious purposes;
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26. Service performed by an individual in the exercise of duties as an elected official, member of a legislative body, or a member of the Judiciary, of a state or political subdivision;

27. Service performed by an individual in the exercise of duties as a member of the State National Guard or Air National Guard, or as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood or similar emergency;
28. Service performed by an individual in the exercise of duties in a position which, under or pursuant to the laws of New Jersey, is designated as a major nontenure policymaking position;
29. Services performed by an individual receiving rehabilitation or remunerative work in a facility conducted for the purpose of carrying out a program of rehabilitation;
30. Services performed by an individual receiving work-relief or work-training as part of an unemployment work-relief or work-training program;
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PO Box 429  
TRENTON, NEW JERSEY 08625-0429

ADMINISTRATION/LEGAL  
(609) 292-9830

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(609) 292-9898

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(609) 292-6780

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

FAX: (609) 777-0089

September 26, 2001

Attached is a report of private sector wage changes compiled by the New Jersey Department of Labor ("NJDOL"). The first table shows changes in average wages in employment for major industry groups in New Jersey. 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.

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Further information compiled by NJDOL can be obtained at its website: [www.state.nj.us/labor](http://www.state.nj.us/labor) under Services/New Jersey Data/Labor Market Information. Additional information is also included in NDOL's "Trends in Employment and Wages."

**NEW JERSEY  
AVERAGE ANNUAL WAGES  
FOR JOBS COVERED BY UNEMPLOYMENT INSURANCE  
BY MAJOR INDUSTRY DIVISION  
1999 and 2000**

Major Industry Division	1999	2000	% Change
Total Private Sector *	\$40,805	\$43,638	6.9%
Construction	\$44,121	\$46,410	5.2%
Manufacturing	\$51,877	\$59,173	14.1%
Transportation/ Communications/ Public Utilities	\$48,837	\$51,047	4.5%
Wholesale Trade	\$53,119	\$57,682	8.6%
Retail Trade	\$20,693	\$21,738	5.1%
Finance/Insurance/ Real Estate	\$61,448	\$69,128	12.5%
Services	\$37,969	\$39,383	3.7%
Total Government	\$42,602	\$43,867	3.0%
Federal Government	\$45,890	\$47,472	3.4%
State Government	\$44,009	\$45,526	3.4%
Local Government	\$41,503	\$42,612	2.7%
TOTAL	\$41,062	\$43,671	6.4%

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

Source: ES-202 report, New Jersey Department of Labor

Labor Planning & Analysis  
Division of Labor Market & Demographic Research  
August 21, 2001

**PRIVATE SECTOR  
AVERAGE ANNUAL WAGES  
FOR JOBS COVERED BY UNEMPLOYMENT INSURANCE  
BY COUNTY  
1999 AND 2000**

County	1999	2000	% Change
Atlantic	\$ 28,294	\$ 29,189	3.2%
Bergen	\$ 43,301	\$ 46,572	7.6%
Burlington	\$ 35,602	\$ 37,337	4.9%
Camden	\$ 32,773	\$ 33,872	3.4%
Cape May	\$ 22,548	\$ 23,402	3.8%
Cumberland	\$ 28,398	\$ 29,424	3.6%
Essex	\$ 42,491	\$ 43,959	3.5%
Gloucester	\$ 30,155	\$ 30,924	2.6%
Hudson	\$ 42,974	\$ 48,010	11.7%
Hunterdon	\$ 44,981	\$ 50,300	11.8%
Mercer	\$ 40,905	\$ 43,331	5.9%
Middlesex	\$ 44,008	\$ 46,742	6.2%
Monmouth	\$ 36,916	\$ 38,939	5.5%
Morris	\$ 51,643	\$ 62,154	20.4%
Ocean	\$ 26,827	\$ 28,277	5.4%
Passaic	\$ 35,992	\$ 36,663	1.9%
Salem	\$ 38,377	\$ 40,210	4.8%
Somerset	\$ 53,085	\$ 55,856	5.2%
Sussex	\$ 30,001	\$ 31,483	4.9%
Union	\$ 43,134	\$ 45,165	4.7%
Warren	\$ 34,102	\$ 34,541	1.3%
Total Private Sector*	\$ 40,805	\$ 43,638	6.9%

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

Source: ES-202 Report, New Jersey Department of Labor

Labor Planning & Analysis  
Division of Labor Market & Demographic Research  
August 21, 2001



## Explanation of "Covered Employment"

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10. Service with respect to which unemployment compensation is payable under an unemployment insurance program established by an act of Congress;
11. Service performed by agents of mutual fund brokers or dealers in the sale of mutual funds or other securities, by agents of insurance companies, exclusive of industrial insurance agents, or by agents of investment companies, if the compensation to such agents for such services is wholly on a commission basis;
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14. Service performed for or in behalf of the owner or operator of any theater, ballroom, amusement hall or other place of entertainment, not in excess of 10 weeks in any calendar year for the same owner or operator, by any leader or musician of a band or orchestra, commonly called a "name band", entertainer, vaudeville artist, actor, actress, singer or other entertainers;
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27. Service performed by an individual in the exercise of duties as a member of the State National Guard or Air National Guard, or as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood or similar emergency;
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P. O. BOX 429  
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ADMINISTRATION/LEGAL  
(609) 292-9830

CONCILIATION/ARBITRATION  
(609) 292-9898

UNFAIR PRACTICE/REPRESENTATION  
(609) 292-8780

*For Courier Delivery*  
495 WEST STATE STREET  
TRENTON, NEW JERSEY 08618  
FAX: (609) 777-0089

March 12, 2001

Attached is a report of private sector wage changes compiled by the New Jersey Department of Labor ("NJDOL"). Table one shows changes in average wages in employment for major industry groups in New Jersey. 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.

Table two shows changes in the average wages of private sector jobs covered under the state's unemployment insurance system. 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.

Further information compiled by NJDOL can be obtained at its website: [www.state.nj.us/labor](http://www.state.nj.us/labor) under Services/New Jersey Data/Labor Market Information.

**Table 1****Average Wages in Employment Covered by Unemployment Insurance  
Major Industry Divisions, New Jersey 1998 and 1999**

<b><u>Major Industry</u></b>	<b><u>1998</u></b>	<b><u>1999</u></b>	<b><u>Percent Change</u></b>
<b>Total Private Sector*</b>	\$39,138	\$40,805	4.3
Construction	42,139	44,121	4.7
Manufacturing	49,443	51,877	4.9
Transportation/Communications/ Public Utilities	46,913	48,837	4.1
Wholesale Trade	50,808	53,119	4.6
Retail Trade	19,881	20,693	4.1
Finance/Insurance/Real Estate	58,254	61,448	5.5
Services	36,542	37,969	3.9
<b>Total Government</b>	\$41,732	\$42,602	2.1
Federal Government	45,692	45,890	0.4
State Government	43,308	44,009	1.6
Local Government	40,440	41,503	2.6
<b>TOTAL – All Employers</b>	<b>\$39,516</b>	<b>\$41,062</b>	<b>3.9</b>

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

Labor Planning & Analysis

Division of Labor Market & Demographic Research

March 9, 2001

**Table 2****Average Wages in Private-Sector Employment Covered by  
Unemployment Insurance  
New Jersey Counties 1998 and 1999**

<b><u>COUNTY</u></b>	<b><u>1998</u></b>	<b><u>1999</u></b>	<b><u>Percent Change</u></b>
Atlantic	\$28,036	\$28,294	0.9
Bergen	41,883	43,301	3.4
Burlington	34,240	35,602	4.0
Camden	31,582	32,773	3.8
Cape May	21,760	22,548	3.6
Cumberland	28,079	28,398	1.1
Essex	40,674	42,491	4.5
Gloucester	29,331	30,155	2.8
Hudson	39,576	42,974	8.6
Hunterdon	43,295	44,981	3.9
Mercer	40,000	40,905	2.3
Middlesex	42,383	44,008	3.8
Monmouth	34,813	36,916	6.0
Morris	48,420	51,643	6.7
Ocean	26,087	26,827	2.8
Passaic	34,412	35,992	4.6
Salem	38,349	38,377	0.1
Somerset	51,099	53,085	3.9
Sussex	28,586	30,001	4.9
Union	42,394	43,134	1.7
Warren	33,317	34,102	2.4
<b>Total Private Sector*</b>	<b>\$39,138</b>	<b>\$40,805</b>	<b>4.3</b>

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

Labor Planning & Analysis

Division of Labor Market & Demographic Research

March 9, 2001

### **Explanation of "Covered Employment"**

The covered employment data illustrated in this report refer to the workers of employers subject to the New Jersey Unemployment Compensation Law. Basically, this includes employing units which in either the current or the preceding calendar year paid remuneration for employment in the amount of \$1,000.00 or more.

The term "employment" does not include the following:

1. Agricultural labor performed prior to January 1, 1978 or agricultural labor performed after December 31, 1977 in employing units not meeting specific remunerative or employment level requirements;
2. Domestic service performed in a private home prior to January 1, 1978 or domestic service performed in a private home after December 31, 1977 where an employing unit paid cash remuneration of less than \$1,000.00 for such service in every quarter in the current or preceding calendar year.
3. Service performed by an individual in the employ of his/her son or daughter, or his/her father or mother.
4. Service performed in the employ of state hospitals or state institutions of higher learning prior to January 1, 1978.
5. Service performed in the employ of this State or any of its political divisions prior to January 1, 1978;
6. Service performed in the employ of any other states or their political subdivisions exempt from the Federal Unemployment Tax Act;
7. Service performed in the employ of the United States Government or of an instrumentality of the United States, unless the Congress of the United States permits coverage.



8. Services performed in the employ of fraternal beneficiary societies, orders or associations operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system and providing for the payment of life, sick, accident, or other benefits to the members of such society, order or association, or their dependents;
9. Services performed as a member of the board of directors, board of trustees, a board of managers, or a committee of any bank, building and loan, or savings and loan association, incorporated or organized under the laws of this State or the United States where such services do not constitute the principal employment of the individual;
10. Service with respect to which unemployment compensation is payable under an unemployment insurance program established by an act of Congress;
11. Service performed by agents of mutual fund brokers or dealers in the sale of mutual funds or other securities, by agents of insurance companies, exclusive of industrial insurance agents, or by agents of investment companies, if the compensation to such agents for such services is wholly on a commission basis;
12. Services performed by real estate salespersons or brokers who are compensated wholly on a commission basis;
13. Services performed in the employ of a veterans' organization chartered by an act of Congress or of any auxiliary thereof, no part of the net earnings of which organization, or auxiliary thereof, insures to the benefit of any private shareholder or individual;
14. Service performed for or in behalf of the owner or operator of any theater, ballroom, amusement hall or other place of entertainment, not in excess of 10 weeks in any calendar year for the same owner or operator, by any leader or musician of a band or orchestra, commonly called a "name band", entertainer, vaudeville artist, actor, actress, singer or other entertainers;
15. Services performed after January 1, 1973 by an individual for a labor union organization, known and recognized as a union local, as a member of a committee or committees reimbursed by the union local for time lost from regular employment, or as a part-time officer of a union local and the remuneration for such services is less than \$1,000.00 in a calendar year.

16. Services performed in a sale or distribution of merchandise by home-to-home salespersons or in-the-home demonstrators whose remuneration consists wholly of commissions or commissions and bonuses.
17. Service performed in the employ of a foreign government, including service as a consular, nondiplomatic representative, or other officer or employee.
18. Service performed in the employ of an instrumentality wholly owned by a foreign government if a reciprocal exemption is granted by that government.
19. Service in the employ of an international organization entitled to enjoy the privileges, exemptions and immunities under the International Organization Immunities Act.
20. Service covered by an election duty approved by an agency charged with the administration of any other state or Federal Unemployment Compensation or Employment Security Law.
21. Service in a school, college, or university by a student or by the spouse of a student, if the spouse is advised that the employment is part of a program of financial aid for the student.
22. Service performed by an individual under the age of 22 enrolled at a nonprofit or public educational institution as part of a work-study program, if the institution certified the employee as a participant in the program.
23. Service performed in the employ of a hospital as a student nurse, or intern, or by a patient of the hospital.
24. Services performed in the employ of a church or convention of association of churches, or an organization operated primarily for religious purposes.
25. Services performed by a duly ordained, commissioned, or a licensed minister of a church in the exercise of his/her ministry or by a member of a religious order in the exercise of duties required by such order.
26. Service performed by an individual in the exercise of duties as an elected official, member of a legislative body, or a member of the Judiciary, of a state or political subdivision.

27. Service performed by an individual in the exercise of duties as a member of the State National Guard or Air National Guard, or as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood or similar emergency;
28. Service performed by an individual in the exercise of duties in a position which, under or pursuant to the laws of New Jersey, is designated as a major nontenure policymaking position;
29. Services performed by an individual receiving rehabilitation or remunerative work in a facility conducted for the purpose of carrying out a program of rehabilitation;
30. Services performed by an individual receiving work-relief or work-training as part of an unemployment work-relief or work-training program;
31. Service performed by an inmate of a custodial or penal institution;
32. Service performed in the employ of a elementary or secondary school operating under a church charter.

.....

Statements included here are intended for general information and do not have the effect of law or regulation.  
For a complete description of exemptions with caveats, please see New Jersey Unemployment Compensation Law  
R.S. 43:21-19(i)(7).



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

PO Box 429  
TRENTON, NEW JERSEY 08625-0429

ADMINISTRATION/LEGAL  
(609) 292-9830

CONCILIATION/ARBITRATION  
(609) 292-9898

UNFAIR PRACTICE/REPRESENTATION  
(609) 292-6780

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

FAX: (609) 777-0089

July 2000

Attached is a report of private sector wage changes compiled by the New Jersey Department of Labor ("NJDOLE"). Page one shows changes in the average wages of private sector jobs covered under the state's unemployment insurance system. 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 worksites.

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Further information compiled by NJDOLE can be obtained at its website:  
[www.state.nj.us/lra](http://www.state.nj.us/lra) under "Labor Market Information."

**NEW JERSEY**  
**AVERAGE ANNUAL WAGES**  
**FOR JOBS COVERED BY UNEMPLOYMENT INSURANCE**  
**BY MAJOR INDUSTRY DIVISION**  
**1997 and 1998**

Major Industry Division	1997	1998	% Change
Total Private Sector *	\$37,032	\$39,138	5.7%
Construction	\$40,154	\$42,139	4.9%
Manufacturing	\$46,868	\$49,443	5.5%
Transportation/ Communications/ Public Utilities	\$45,050	\$46,914	4.1%
Wholesale Trade	\$48,143	\$50,808	5.5%
Retail Trade	\$18,922	\$19,881	5.1%
Finance/Insurance/ Real Estate	\$53,576	\$58,254	8.7%
Services	\$34,519	\$36,542	5.9%
Total Government	\$40,389	\$41,739	3.3%
Federal Government	\$44,330	\$45,692	3.1%
State Government	\$41,904	\$43,308	3.4%
Local Government	\$39,083	\$40,440	3.5%
TOTAL	\$37,529	\$39,516	5.3%

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

Source: ES-202 report, New Jersey Department of Labor

**PRIVATE SECTOR  
AVERAGE ANNUAL WAGES  
FOR JOBS COVERED BY UNEMPLOYMENT INSURANCE  
BY COUNTY  
1997 AND 1998**

County	1997	1998	% Change
Atlantic	\$ 27,519	\$28,036	1.9%
Bergen	\$ 40,100	\$41,883	4.4%
Burlington	\$ 32,357	\$34,240	5.8%
Camden	\$ 30,765	\$31,582	2.7%
Cape May	\$ 21,102	\$21,760	3.1%
Cumberland	\$ 26,867	\$28,079	4.5%
Essex	\$ 38,361	\$40,674	6.0%
Gloucester	\$ 28,388	\$29,331	3.3%
Hudson	\$ 37,928	\$39,576	4.3%
Hunterdon	\$ 40,816	\$43,295	6.1%
Mercer	\$ 38,014	\$40,000	5.2%
Middlesex	\$ 40,108	\$42,383	5.7%
Monmouth	\$ 32,941	\$34,813	5.7%
Morris	\$ 45,198	\$48,420	7.1%
Ocean	\$ 24,567	\$26,087	6.2%
Passaic	\$ 33,414	\$34,412	3.0%
Salem	\$ 38,899	\$38,349	-1.4%
Somerset	\$ 46,586	\$51,099	9.7%
Sussex	\$ 27,008	\$28,586	5.8%
Union	\$ 39,512	\$42,394	7.3%
Warren	\$ 32,275	\$33,317	3.2%
Total			
Private Sector*	\$ 37,032	\$39,138	5.7%

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

Source: ES-202 Report, New Jersey Department of Labor

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8. Services performed in the employ of fraternal beneficiary societies, orders or associations operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system and providing for the payment of life, sick, accident, or other benefits to the members of such society, order or association, or their dependents;
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22. Service performed by an individual under the age of 22 enrolled at a nonprofit or public educational institution as part of a work-study program, if the institution certified the employee as a participant in the program.
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P. O. BOX 429  
TRENTON, NEW JERSEY 08625-0429

ADMINISTRATION/LEGAL  
(609) 292-9830

CONCILIATION/ARBITRATION  
(609) 292-9898

UNFAIR PRACTICE/REPRESENTATION  
(609) 292-6780

*For Courier Delivery*  
495 WEST STATE STREET  
TRENTON, NEW JERSEY 08625

FAX: (609) 777-0089

December 1998

Attached is a report of private sector wage changes compiled by the New Jersey Department of Labor ("NJDOLE"). Page one shows changes in the average wages of private sector jobs covered under the state's unemployment insurance system. 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 worksites. The report shows changes in the average wages of private sector jobs covered under the state's unemployment insurance system.

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Further information about the NJDOLE's report can be obtained by referring to "Trend in Employment & Wages," published annually by NJDOLE.

**Average Wages in Private- Sector Employment Covered by Unemployment Insurance:  
New Jersey Counties, 1996 and 1997**

<u>County</u>	<u>1996</u>	<u>1997</u>	<u>Percent Change</u>
Atlantic	\$27,231	\$27,519	1.06%
Bergen	38,189	40,100	5.00%
Burlington	31,172	32,357	3.80%
Camden	29,720	30,765	3.52%
Cape May	20,610	21,102	2.39%
Cumberland	26,053	26,867	3.12%
Essex	37,541	38,361	2.18%
Gloucester	27,199	28,388	4.37%
Hudson	36,053	37,928	5.20%
Hunterdon	38,038	40,816	7.30%
Mercer	35,147	38,014	8.16%
Middlesex	38,209	40,108	4.97%
Monmouth	31,104	32,941	5.91%
Morris	43,044	45,198	5.00%
Ocean	23,832	24,567	3.08%
Passaic	32,108	33,414	4.07%
Salem	38,989	38,899	-0.23%
Somerset	43,180	46,586	7.89%
Sussex	26,316	27,008	2.63%
Union	37,812	39,512	4.50%
Warren	30,488	32,275	5.86%
Total Private Sector	35,351	37,032	4.76%

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

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Source: New Jersey Department of Labor, Division of Labor Market and Demographic Research.

**Average Wages in Employment Covered by Unemployment Insurance,  
Major Industry Division: New Jersey, 1996 and 1997**

<b><u>Major Industry</u></b>	<b><u>1996</u></b>	<b><u>1997</u></b>	<b><u>Percent Change</u></b>
Total Private Sector	\$35,351	\$37,032	4.8%
Construction	38,510	40,154	4.3%
Manufacturing	44,126	46,868	6.2%
Transportation/Communications/ Public Utilities	43,381	45,050	3.8%
Wholesale Trade	45,405	48,143	6.0%
Retail Trade	18,366	18,922	3.0%
Finance/Insurance/Real Estate	50,391	53,576	6.3%
Services	33,082	34,519	4.3%
Total Government	39,194	40,389	3.0%
Federal Government	42,216	44,330	5.0%
State Government	41,048	41,904	2.1%
Local Government	37,954	39,083	3.0%
TOTAL	35,928	37,529	4.5%

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

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Source: New Jersey Department of Labor, Division of Labor Market and Demographic Research.

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11. Service performed by agents of mutual fund brokers or dealers in the sale of mutual funds or other securities, by agents of insurance companies, exclusive of industrial insurance agents, or by agents of investment companies, if the compensation to such agents for such services is wholly on a commission basis;
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19. Service in the employ of an international organization entitled to enjoy the privileges, exemptions and immunities under the International Organization Immunities Act;
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21. Service in a school, college, or university by a student or by the spouse of a student, if the spouse is advised that the employment is part of a program of financial aid for the student;
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32. Service performed in the employ of a elementary or secondary school operating under a church charter.

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 For a complete description of exemptions with caveats, please see New Jersey Unemployment Compensation Law  
 R.S. 43:21-19(i)(7).



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FAX: (609) 777-0089

September 1997

Attached is a report of private sector wage changes compiled by the New Jersey Department of Labor ("NJDOLE"). The report shows changes in the average wages of private sector jobs covered under the state's unemployment insurance system. Table 1 shows changes in average wages in employment for major industry groups in New Jersey. 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 worksites. Table 1 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.

Table 2 shows changes in the average wages of private sector jobs covered under the state's unemployment insurance system. 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 worksites.

Further information about the NJDOLE's report can be obtained by referring to "Trends in Employment & Wages," published annually by NJDOLE.

**TABLE 1**  
**AVERAGE WAGES IN EMPLOYMENT**  
**COVERED BY UNEMPLOYMENT INSURANCE**  
**BY MAJOR INDUSTRY DIVISION IN NEW JERSEY**  
**1995 and 1996**

<u>Major Industry</u>	<u>1995</u>	<u>1996</u>	<u>Percent Change</u>
Construction	\$37,353	\$38,510	3.1
Manufacturing	42,171	44,126	4.6
Transportation/ Communications/ Public Utilities	41,769	43,381	3.9
Wholesale Trade	43,700	45,405	3.9
Retail Trade	17,820	18,366	3.1
Finance/Insurance/ Real Estate	45,469	50,391	10.8
Services	31,979	33,082	3.5
Total Private Sector <sup>1</sup>	33,890	35,351	4.3
Federal Government	40,864	42,216	3.3
State Government	40,214	41,048	2.1
Local Government	36,840	37,954	3.0
Total Government	<u>38,122</u>	<u>39,194</u>	<u>2.8</u>
TOTAL	\$34,534	\$35,928	4.0

<sup>1</sup> Also includes smaller categories not shown separately: agriculture, mining, forestry, fishing and those firms which have failed to provide sufficient information for industrial classification.

**TABLE 2**  
**PRIVATE SECTOR**  
**AVERAGE WAGES**  
**FOR JOBS COVERED BY UNEMPLOYMENT INSURANCE**  
**BY COUNTY**  
**1995 and 1996**

<u>County</u>	<u>1995</u>	<u>1996</u>	<u>Percent Change</u>	<u>Average Wages</u>	
				<u>Rank</u> <u>1995</u>	<u>1996</u>
Atlantic	\$26,249	\$27,231	3.7	16	16
Bergen	36,853	38,189	3.6	4	5
Burlington	29,800	31,172	4.6	14	12
Camden	28,651	29,720	3.7	15	15
Cape May	20,013	20,610	3.0	21	21
Cumberland	25,221	26,053	3.3	18	19
Essex	36,077	37,541	4.1	7	8
Gloucester	26,141	27,199	4.1	17	17
Hudson	33,677	36,053	7.1	10	9
Hunterdon	35,317	38,038	7.7	8	6
Mercer	34,037	35,147	3.3	9	10
Middlesex	36,428	38,209	4.9	6	4
Monmouth	30,162	31,104	3.1	12	13
Morris	40,387	43,044	6.6	2	2
Ocean	23,016	23,832	3.6	20	20
Passaic	31,795	32,108	1.0	11	11
Salem	36,986	38,989	5.4	3	3
Somerset	41,607	43,180	3.8	1	1
Sussex	25,091	26,316	4.9	19	18
Union	36,603	37,812	3.3	5	7
Warren	29,813	30,488	2.3	13	14
Total Private Sector	\$33,890	\$35,351	4.3		

### **Explanation of "Covered Employment"**

The covered employment data illustrated in this report refer to the workers of employers subject to the New Jersey Unemployment Compensation Law. Basically, this includes employing units which in either the current or the preceding calendar year paid remuneration for employment in the amount of \$1,000.00 or more.

The term "employment" does not include the following:

1. Agricultural labor performed prior to January 1, 1978 or agricultural labor performed after December 31, 1977 in employing units not meeting specific remunerative or employment level requirements;
2. Domestic service performed in a private home prior to January 1, 1978 or domestic service performed in a private home after December 31, 1977 where an employing unit paid cash remuneration of less than \$1,000.00 for such service in every quarter in the current or preceding calendar year.
3. Service performed by an individual in the employ of his/her son or daughter, or his/her father or mother;
4. Service performed in the employ of state hospitals or state institutions of higher learning prior to January 1, 1978;
5. Service performed in the employ of this State or any of its political divisions prior to January 1, 1978;
6. Service performed in the employ of any other states or their political subdivisions exempt from the Federal Unemployment Tax Act;
7. Service performed in the employ of the United States Government or of an instrumentality of the United States, unless the Congress of the United States permits coverage;

8. Services performed in the employ of fraternal beneficiary societies, orders or associations operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system and providing for the payment of life, sick, accident, or other benefits to the members of such society, order or association, or their dependents;
9. Services performed as a member of the board of directors, board of trustees, a board of managers, or a committee of any bank, building and loan, or savings and loan association, incorporated or organized under the laws of this State or the United States where such services do not constitute the principal employment of the individual;
10. Service with respect to which unemployment compensation is payable under an unemployment insurance program established by an act of Congress;
11. Service performed by agents of mutual fund brokers or dealers in the sale of mutual funds or other securities, by agents of insurance companies, exclusive of industrial insurance agents, or by agents of investment companies, if the compensation to such agents for such services is wholly on a commission basis;
12. Services performed by real estate salespersons or brokers who are compensated wholly on a commission basis;
13. Services performed in the employ of a veterans' organization chartered by an act of Congress or of any auxiliary thereof, no part of the net earnings of which organization, or auxiliary thereof, insures to the benefit of any private shareholder or individual;
14. Service performed for or in behalf of the owner or operator of any theater, ballroom, amusement hall or other place of entertainment, not in excess of 10 weeks in any calendar year for the same owner or operator, by any leader or musician of a band or orchestra, commonly called a "name band", entertainer, vaudeville artist, actor, actress, singer or other entertainers;
15. Services performed after January 1, 1973 by an individual for a labor union organization, known and recognized as a union local, as a member of a committee or committees reimbursed by the union local for time lost from regular employment, or as a part-time officer of a union local and the remuneration for such services is less than \$1,000.00 in a calendar year;

16. Services performed in a sale or distribution of merchandise by home-to-home salespersons or in-the-home demonstrators whose remuneration consists wholly of commissions or commissions and bonuses;
17. Service performed in the employ of a foreign government, including service as a consular, nondiplomatic representative, or other officer or employee;
18. Service performed in the employ of an instrumentality wholly owned by a foreign government if a reciprocal exemption is granted by that government;
19. Service in the employ of an international organization entitled to enjoy the privileges, exemptions and immunities under the International Organization Immunities Act;
20. Service covered by an election duly approved by an agency charged with the administration of any other state or Federal Unemployment Compensation or Employment Security Law;
21. Service in a school, college, or university by a student or by the spouse of a student, if the spouse is advised that the employment is part of a program of financial aid for the student;
22. Service performed by an individual under the age of 22 enrolled at a nonprofit or public educational institution as part of a work-study program, if the institution certified the employee as a participant in the program;
23. Service performed in the employ of a hospital as a student nurse, or intern, or by a patient of the hospital;
24. Services performed in the employ of a church or convention of association of churches, or an organization operated primarily for religious purposes;
25. Services performed by a duly ordained, commissioned, or a licensed minister of a church in the exercise of his/her ministry or by a member of a religious order in the exercise of duties required by such order;
26. Service performed by an individual in the exercise of duties as an elected official, member of a legislative body, or a member of the Judiciary, of a state or political subdivision;

27. Service performed by an individual in the exercise of duties as a member of the State National Guard or Air National Guard, or as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood or similar emergency;
28. Service performed by an individual in the exercise of duties in a position which, under or pursuant to the laws of New Jersey, is designated as a major nontenure policymaking position;
29. Services performed by an individual receiving rehabilitation or remunerative work in a facility conducted for the purpose of carrying out a program of rehabilitation;
30. Services performed by an individual receiving work-relief or work-training as part of an unemployment work-relief or work-training program;
31. Service performed by an inmate of a custodial or penal institution;
32. Service performed in the employ of a elementary or secondary school operating under a church charter.

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August 30, 1996

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Further information about the NJDOL's report can be obtained by referring to "Trends in Employment & Wages," published annually by the NJDOL.

PRIVATE SECTOR  
AVERAGE WAGES  
FOR JOBS COVERED BY UNEMPLOYMENT INSURANCE  
BY COUNTY  
1994 and 1995

<u>County</u>	<u>1994</u>	<u>1995</u>	<u>Percent Change</u>	<u>Rank</u> <u>1994</u>	<u>1995</u>
Atlantic	\$25,876	\$26,249	1.4	16	16
Bergen	35,590	36,853	3.6	5	4
Burlington	28,814	29,800	3.4	14	14
Camden	28,047	28,651	2.2	15	15
Cape May	19,837	20,013	0.9	21	21
Cumberland	24,748	25,221	1.9	18	18
Essex	34,736	36,077	3.9	8	7
Gloucester	25,728	26,141	1.6	17	17
Hudson	31,890	33,677	5.6	10	10
Hunterdon	35,515	35,317	-0.6	6	8
Mercer	33,191	34,037	2.6	9	9
Middlesex	35,193	36,428	3.5	7	6
Monmouth	29,246	30,162	3.1	12	12
Morris	38,692	40,387	4.4	2	2
Ocean	22,600	23,016	1.8	20	20
Passaic	31,062	31,795	2.4	11	11
Salem	35,644	36,986	3.8	4	3
Somerset	39,670	41,607	4.9	1	1
Sussex	23,535	25,091	6.6	19	19
Union	35,656	36,603	2.7	3	5
Warren	28,917	29,813	3.1	13	13
Total					
Private Sector	\$32,782	\$33,890	3.4		

## **Explanation of "Covered Employment"**

The covered employment data illustrated in this report refer to the workers of employers subject to the New Jersey Unemployment Compensation Law. Basically, this includes employing units which in either the current or the preceding calendar year paid remuneration for employment in the amount of \$1,000.00 or more.

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4. Service performed in the employ of state hospitals or state institutions of higher learning prior to January 1, 1978;
5. Service performed in the employ of this State or any of its political divisions prior to January 1, 1978;
6. Service performed in the employ of any other states or their political subdivisions exempt from the Federal Unemployment Tax Act;
7. Service performed in the employ of the United States Government or of an instrumentality of the United States, unless the Congress of the United States permits coverage;

8. Services performed in the employ of fraternal beneficiary societies, orders or associations operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system and providing for the payment of life, sick, accident, or other benefits to the members of such society, order or association, or their dependents;
9. Services performed as a member of the board of directors, board of trustees, a board of managers, or a committee of any bank, building and loan, or savings and loan association, incorporated or organized under the laws of this State or the United States where such services do not constitute the principal employment of the individual;
10. Service with respect to which unemployment compensation is payable under an unemployment insurance program established by an act of Congress;
11. Service performed by agents of mutual fund brokers or dealers in the sale of mutual funds or other securities, by agents of insurance companies, exclusive of industrial insurance agents, or by agents of investment companies, if the compensation to such agents for such services is wholly on a commission basis;
12. Services performed by real estate salespersons or brokers who are compensated wholly on a commission basis;
13. Services performed in the employ of a veterans' organization chartered by an act of Congress or of any auxiliary thereof, no part of the net earnings of which organization, or auxiliary thereof, insures to the benefit of any private shareholder or individual;
14. Service performed for or in behalf of the owner or operator of any theater, ballroom, amusement hall or other place of entertainment, not in excess of 10 weeks in any calendar year for the same owner or operator, by any leader or musician of a band or orchestra, commonly called a "name band", entertainer, vaudeville artist, actor, actress, singer or other entertainers;
15. Services performed after January 1, 1973 by an individual for a labor union organization, known and recognized as a union local, as a member of a committee or committees reimbursed by the union local for time lost from regular employment, or as a part-time officer of a union local and the remuneration for such services is less than \$1,000.00 in a calendar year;

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18. Service performed in the employ of an instrumentality wholly owned by a foreign government if a reciprocal exemption is granted by that government;
19. Service in the employ of an international organization entitled to enjoy the privileges, exemptions and immunities under the International Organization Immunities Act;
20. Service covered by an election duly approved by an agency charged with the administration of any other state or Federal Unemployment Compensation or Employment Security Law;
21. Service in a school, college, or university by a student or by the spouse of a student, if the spouse is advised that the employment is part of a program of financial aid for the student;
22. Service performed by an individual under the age of 22 enrolled at a nonprofit or public educational institution as part of a work-study program, if the institution certified the employee as a participant in the program;
23. Service performed in the employ of a hospital as a student nurse, or intern, or by a patient of the hospital;
24. Services performed in the employ of a church or convention of association of churches, or an organization operated primarily for religious purposes;
25. Services performed by a duly ordained, commissioned, or a licensed minister of a church in the exercise of his/her ministry or by a member of a religious order in the exercise of duties required by such order;
26. Service performed by an individual in the exercise of duties as an elected official, member of a legislative body, or a member of the Judiciary, of a state or political subdivision;

27. Service performed by an individual in the exercise of duties as a member of the State National Guard or Air National Guard, or as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood or similar emergency;
28. Service performed by an individual in the exercise of duties in a position which, under or pursuant to the laws of New Jersey, is designated as a major nontenure policymaking position;
29. Services performed by an individual receiving rehabilitation or remunerative work in a facility conducted for the purpose of carrying out a program of rehabilitation;
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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

November 14, 2009

## 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 as the hardware and software platform. Lotus Script is the programming language for Lotus Notes and was used to program the new 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 to confirm that the new 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 the study confirmed that the random number generator provided by IBM in Lotus Script generated random numbers. The results of the study also confirmed that the programming provided by SSI selected interest arbitrators in a random manner (Steffero, 2005).

In 2009, the Lotus Notes system was retested to confirm that the computer assisted system assigned interest arbitrators in a random manner following the methodology from the past study (Steffero, 2005). The results of the 2009 re-certification study confirmed that the random number generator provided by IBM in Lotus Script generated random numbers. The results also confirmed that the programming provided by SSI selected interest arbitrators in a random manner.



## II. BACKGROUND INFORMATION

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

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

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 1, by Microsoft Corporation. The Lotus software version was Lotus Domino Server, Release 7.1 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.

#### *PRNG Test*

To perform the PRNG test, the Lotus Script “Rnd” function was executed 1,000 times in the production environment using a script requested by the author and written by SSI for this study. The script used the “Rnd” function to generate 1,000 pseudo-random numbers between 0 and 1, 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 twenty-five arbitrators behaved in a random manner, an automated test was executed 300 times and the results were recorded, analyzed and presented in Table 2, Test 1, on October 26, 2009. The automated test script was executed two more times to produce Test 2 and Test 3, respectively, on October 26, 2009, 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 12 times ( $300/25 = 12$ ), the second arbitrator 12 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 and Completed Application Test for Interest Arbitrator Selection.

##### *PRNG Test*

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

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

CHOICE	TEST
1	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*

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 25 interest arbitrators is behaving in a random manner.

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

Actual Arbitrator	Test 1	Test 2	Test 3
1	12	21	10
2	6	9	3
3	19	14	14
4	20	10	17
5	12	10	13
6	12	10	13
7	13	7	15
8	11	17	11
9	5	19	17
10	8	10	11
11	13	11	7
12	13	11	15
13	11	11	11
14	12	9	14
15	10	13	12
16	16	12	18
17	13	11	9
18	10	10	7
19	15	9	13
20	12	12	16
21	9	18	8
22	10	8	9
23	14	13	11
24	14	15	14
25	10	10	12
<b>k=25</b>	<b>300</b>	<b>300</b>	<b>300</b>
<b>Chi-Square</b>	<b>23.17</b>	<b>25.17</b>	<b>25.67</b>

At the .01 Level of Significance with  $df = 24$ , Chi-square must be less than 42.98.  
The test indicates 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-16, N.J.S.A. 34:13A-16e(2) and N.J.A.C. 19:16-5.6. The pseudo-random number generator provided by IBM/Lotus behaved in a random manner. The computer-assisted processes developed by Specialty Systems, Inc. for selecting interest arbitrators by-lot behaved in a random manner.

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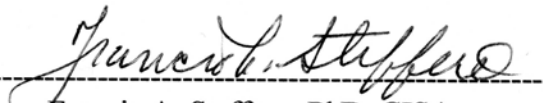
## Signature Page

**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

  
-----  
Francis A. Steffero, PhD, CISA

  
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Date

PUBLIC EMPLOYMENT RELATIONS COMMISSION  
SALARY INCREASE ANALYSIS  
INTEREST ARBITRATION  
1/1/1993 - 12/08/2009

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

<sup>1</sup>Three awards did not involve salary as an issue

<sup>2</sup>Appeals had to be filed in Superior Court

P.E.R.C. NO. 2010-42

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matters of

COUNTY OF PASSAIC AND  
PASSAIC COUNTY SHERIFF,

Appellants,

-and-

Docket No. IA-2007-115

POLICE BENEVOLENT ASSOCIATION LOCAL 197  
(Correction Officers),

POLICE BENEVOLENT ASSOCIATION LOCAL 197  
(Correction Superior Officers),

POLICE BENEVOLENT ASSOCIATION LOCAL 286  
(Sheriff's Officers),

POLICE BENEVOLENT ASSOCIATION LOCAL 286  
(Sheriff's Superior Officers),

Respondents.

SYNOPSIS

The Public Employment Relations Commission vacates and remands an interest arbitration award to the arbitrator for reconsideration. The County appealed the award arguing that: the award must be vacated and remanded to a new arbitrator because the arbitrator did not apply and give due weight to the statutory factors; the award violates the New Jersey Arbitration Act, N.J.S.A. 2A:24-8, because the arbitrator failed to consider the statutory factors or calculate the total net economic changes for each year of the agreement; and the award is not based on substantial credible evidence in the record as a whole. The PBA argued that the award meets the statutory criteria and should be affirmed. The Commission vacates and remands the award to the arbitrator for reconsideration and issuance of a new award that must explain which of the statutory factors he deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor.

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

P.E.R.C. NO. 2010-42

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF PASSAIC AND  
PASSAIC COUNTY SHERIFF,

Appellants,

-and-

Docket No. IA-2007-115

POLICE BENEVOLENT ASSOCIATION LOCAL 197  
(Correction Officers),

POLICE BENEVOLENT ASSOCIATION LOCAL 197  
(Correction Superior Officers),

POLICE BENEVOLENT ASSOCIATION LOCAL 286  
(Sheriff's Officers),

POLICE BENEVOLENT ASSOCIATION LOCAL 286  
(Sheriff's Superior Officers),

Respondents.

Appearances:

For the Appellants, Genova, Burns & Vernoia, attorneys  
(Brian W. Kronick, of counsel and on the brief;  
Kristina E. Chubenko, on the brief)

For the Respondents, Loccke, Correia, Schlager, Limsky  
& Bukosky, attorneys (Leon B. Savetsky, of counsel)

DECISION

The County of Passaic and Passaic County Sheriff appeal from an interest arbitration award involving negotiations units of County Correction Officers and Sheriff's Officers represented by Police Benevolent Association, Local 197 (Correction Officers), Police Benevolent Association, Local 197 (Correction Superior Officers), Police Benevolent Association Local 286 (Sheriff's

Officers), and Police Benevolent Association, Local 286 (Sheriff's Superior Officers). See N.J.S.A. 34:13A-16f(5)(a). The arbitrator issued a conventional arbitration award as he was required to do absent the parties' agreement to use another terminal procedure. N.J.S.A. 34:13A-16d(2). We vacate the award and remand the case to the arbitrator for reconsideration consistent with this opinion.

The Associations proposed a five-year agreement from January 1, 2007 through December 31, 2011 with 5% annual across-the-board salary increases at each rank, step, and position on the salary guide.

The County proposed a five-year agreement with cost-of-living increases and changes as follows:

January 1, 2007	1.5%	July 1, 2007	1.5%
January 1, 2008	1.375%	July 1, 2008	1.375%
January 1, 2009	1.375%	July 1, 2009	1.375%
January 1, 2010	1.375%	July 1, 2010	1.375%
January 1, 2011	1.375%	July 1, 2011	1.375%

Any new employee hired through the State of New Jersey Intergovernmental Transfer Program may not receive a starting salary in excess of Step 2 of the salary guide.

Effective 1/1/07, any employee without academy certification shall be considered a recruit and shall receive a recruit salary of 75% of Step 1 and shall not receive increments until they complete the academy. Upon successful completion of the academy, the employee will receive Step 1. Step 1 shall not be withheld for more than 18 months unless the employee fails to pass a certified academy, which would extend the recruit pay until the Employee is certified by an academy.

The County also proposed the following:

Workweek/Work Hours:

For employees assigned to the Court-house - M-F 8:15 to 4:15 inclusive of a thirty (30) minute lunch period.

Overtime:

In lieu of overtime compensation, any employee assigned to the K-9 Unit will receive five (5) hours per week compensation at a rate commensurate with the duties performed in relation to the care of his or her canine.

All Employees required to attend Bi-Annual Firearms Qualifications on their day off will be compensated with three (3) hours of compensatory time for each day of qualification.

For PBA 197 and 197 (SOA): Article 10, Court Papers and Sequestered Jury Service, Paragraph A(1). Delete Article 10

For PBA 286 and 286 (SOA): Article 10, Court Papers and Sequestered Jury Service, Paragraph A(1). Substitute PBA 286 for 197: "Those members of PBA 286 who serve subpoenas . . . ."

Vacation:

Employees hired after the ratification of this agreement shall have the following vacation schedule:

<u>Years</u>	<u>Days</u>
1-5	12
6-10	12
11-15	15
16-20	18
Over 20	20

If an employee calls out sick on a holiday, he or she will have 3 days deducted from their accumulated time.

For each 12 month period that an employee does not use sick time, an additional comp day will be awarded as an incentive for perfect attendance.

Holiday:

Employees having a 4&2 work week shall be granted 15 comp days in lieu of holiday pay.

Criminal/Civil Actions, Paragraph C

Amend this paragraph as follows: "The maximum counsel fees for Employees . . . ."

Medical Benefits:

Employees hired prior to the ratification of the agreement provide the following medical premium contribution:

\$10/month	Single
\$20/month	Husband/Wife
	Parent/Child
	Employee/Domestic Partner
\$40/month	Family

Employees hired after the ratification of the agreement:

2%	of base salary	Single
2.5%	of base salary	Husband/Wife
		Parent/Child
		Employee/Domestic Partner
3%	of base salary	Family

## Co-Pays:

Co-pays \$15.00

Deductible                    \$250/Employee and  
                                     \$500/Family member

Out of pocket max  
(in network)                \$200 Employee  
                                     \$400 Family member

Out of pocket max  
(out of network)        \$600 Employee  
                                     \$1,000 Family member

Upon retirement, the employer will  
continue to provide and pay for the  
above programs as stipulated herein.

Prescription:        \$5 (generic)/\$10 (brand)  
                             \$10 (mail generic)  
                             \$20 (mail brand)  
                             Includes family members.

## Retirement:

Employees who have more than 2 years of  
service with the County at the time of  
this agreement may be out without a  
doctor's note for no more than 120 days.  
Those employees who have more than 15  
years of service with the County but  
less than 20 years at the time this  
agreement is signed may be out without a  
doctor's note for no more than 90 days.  
Employees who have more than 10 years of  
service with the County, but less than  
15 years at the time this agreement is  
signed may be out without a doctor's  
note for no more than 60 days.

The County shall pay all medical  
prescription premiums for all members  
who retire with a minimum of 25 years of  
service with the County. For employees  
with less than 25 years of service, the  
employees who retire on a disability



shall continue to receive full medical benefits as provided under this article at no cost to the retiree or the retirees family as if the employee were active.

Medical:

Employees shall pay the following monthly amount to the County toward medical coverage premiums:

10-17 years of County service

\$103.43 single  
\$214.52 couple  
\$265.00 family  
\$172.68 parent & child

18-24 years of County service

\$101.08 single  
\$183.53 couple  
\$227.14 family  
\$128.45 parent & child

Rates subject to change by Board of Chosen Freeholders.

Workweek/Hours of Work:

New requirements for the Reciprocal Day Program.

Holiday Compensation Program:

Change Washington's Birthday to Presidents' Day.

The arbitrator awarded a five-year agreement from January 1, 2007 through December 31, 2011 with 4% across-the-board increases for all unit members effective April 1 for each year of the agreement; premium sharing of \$10, \$20, and \$30 per month for single, husband/wife or parent/child, and family coverage respectively; and an increase in prescription co-pays to \$5, \$10,

and \$20 for generic, brand, and three-month mail supply drugs. All other proposals were denied.

The County appeals contending that: the award must be vacated and remanded to a new arbitrator because the arbitrator did not apply and give due weight to the statutory factors; the award violates the New Jersey Arbitration Act, N.J.S.A. 2A:24-8 because the arbitrator failed to consider the statutory factors or calculate the total net economic changes for each year of the agreement; and the award is not based on substantial credible evidence in the record as a whole.

Specifically, the County alleges that: the arbitrator did not give due weight to the interest and welfare of the public; did not discuss the impact of the award on the County tax rate; did not discuss the County budget and its ability to fund the award; erred in giving more weight to morale than the County taxpayers; did not discuss what weight was given to the comparability evidence of the County or to support a deviation from the internal pattern of settlement; the award is flawed in that it causes the County to exceed its tax cap; the arbitrator did not give proper weight or consider the relevant evidence presented as to the overall compensation; the arbitrator did not give due weight to the lawful authority of the employer; the arbitrator did not give due weight to the cost of living; the arbitrator did not give due weight to the continuity and

stability of employment; and the arbitrator did not calculate the net economic changes for each year of the agreement.

The Associations respond that: the award gave due weight to the statutory factors and points to the portions of the award that discuss the factors; the award did not violate the standards set forth in N.J.S.A. 2A:24-8 because the arbitrator noted that he considered both parties' proposals and evidence; and the award is supported by substantial credible evidence in the record as a whole; and if remanded, it should be to the same arbitrator.

N.J.S.A. 34:13A-16(g) requires an arbitrator to 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-16(g)]

The arbitrator must also separately determine whether the total net annual economic changes for each year of the agreement are reasonable under the foregoing factors. N.J.S.A. 34:13A-16d(2).

The standard for reviewing interest arbitration awards is well established. We will not vacate an award unless the appellant demonstrates that: (1) the arbitrator failed to give "due weight" to the subsection 16g factors judged relevant to the resolution of the specific dispute; (2) the arbitrator violated the standards in N.J.S.A. 2A:24-8 and -9; or (3) the award is not

supported by substantial credible evidence in the record as a whole. Teaneck Tp. v. Teaneck FMBA, Local No. 42, 353 N.J. Super. 298, 299 (App. Div. 2002), aff'd o.b. 177 N.J. 560 (2003), citing Cherry Hill Tp., P.E.R.C. No. 97-119, 23 NJPER 287 (¶28131 1997). Because the Legislature entrusted arbitrators with weighing the evidence, we will not disturb an arbitrator's exercise of discretion unless an appellant demonstrates that the arbitrator did not adhere to these standards. Teaneck, 353 N.J. Super. at 308-309; Cherry Hill.

Arriving at an economic award is not a precise mathematical process. Given that the statute sets forth general criteria rather than a formula, the treatment of the parties' proposals involves judgment and discretion and an arbitrator will rarely be able to demonstrate that an award is the only "correct" one. See Borough of Lodi, P.E.R.C. No. 99-28, 24 NJPER 466 (¶29214 1998). Some of the evidence may be conflicting and an arbitrator's award is not necessarily flawed because some pieces of evidence, standing alone, might point to a different result. Lodi. Therefore, within the parameters of our review standard, we will defer to the arbitrator's judgment, discretion and labor relations expertise. City of Newark, P.E.R.C. No. 99-97, 25 NJPER 242 (¶30103 1999). However, an arbitrator must provide a reasoned explanation for an award and state what statutory factors he or she considered most important, explain why they

were given significant weight, and explain how other evidence or factors were weighed and considered in arriving at the final award. N.J.S.A. 34:13A-16(g); N.J.A.C. 19:16-5.9; Lodi.

Within this framework, we conclude that the award must be vacated and remanded to the arbitrator for reconsideration.<sup>1/</sup> The arbitrator summarized the parties' positions on the application of the statutory factors, but he did not provide an independent analysis of the relevant factors and how he considered each of them in light of the evidence presented to reach his award. Borough of Paramus, P.E.R.C. No. 2010-35, \_\_\_ NJPER \_\_\_ (¶ \_\_\_ 2009). The Associations point to sections of the award that they contend apply the required analysis, but those sections are a summary of the parties' positions on the statutory factors, not the arbitrator's analysis of how the factors led him to his particular result.

The County's appendix on appeal includes over 12,000 pages of evidence submitted to the arbitrator. The arbitrator's award is 45 pages, but the rationale for his award is just four and a half pages. We summarize that rationale.

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<sup>1/</sup> We believe a remand to the original arbitrator will benefit the negotiations process as he is already familiar with the record and can presumably issue a comprehensive award without additional briefing or argument from the parties.

The arbitrator began with a discussion of one of the statutory factors, "Interest and Welfare of the Public." He stated:

The interest and welfare of the public is not solely determined by the County paying its officers the most or the least of any comparable group. The morale of the County's officers will inevitably impact the quality of services rendered. On one hand, the County offers salary increases that, on a percentage basis, are lower than the average voluntary settlement or awarded amount through interest arbitration over the relevant time period. On the other hand, the Association seeks increases that are beyond the going rate. In sum, my analysis leads to the conclusion that the interests and welfare of the public will be best served by accepting neither party's proposals in their entirety, but rather, determining a reasonable but competitive compromise based upon the factors that will be more fully discussed below.

As for the "Cost of Living," the arbitrator stated that the Associations' proposal exceeded the CPI and the County's wage proposal includes an employee contribution toward medical insurance that results in a lesser net annual wage increase than proposed by the County. He found that neither economic proposal prevails under this factor.

As for the "Continuity and Stability of Employment," the arbitrator noted that until the County's recent layoffs, employment has been relatively stable; the current and past compensation packages have encouraged employees to remain with the County; and that compared with sheriff's officers and

correction officers in other counties, these employees are fairly compensated. He noted that although the County has taxed at the maximum since 2003, it has managed to maintain healthy fund balances. He concluded that there is no reasonable basis for providing an award that would significantly deviate from either the recent settlements of sheriff's officers and correction officers around the State, or the recent settlements for other County employees.

The arbitrator noted that there were no substantive stipulations of the parties.

As for the "Lawful Authority of the Employer" and the "Statutory Restrictions on the Employer," the arbitrator stated that "[b]ased on the extensive financial data supplied and the relevant expert testimony, I conclude that the Award outlined below will not exceed the statutory restrictions or cause a CAP problem for the County."

As for "Overall Compensation," the arbitrator noted that employees enjoy a broad spectrum of benefits that are not only adequate, but competitive no matter what comparison group is considered. He continued that the County has not proven that the host of changes it proposes are necessary and that neither party prevails under this factor.

As for "Comparability," the arbitrator found that the Associations had not proven that municipal law enforcement



officers comprise the best comparison group for reviewing maximum salaries. He stated that this factor leans in favor of the County's assertion that the appropriate comparison is other county sheriff's officers, sheriff's superior officers, correction officers and correction superior officers. He then stated that neither comparison supported the parties' proposals and that having reviewed all the relevant comparisons, including the other County units and the private sector, the County's officers receive competitive wage and benefits that fall within an acceptable range.

Finally, as for "Financial Impact," the arbitrator stated that the economic health and welfare of the County must be taken into consideration. He noted that the County emphasized the basis for its recent layoffs and the fact that it has taxed at the maximum since 2003; the Association pointed out the healthy amount of surplus the County continues to regenerate despite its fiscal challenges. The arbitrator concluded by stating that his independent analysis led him to the conclusion that his award will not produce prohibitive financial effects on the County.

We vacate the award and remand this matter to the arbitrator because he did not provide a reasoned explanation for his award and state what statutory facts he considered most important, explain why they were given significant weight, and

explain how the evidence and factors were weighed and considered to arrive at his award.

Addressing the "Interest and Welfare of the Public" factor, the County argues that the arbitrator did not discuss the award's impact on the County tax rate; and did not analyze the County's budget situation and the ability of the County to fund and implement this award in light of the County's CAP constraints. We agree.

In addressing the "Comparability" factor, the arbitrator did not make any findings about the County's alleged pattern of settlement with 13 other negotiations units; and did not decide whether a wage and medical contribution pattern was established or whether the evidence supports a deviation from the pattern. See Union Cty., P.E.R.C. No. 2003-33, 28 NJPER 452 (¶33169 2002). He must do so on remand.

In addition, there was no serious discussion of the wages and benefits of unit employees relative to other County employees, or other sheriff's and corrections officers throughout the State. The County asserts that the Sheriff's officers receive the third highest base compensation in the State and the corrections officers the second highest base salary in the State. The County correctly asserts that the arbitrator did not even mention private sector comparisons in his award. We note that the record includes at least seven exhibits addressing private

sector wages. Six of those exhibits contain private sector collective bargaining agreements.

As for the "Overall Compensation" factor, the arbitrator did not explain how his award would affect overall compensation. Nor did he explain what evidence he relied on in deciding that 4% was the appropriate annual salary increase.

Two statutory factors require an arbitrator to consider the lawful authority of the employer including compliance with the CAP laws. The arbitrator addressed these factors in one sentence, finding that the award would not exceed the statutory restrictions or cause a CAP problem. The County states that it introduced undisputed evidence that it is suffering through a major financial downturn; that its bond ratings went from a neutral outlook to a negative outlook; and that the arbitrator did not address how the salary increases he awarded would affect other areas of the County's budget. The Associations respond that the arbitrator considered and discussed the PBA's contention that the County's ability to pay was within the CAP law; that the County's proposal would not have a negative effect on the County, its residents or its taxpayers; and would not prevent the County from meeting any statutory restrictions placed upon it. We agree that the arbitrator repeated the parties' assertions. What he did not do is explain how the evidence supports one conclusion or the other and how that evidence supports his award.

We also agree with the County that the arbitrator's discussion of the "Financial Impact" on the governing unit was inadequate. It was not enough for the arbitrator to assert that his "independent analysis leads me to the conclusion that the Award rendered below will not produce prohibitive financial effects on the County." The arbitrator must explain the evidentiary basis for his conclusions.

As for the "Cost of Living" factor, the arbitrator recited the cost-of-living percentages as 4.1% for 2006, 2.3% for 2007, 3.9% for 2008, and 0.5% for 2009. He awarded 4% increases for 2007 through 2011. The County argues that he did not explain what weight he gave to this factor and why. We agree.

In addressing "Continuity and Stability of Employment," the arbitrator stated that there is no reasonable basis for providing an award that would deviate significantly from the recent settlement trends for sheriff's officers and corrections officers around the State, or the recent settlements for employees of the County. The County states that it presented testimony about its pattern of settlement: three, four or five year agreements with 3% increases in year one and 2.75% increases for the remainder of the contracts. The County states that it negotiated agreements with 13 of its 20 units with salary increases at or below 3% per year; the pattern also includes employee contributions to medical insurance. As noted above, the arbitrator did not explain

whether there was a pattern of settlement, and if there was, what evidence or factors justify a deviation from that pattern.

We also vacate and remand the award for the arbitrator to consider the total net annual economic change for each year of the agreement. The Associations argue that the arbitrator's failure to perform this calculation was harmless since the only economic change was in gross salary. We disagree. The interest arbitration statute charges the arbitrator with the responsibility to determine whether the economic changes for each year of the agreement are reasonable under the statutory factors. N.J.S.A. 34:13A-16b(2). The arbitrator did not make this calculation and must do so on remand.

Finally, given the remand on the ground that the arbitrator failed to apply the criteria specified in N.J.S.A. 34:13A-16g and did not make the determination required by N.J.S.A. 34:13A-16b(2), we need not reach the question of whether those same reasons would also violate N.J.S.A. 2A:24-8.

#### ORDER

The interest arbitration award is vacated and remanded to the arbitrator for reconsideration and issuance of a new award that must explain which of the statutory factors he deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor.

The arbitrator's new award is due within 30 days of this decision.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissions Branigan, Buchanan, Fuller, Joanis and Watkins voted in favor of this decision. None opposed. Commission Colligan recused himself.

ISSUED: December 17, 2009

Trenton, New Jersey

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF PARAMUS,

Appellant,

-and-

Docket No. IA-2008-060

PARAMUS PBA, LOCAL NO. 186,

Respondent.

SYNOPSIS

The Public Employment Relations Commission vacates and remands an interest arbitration award to the arbitrator for reconsideration. The Borough of Paramus appealed the award arguing that: the arbitrator failed to apply the statutory factors; the arbitrator violated the standards set forth in N.J.S.A. 2A:24-8; and the award violates N.J.S.A. 2A:24-9. The PBA argues that the award meets the statutory criteria and should be affirmed. The Commission vacates and remands the award to the arbitrator for reconsideration and issuance of a new award that must explain which of the statutory factors were deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor. The arbitrator must also consider the total net annual economic change for each year of the agreement. The arbitrator's new award is due within 30 days of the Commission 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.

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF PARAMUS,

Appellant,

-and-

Docket No. IA-2008-060

PARAMUS PBA, LOCAL NO. 186,

Respondent.

Appearances:

For the Appellant, Herten, Burstein, Sheridan, Cevasco, Bottinelli, Litt & Harz, LLC (Patrick Papalia, of counsel and on the brief; Daniel C. Ritson, on the brief)

For the Respondent, Loccke, Correia, Schlager, Limsky & Bukosky, attorneys (Leon B. Savetsky, of counsel)

DECISION

The Borough of Paramus appeals from an interest arbitration award involving a negotiations unit of approximately 95 police officers. See N.J.S.A. 34:13A-16f(5)(a). The arbitrator issued a conventional arbitration award as he was required to do absent the parties' agreement to use another terminal procedure. N.J.S.A. 34:13A-16d(2). The parties were able to reach agreement on many issues. The outstanding issues were submitted to the arbitrator in the parties' final offers. We vacate the award and remand the case to the arbitrator.

The PBA proposed a four-year agreement from January 2008 through December 31, 2011, with 5% across-the-board salary



increases effective each January, and an increase in the promotional adjustment from \$400 to \$2,000. The PBA also proposed: an increase in the compensatory time off bank from 160 hours (20 days) to 320 hours; an additional holiday for a total of 13; and for an officer who worked overtime to have the option of receiving payment in cash or compensatory time.

The Borough proposed a three-year agreement with 2% across-the-board salary increases for each year of the agreement and an increase in the maximum allowable hours in the compensatory time off bank from 160 hours (20 days) to 25 days.

At the commencement of the formal interest arbitration hearing on November 14, 2008, the PBA objected to the arbitrator's considering a Borough medical coverage proposal. The Borough proposed that employees contribute 1.5% of base salary yearly towards their medical coverage. That proposal was separate from the Borough's original proposal for a 3.5% across-the-board wage increase. The PBA argued that the issue was not on the list of issues submitted by the PBA in its initial petition, nor added by the Borough in its response to the petition.

On December 1, 2008, the arbitrator granted the PBA's motion and ruled that the issues to be submitted to formal arbitration are limited to those issues listed on the PBA's initial petition. The arbitrator stated that N.J.A.C. 19:16-5.5 is clear and

unambiguous.<sup>1/</sup> The arbitrator considered the Borough's argument that the medical care issue is very important to the Borough and that it has been a continuous topic in the mediation phase of the arbitration. However, he concluded that it has been long established that without mutual agreement, an issue not listed in the petition or response may not be included for consideration in the formal proceeding -- to hold otherwise would violate the rules and open the door for either side to continuously propose additional issues and harm the arbitration process.

On December 8, 2008, the Borough requested special permission to appeal the arbitrator's interlocutory ruling. Our Chairman denied the Borough's request, finding that the arbitrator acted within his discretion and noted that the net economic effect of a wage giveback as a contribution toward medical benefits is the same as a lower across-the-board wage increase and that the PBA had no objection to the Borough adjusting its wage proposal accordingly. Borough of Paramus, P.E.R.C. No. 2009-28, 34 NJPER 384 (¶125 2008), lv. to app. den. App. Div. Dkt. No. AM-29208T3.

The arbitrator awarded a four-year contract from 2008 through 2011 with 4% across-the-board increases for all unit

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<sup>1/</sup> N.J.A.C. 19:16-5.5(a) requires that a non-petitioning party, in this case the Borough, file a response to the interest arbitration petition within 14 days of receipt of a notice of filing. The response must set forth "[a]ny additional unresolved issues to be submitted to arbitration."

members for each year of the agreement. He also awarded the Borough's compensatory time proposal and the PBA's overtime proposal. All other proposals were denied.

The Borough appeals,<sup>2/</sup> contending that the arbitrator failed to apply the statutory factors when he: based the award on his erroneous conclusion that ability to pay was not a central issue in interest arbitration; placed undue, unexplained, and factually unsubstantiated emphasis on the purported wage increases and compensation awarded to other bargaining units in Bergen County; and based the award in part on his erroneous conclusion that it will not put pressure on the Borough pursuant to the Local Budget Law without analysis to support the conclusion. The Borough further contends that the arbitrator violated the standards set forth in N.J.S.A. 2A:24-8 by refusing to rule on the issue of employee contributions to health benefits, and not considering that issue with regard to the wage increases, and repeating the parties' arguments without explanation as to what weight was given, if any, to the evidence submitted. The Borough's last point of appeal is that the award violates N.J.S.A. 2A:24-9 because the arbitrator erroneously found that the Borough is not

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<sup>2/</sup> The New Jersey League of Municipalities submitted an amicus curiae application in this case that was denied by the Chairman. Despite the denial of the League's application, the Borough has included the League's Brief in its appendix and the PBA objects to its inclusion. We exclude the brief from consideration in this matter.

faced with pressure from the Local Budget Law and cited charts submitted by the PBA for base wages when the charts are actually percentage wage increases unrelated to base wages.

The PBA responds that: the arbitrator fully considered each of the statutory criteria; the award is justified based on the evidence presented; it was established that the officers had increased productivity; the financial condition of the Borough supports the award; and the Borough is unable to accept the arbitrator's procedural ruling that precluded it from modifying its final offer to add a health benefits proposal.

The Borough replies that the PBA misstates its position; the productivity of officers cannot be relied upon in defending the award; and the PBA's arguments as to the Borough's financial condition focuses on the past. The PBA counters that productivity is an integral part of the interests and welfare of the public and the award should be affirmed.

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

The arbitrator must also separately determine whether the total net annual economic changes for each year of the agreement

are reasonable under the foregoing factors. N.J.S.A. 34:13A-16d(2).

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

Arriving at an economic award is not a precise mathematical process. Given that the statute sets forth general criteria rather than a formula, the treatment of the parties' proposals involves judgment and discretion and an arbitrator will rarely be able to demonstrate that an award is the only "correct" one. See Borough of Lodi, P.E.R.C. No. 99-28, 24 NJPER 466 (¶29214 1998). Some of the evidence may be conflicting and an arbitrator's award

is not necessarily flawed because some pieces of evidence, standing alone, might point to a different result. Lodi. Therefore, within the parameters of our review standard, we will defer to the arbitrator's judgment, discretion and labor relations expertise. City of Newark, P.E.R.C. No. 99-97, 25 NJPER 242 (¶30103 1999). However, an arbitrator must provide a reasoned explanation for an award and state what statutory factors he or she considered most important, explain why they were given significant weight, and explain how other evidence or factors were weighed and considered in arriving at the final award. N.J.S.A. 34:13A-16g; N.J.A.C. 19:16-5.9; Lodi.

Within this framework, we conclude that the award must be vacated and the matter remanded. The arbitrator summarized the parties' positions including their views on the application of the statutory factors. However, the arbitrator did not provide an independent analysis of the relevant factors and how he weighed each of them against the evidence presented to reach his award. It was not sufficient to simply assert that he considered the parties' evidence and arguments.

On remand, the arbitrator must discuss each of the statutory factors and then explain how the evidence and each relevant factor was considered in arriving at his award. The arbitrator must also address the arguments of the parties and explain why he accepts or rejects a specific argument. For

example, in his discussion of the financial impact on the governing unit, its residents and taxpayers, the arbitrator concluded that the Borough would not be immediately devastated if the PBA's entire wage proposal were awarded. However, the arbitrator did not discuss the weight he gave this factor or how the evidence supports his conclusion. The Borough asserts that two experts testified about its financial condition.<sup>3/</sup> If the employer submitted evidence and argument regarding the Borough's financial condition, the arbitrator must address that evidence and explain how it was considered in arriving at the award. This exercise must be repeated for each relevant factor and for each term of the award.

We understand that the arbitrator did not award a health benefit change, but if evidence was presented about the cost of the Borough's health plan to justify the Borough's wage proposal, it must be considered in the arbitrator's discussion of his wage award. See, e.g., Borough of Ramsey, P.E.R.C. No. 2010-026, \_\_ NJPER \_\_ (¶\_\_ 2009).

We also vacate and remand the award for the arbitrator to consider the total net annual economic change for each year of the agreement. The arbitrator must determine whether the

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<sup>3/</sup> The Borough submitted a copy of the 2009 Budget with its reply brief. This document was not available at the time of the hearing and will not become part of the Commission record.



economic changes for each year of the agreement are reasonable under the statutory factors. N.J.S.A. 34:13A-16b(2). The arbitrator did not make this calculation and must do so on remand.

We are confident that the new award will remedy the parties' dispute as to whether PBA charts relied upon in the initial award are reflective of base wages or percentage wage increases.

ORDER

The interest arbitration award is vacated and remanded to the arbitrator for reconsideration and issuance of a new award that must explain which of the statutory factors he deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor. The arbitrator's new award is due within 30 days of this decision.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Branigan, Buchanan, Fuller, Joanis and Watkins voted in favor of this decision. None opposed. Commissioner Colligan recused himself.

ISSUED: November 24, 2009

Trenton, New Jersey

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

POLICEMEN'S BENEVOLENT ASSOCIATION,  
LOCAL 155,

Appellant,

-and-

Docket No. IA-2007-081

BOROUGH OF RAMSEY,

Respondent.

SYNOPSIS

The Public Employment Relations Commission affirms an interest arbitration award involving the Borough of Ramsey and the Policemen's Benevolent Association, Local 155. The PBA argued that the health insurance award is not supported by substantial credible evidence in the record because the Borough cannot calculate the cost impact of its proposal and the award is in conflict with N.J.S.A. 34:13A-18. The Commission finds that the arbitrator provided several reasons that constitute substantial credible evidence supporting the award and that the award is not in conflict with the statutes cited by the PBA.

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

POLICEMEN'S BENEVOLENT ASSOCIATION,  
LOCAL 155,

Appellant,

-and-

Docket No. IA-2007-081

BOROUGH OF RAMSEY,

Respondent.

Appearances:

For the Appellant, Loccke, Correia, Schlager, Limsky &  
Bukosky, attorneys (Richard D. Loccke, of counsel)

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

DECISION

On August 11, 2009, Policemen's Benevolent Association, Local 155 appealed from an interest arbitration award involving a unit of approximately 32 police officers.<sup>1/</sup> See N.J.S.A. 34:13A-16f(5)(a). 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). A conventional award is crafted by an arbitrator after considering the parties' final offers in light of nine statutory factors. We affirm the award.

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<sup>1/</sup> We deny the PBA's request for oral argument. The matter has been thoroughly briefed.

The Borough proposed a four-year agreement beginning January 1, 2007 with 2.5% salary increases on January 1 of each year. The Borough also proposed the creation of a ten-step salary schedule for officers hired after January 1, 2008; to freeze the starting salary at \$35,000 for the life of the contract; and the creation of a five-step salary guide for lieutenant and sergeant. The Borough proposed employee contributions toward insurance benefits for active and retired employees; modified sick leave benefits; the capping of the terminal leave benefit at \$15,000; the capping of the vacation benefit for new hires at 20 days; a maximum of three personal days for employees hired after January 1, 2008; the freezing of longevity payments in dollar amounts for existing employees while eliminating the longevity benefit for new hires; modification of the death benefit provision; and modifications to the grievance procedure.

The PBA proposed a six-year agreement beginning January 1, 2007 with annual salary increases of 4.8%, 4.9%, 5.0%, 5.1%, 5.2% and 5.3%. It also proposed to add Thanksgiving and Easter as holidays, increase the minimum to four hours for recall for outside details, and a provision that would allow an officer to receive the minimum recall payment in the event an overtime assignment is canceled less than eight hours prior to commencement. It also proposed a provision that would permit

officers to elect a deferral of sick leave payout at termination for up to three years.

The arbitrator awarded a five-year agreement, effective January 1, 2007 through December 31, 2011. Effective January 1, 2010, the arbitrator awarded the Borough's proposal regarding Article XXXVII, Insurance Coverage for Active Employees and Article XXXVI, Retiree Insurance Benefits as follows:

Article XXXVI - Retiree Insurance Benefits

Effective January 1, 2010, add the following to paragraph (G):

"Retired employees eligible to receive medical and dental benefits in retirement under this article shall receive the same level of medical and dental benefits accorded to non-retired employees under this contract or 54% of the contribution requirements as non-retired employees."

Article XXXVIII - Health Insurance

Effective January 1, 2010, delete paragraph (A) and replace with the following:

- A. Full-time employees receiving medical insurance benefits shall have an option to choose one of the two coverages under Horizon Blue Cross/Blue Shield PPO plan. One is a 90/70 plan and one is a 100/80 plan. Employees should be given a booklet from Horizon Blue Cross/Blue Shield to find the exact terms of the plan.
- B. Employees will have the following option with respect to Health Benefits described in Paragraph A:
  - 1. Those current employees choosing the 90/70 plan shall

pay the following per pay  
period:

	Family	Parent/Child	Single
2010	32.50	20.00	11.25

2. Those current employees  
choosing 100/80 plan shall pay  
the following:

	Family	Parent/Child	Single
2010	137.50	87.50	47.50

- C. New hires (hired after 1/1/10) desiring coverage other than single coverage (for example, family coverage or parent and child coverage) must pay one-half of the cost to the Board/Borough of the premium difference between single coverage and the enhanced coverage desired by the employee, both for medical insurance and dental insurance. Such payment shall be in the form of pro rata payroll deductions every pay period.
- D. The employer reserves the right, solely at the employer's option, to change to the New Jersey State Health Benefits Program at any time without renegotiation, or to any other health insurance provider program offering substantially similar benefits to the employee.
- E. Employees who have a spouse also employed (or retired from employment with) a public entity in New Jersey that provides health insurance benefits, shall decide, in conjunction with their spouses, whether they will opt out of health insurance benefits with the Employer and advise the Borough Administrator accordingly in writing. Employees shall have a continuing responsibility to promptly inform the

Borough Administrator whenever they have a spouse who is entitled to receive health insurance benefits by virtue of employment with (or retirement from) another public entity in New Jersey and promptly advise the Borough Administrator of their decision with regard to opting out of the Employer's health insurance plan, as set forth hereinabove. It is expressly understood by the parties hereto that the objective of this provision is to avoid duplicate coverage for a family by public entities in New Jersey employing spouses in that family in furtherance of sound public policy, and is not intended to be punitive or detrimental to employees.

- F. Employees who opt out of health insurance benefits shall receive a \$2,500 annual opt-out payment. In the event the employee's other insurance is lost (for example, if the employee's spouse loses insurance coverage for the family because of a change in employment status) or amended so that it becomes detrimental for the employee to opt out of the Employer's health insurance plan, either event would be considered a "qualifying event" and the employee would be permitted to re-enroll in the Employer's health insurance plan without penalty, except that the pro rata share of the opt-out payment must be returned by the employee to the Employer.

With regard to salary, for each step on the salary schedule except Patrolman 1st step, the arbitrator awarded increases of 4.0% on January 1 of 2007, 2008 and 2009, and 3.75% in 2010 and 2011. The arbitrator awarded the Patrolman 1st step an annual increase of \$500. Moreover, the arbitrator awarded the PBA's proposal regarding the deferral of sick leave at termination for

a period of three years, however the arbitrator included a requirement that the officer provide the Borough with 60-days' prior notification. The arbitrator rejected the parties' remaining proposals.

The PBA asserts that the awarding of Article XXXVIII- Health Insurance, paragraphs C, D and E is not supported by substantial credible evidence in the record because the Borough cannot calculate the cost impact of its proposal. The PBA also asserts that because the Borough failed to supply the requisite information to cost out the proposals, the arbitrator never had the opportunity to evaluate the total net annual economic changes of the Borough's proposals. The PBA also raises concerns about the opt-out provision of the award and its relation to the provision allowing the Borough to move to the New Jersey State Health Benefits Program ("SHBP"), as well as the provision requiring retiree contributions toward premiums and whether there may be conflict with N.J.S.A. 52:14-17.32i.

The Borough counters that the interest arbitration law does not require the employer to be able to quantify a proposal as a precondition for the employer's availing itself of the interest arbitration process.<sup>2/</sup> The Borough further alleges that if the

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<sup>2/</sup> Initially, the Borough interpreted the PBA's appeal as including an argument that health insurance proposals are negotiable but not subject to interest arbitration. In its reply, the PBA clarified that it was not making such an  
(continued...)



PBA's argument were taken literally, no health insurance proposal would be appropriate for interest arbitration because of the uncertainty of the economic expense.

N.J.S.A. 34:13A-16(g) 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

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2/ (...continued)  
argument, and that the specific points of its appeal had  
been enumerated in its brief.

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-16(g)]

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

arbitrator did not adhere to these standards. Teaneck, 353 N.J. Super. at 308-309; Cherry Hill.

Arriving at an economic award is not a precise mathematical process. Given that the statute sets forth general criteria rather than a formula, the treatment of the parties' proposals involves judgment and discretion and an arbitrator will rarely be able to demonstrate that an award is the only "correct" one. See Borough of Lodi, P.E.R.C. No. 99-28, 24 NJPER 466 (¶29214 1998). Some of the evidence may be conflicting and an arbitrator's award is not necessarily flawed because some pieces of evidence, standing alone, might point to a different result. Lodi. Therefore, within the parameters of our review standard, we will defer to the arbitrator's judgment, discretion and labor relations expertise. City of Newark, P.E.R.C. No. 99-97, 25 NJPER 242 (¶30103 1999). However, an arbitrator must provide a reasoned explanation for an award and state what statutory factors he or she considered most important, explain why they were given significant weight, and explain how other evidence or factors were weighed and considered in arriving at the final award. N.J.S.A. 34:13A-16g; N.J.A.C. 19:16-5.9; Lodi.

With regard to the award of Article XXXVIII, Health Insurance, the arbitrator noted that the record reflected the existence of a settlement pattern among the Borough's non-law enforcement units providing for the co-payment of insurance

premiums for active and retired employees.<sup>3/</sup> The arbitrator found, after giving substantial weight to N.J.S.A. 34:13A-16g(1) (interests and welfare of the public) and (2)(c) (comparison to public employment in the same jurisdiction), that the Borough had sustained its burden to prove that the extension of the pattern of settlement to the PBA on the health care issue is reasonable and justified.<sup>4/</sup> He also concluded that the PBA, despite its vigorous opposition, had not advanced sufficient justifications to break the pattern.

The arbitrator provided several reasons that constitute substantial credible evidence supporting this aspect of the award. First, the Borough's proposal did not require a reduction in the level of health insurance benefits. While premium sharing would be required under the Borough's proposal, employees are entitled to keep their same insurance coverage, although at a greater cost. The arbitrator found:

After achieving premium sharing by voluntary agreement or by implementation for all other Borough employees, a result that would exempt the PBA from this key and common feature,

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3/ The non-law enforcement units are represented by Teamsters Locals 11, 469 and 945, and the United Public Service Employee Union.

4/ Notwithstanding the existence of an internal pattern of settlement on the issues of sick leave, terminal leave, death benefits, grievance procedure, arbitration, vacations and longevity in the non-law enforcement labor agreements, the arbitrator found insufficient justification to extend the pattern to this award.

would, more than likely, undermine employee morale for those who have co-pays deducted and create a potential for unstable labor relations within the Borough in the future. The Borough has sought to provide common treatment with respect to providing a policy affording health insurance benefits to all employees. After negotiating contributions toward the costs of providing those benefits, a result that would separate one group from another, absent evidence warranting a deviation, would run counter to the goal of common treatment. The distinction in employment conditions that I have found to distinguish police officers from the non-law enforcement employees and non-unionized employees on other issues that form the pattern are simply not present on the issue of premium sharing. All affected are employees of the Borough and the unique nature of law enforcement work cannot serve as a disconnect on the issue of premium cost sharing. It is unnecessary to determine whether in the absence of a pattern, the exact terms proposed by the Borough would represent the more reasonable determination of this issue because the most substantial weight on this issue must be given to the terms that represent the internal pattern of settlement. The conclusion sought by the PBA would render the Borough's policy and budgetary actions irrelevant when applied to the PBA.

[Award at 34-35]

With regard to the interests and welfare of the public, the arbitrator found that the record reflected steady increases in health insurance costs, and a current cost of over \$22,000 for a family plan. The PBA argues that the Borough's health care proposal should be rejected because it offered no evidence of its inability to pay for the PBA's proposal. The arbitrator found,

and we agree, that the Borough need not prove an inability to pay to defeat the PBA's proposal, or a budgetary crisis to have its proposal awarded. While the Borough has saved money through attrition, the arbitrator did not find the arguments on the Borough's financial abilities to outweigh the evidence regarding the internal pattern of settlement.

The PBA's opposition to the award of the Borough's health care proposal centers around the arbitrator's inability to project the Borough's cost savings or employee contributions because the Borough did not provide future premium costs. Article XXXVIII, Health Insurance, Paragraph C establishes that employees hired after January 1, 2010 must pay one-half of the cost, for both medical and dental insurance, of the premium difference between single coverage and enhanced coverage (either family or parent/child coverage). The PBA asserts that there is an inability to calculate the difference between the two insurance programs for new employees, and contends that without supplied costs for both options in both medical and dental insurance categories, the arbitrator could not determine the impact of the award. The PBA makes a similar assertion with regard to Article XXXVI, Retiree Insurance Benefits, and asserts that a specific figure cannot be determined for retirees to pay 54% of the contribution requirements made by active employees

because the base on which the percentage is to be calculated is not available.<sup>5/</sup>

The Borough provided employee contribution rates for 2010, but not for 2011. The Borough's inability to provide specific future cost savings, or employees' future cost contributions, is reasonable as it is expected that future premium costs would be unavailable. The award represents the first time this unit has been directed to contribute toward health insurance premiums. Accordingly, there will be definite cost savings realized for the Borough beginning January 1, 2010, when employees start making premium contributions. We will not fault the award for not providing future cost savings for the Borough or employee contributions in the absence of figures that would have made such calculations possible. Borough of Fort Lee, P.E.R.C. No. 2010-17, \_\_ NJPER \_\_ (¶\_\_\_\_ 2010). The arbitrator also could not make such calculations since he does not know which plan the officers will choose as of January 1, 2010 when an alternative plan becomes available, or whether any officers will opt out of the insurance. The award of the Borough's health care proposal was well-reasoned. As detailed above, the arbitrator provided a

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<sup>5/</sup> The PBA also asserts that retiree contributions towards premiums may affect the vested rights of retirees. However, the Borough represented in its brief that it intends to apply that provision prospectively to officers retiring on or after January 1, 2010 only. An interpretation of the plain language of this provision supports the Borough's position.

comprehensive and reasonable analysis as to why he placed significant weight on the internal pattern of settlement as well as the interests and welfare of the public.

With regard to Article XXXVIII, paragraph D, which gives the Borough the option of entering the SHBP, the PBA asserts that the cost differentials between the current health care plans and the SHBP cannot be determined. While this provision gives the Borough the option of entering the SHBP, the Borough has not exercised that option. Therefore, it is not unreasonable that cost savings to the Borough and employee contributions under this provision were not calculated.

The PBA also asserts that N.J.S.A. 34:13A-18, which prohibits an arbitrator from issuing "any finding, opinion or order regarding any aspect of the rights, duties, obligations in or associated with the New Jersey State Health Benefits Program" may conflict with Article XXXVIII, paragraph E, which allows employees who have spouses employed with a public entity in New Jersey that provides health insurance benefits to opt out of health insurance benefits with the Borough, and then opt back in if their spouse loses coverage. The PBA asserts that N.J.S.A. 34:13A-18 prevents the arbitrator from rendering an award that allows retirees who opt out of coverage from obtaining coverage again with the SHBP. The Borough responds that the opt-out



provision applies only to employees, and not to retirees. The provision, on its face, supports that interpretation.

The PBA also raises concerns about a potential conflict between retirees' making premium contributions under the award and N.J.S.A. 52:14-17.32i. That statute provides eligibility for enrollment in the SHBP to certain retired local police officers and firefighters whose employers do not pay for health benefits coverage. The Borough asserts that the contract between the Borough and the PBA in effect on July 1, 1998 provided for Borough-paid, post-retirement medical benefits, therefore Borough retirees would not look to take advantage of the coverage option offered pursuant to N.J.S.A. 52:14-17.32i. This assertion was not refuted by the PBA in its reply to the Borough's brief.

The PBA asserts that the award is also inadequate because the arbitrator could not calculate the total net annual economic changes for each year of the agreement due to the Borough's failure to provide figures for the future costs of health insurance premiums. N.J.S.A. 34:13A-16d(2). After rendering the portion of the award pertaining to salary increases, the arbitrator did determine the total annual net economic change. He found:

The cost analysis for the salary terms will fluctuate depending upon the number of employees employed during the contract years. The Borough estimates that manpower will decrease from 31 to 29 over the contract term which, if realized, could

impact on the amount of salary to be paid and impact on costs of the Award. For the sake of clarity I will calculate total net economic change based upon the 2006 payroll and apply the awarded percentages without engaging in projections as to changes that might or have occurred to number of employees employed or placements on the salary schedule. The cost for Year 2007 would be \$111,975, \$116,434 for 2008, \$121,102 for 2009, \$118,074 for 2010 and \$144,335 for 2011. The 2010 and 2011 costs would be offset by premium co-payment deductions which cannot be calculated without evidence as to the plan each employee opts into or whether an employee would opt out of coverage.

[Award at 40]

That calculation need not more precisely estimate the health insurance cost savings.

Finally, the PBA asserts that the awarded salary increases are significantly reduced when factoring in employee contributions toward health insurance premiums. That may be true, however, the arbitrator's awarded salary increases were more closely aligned with the PBA's proposals. Indeed, the arbitrator found that the Borough's proposal of 2.5% each year did not give sufficient consideration to the external comparisons nor provide consistency with at least two of the internal settlements. The arbitrator further found that the Borough did not show evidence concerning financial impact or statutory spending or taxing limitations that would interfere with its ability to provide increases at or near what was achieved in

surrounding communities. For contract years 2010 and 2011, when salary increases were lower than the first three years of the contract, the arbitrator balanced external comparability with evidence showing a decline in the cost of living, sharp increases in unemployment within the State and Nation, and economic considerations impacting the private and public sector generally. The arbitrator's awarded salary increases were well-reasoned within the overall context of the award.

ORDER

The award is affirmed.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Branigan, Buchanan, Fuller and Joanis voted in favor of this decision. None opposed. Commissioners Colligan and Watkins were not present.

ISSUED: October 29, 2009

Trenton, New Jersey

P.E.R.C. NO. 2010-17

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF FORT LEE,

Appellant,

-and-

Docket No. IA-2007-087

PBA LOCAL NO. 245,

Respondent.

SYNOPSIS

The Public Employment Relations Commission affirms an interest arbitration award on remand. The Commission had remanded the initial award to the arbitrator to address comparability to private and public sector employees in general, as well as the \$1 million the arbitrator projected in savings to the Borough from his award of a new salary schedule given the Borough's hiring freeze. The Arbitrator issued a supplemental award finding no basis to modify the terms of his initial award and the Borough appealed. The Commission holds that in his second decision, the arbitrator provided a reasoned analysis and affirms 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. 2010-17

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF FORT LEE,

Appellant,

-and-

Docket No. IA-2007-087

PBA LOCAL NO. 245,

Respondent.

Appearances:

For the Appellant, DeCotiis, Fitzpatrick, Cole &  
Wisler, LLP, attorneys (J. Sheldon Cohen, of counsel)

For the Respondent, Loccke, Correia, Schlager, Limsky &  
Bukosky, attorneys (Leon B. Savetsky, of counsel)

DECISION

This case involves an appeal of an interest arbitration award issued to resolve successor contract negotiations between the Borough of Fort Lee and PBA Local No. 245. On May 28, 2009, we issued a decision remanding the case to the arbitrator to issue a supplemental decision. P.E.R.C. No. 2009-64, 35 NJPER 149 (¶55 2009). In his original award, the arbitrator granted the PBA's proposal to fold holiday pay into base pay. The arbitrator stated that he was offsetting the cost of the holiday pay fold-in by awarding wage increases smaller than the Borough's proposal, accepting the Borough's health care proposal, and adding two steps to the salary guide to save the Borough \$1 million over the course of the careers of any new hires. On

remand, we directed the arbitrator to address the projected savings from the new salary schedule given the Borough's hiring freeze as well as to address comparability to private and public sector employment in general. The arbitrator issued a supplemental decision on July 6, 2009, finding no basis to modify the terms of his award.<sup>1/</sup> The Borough has appealed the supplemental decision and we now affirm the award.

Realizing that the statute sets forth general criteria rather than a formula, an arbitrator will rarely be able to demonstrate that an award is the only "correct" one, but the arbitrator must provide a reasoned explanation for an award and explain how the factors are weighed and considered in arriving at the final award. Borough of Lodi, P.E.R.C. No. 99-28, 24 NJPER 466 (¶29214 1998); N.J.S.A. 34:13A-16g; N.J.A.C. 19:16-5.9.

The arbitrator's analysis of the savings from the new salary schedule was based on a total of 12 officers being hired in 2009 and 2010, with a savings of approximately \$80,000 per officer for the next 7 1/2 years as each officer moves through the salary guide. The arbitrator found that if a hiring freeze were in

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<sup>1/</sup> The Borough argues that the award should be rendered null and void because it was received by this agency one day after a 30-day extension requested by the arbitrator. Our original order directed the arbitrator to "issue" a supplemental decision within 30 days. Then, due to a scheduled vacation, the arbitrator requested an extension of time until July 6 to issue his decision. He issued it on July 6 and we received it on July 7. The decision was not issued late.

effect and the first six officers were not hired in 2009, the Borough's savings would be immediate and significantly higher.<sup>2/</sup> Although the Borough argues that this finding was not based on a "scintilla of evidence" and that the arbitrator's decision makes "false assumptions that have no basis in fact," the supplemental decision proves otherwise. The arbitrator based this finding on information submitted by the PBA, which noted that ten officers (one captain, two lieutenants, two sergeants and five patrol officers) retired during the term of the last collective bargaining agreement, with a total base salary of \$995,553.<sup>3/</sup> An even greater savings would result from the same number of officers retiring, but those officers not being replaced because of a hiring freeze.<sup>4/</sup> The arbitrator acknowledged that the

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2/ The Borough's arguments that the arbitrator failed to acknowledge the existence of the hiring freeze are unfounded since the arbitrator provided an analysis of the impact of the hiring freeze on the savings projected from the new salary schedule.

3/ The information regarding officers' retirement during the term of the last collective negotiations agreement was not disputed by the Borough.

4/ On September 1, 2009, the Chairman granted the PBA's motion to exclude from the record a certification that the Borough included with its brief in response to the supplemental decision. The certification included information about retirements in 2009 that was not in the record before the arbitrator and cannot properly be considered by the Commission. The Chairman also excluded a document about dangerous jobs that also was not in the record before the arbitrator and cannot be considered on appeal. The Borough has moved for reconsideration of the Chairman's decision and  
(continued...)

actual savings would be determined by the mix of officers retiring or resigning, and that the Borough's savings would be higher if senior officers, sergeants, lieutenants and captains retire and are not replaced whereas the savings will be lower if junior officers are not replaced. However, estimating the average cost to the Borough for each police officer in 2009 as \$161,994, the arbitrator found that the savings resulting from not replacing officers is significantly greater than the savings he originally projected from the hiring of new officers on the new salary schedule. He also noted that if and when the Borough decides to lift the hiring freeze, it will have the benefit of a reduced cost salary schedule for new hires.<sup>5/</sup> We cannot fault the arbitrator for projecting a cost savings based on past experience, just as we cannot fault an arbitrator for projecting that the cost of health benefits will continue to rise based on past experience. See, e.g., Borough of Pompton Lakes, P.E.R.C. No. 2009-23, 34 NJPER 371 (¶120 2008). The arbitrator's cost savings projections are well reasoned and will be realized at some point when new officers are hired.

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4/ (...continued)  
we deny that motion.

5/ Because the savings to the Borough is long term, regardless of the number of retirees in 2009, the Borough will realize savings from additional steps on the salary guide when it does finally hire new employees.



The arbitrator next addressed comparability to private employment in general and public employment in general. With regard to private employment comparisons, he found that a police officer is a unique public sector position that does not lend itself to specific private sector comparisons. While the Borough now argues that police officers could be compared to emergency medical technicians and paramedics, the arbitrator noted that neither party submitted salary data on this issue. The arbitrator assigned no weight to this sub-factor.

With regard to private employment comparisons generally, the arbitrator noted that the awarded salary increases, while somewhat higher than private employment salary increases in general, are acceptable when measured against the totality of the terms of the award. He noted that neither party emphasized private sector comparisons and found that this sub-factor was not entitled to significant weight.

With regard to comparisons to public employment in general, the arbitrator found that the average annual salary increases in that sector are consistent with both the salary increases proposed by the Borough and the awarded salary increases. Although the Borough now argues that police officers could be compared to State corrections officers, the arbitrator noted that neither party submitted any salary data on this issue. The

arbitrator found that public employment comparisons in general are supportive of the awarded salary increases.

In addition to the Borough's arguments on the remanded issues, the Borough reiterates many of the arguments it made in its initial appeal brief. Those arguments were addressed in our initial decision, were not part of our remand order, and, since the arbitrator did not modify his award with regard to any of those issues, they are outside the scope of the remand. Those arguments include why the arbitrator rolled holiday pay into base pay and whether the arbitrator considered the effect of the roll-in on pension and overtime costs, the recent downturn in the economy and its impact on State and local governments, overall compensation, financial impact on the governing unit, and the relationship between the awarded increases and the Consumer Price Index. Given the reasoned analysis provided by the arbitrator on the remanded issues, we now affirm the award.

ORDER

The award is affirmed.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Branigan, Buchanan, Fuller, Joanis and Watkins voted in favor of this decision. None opposed. Commissioner Colligan recused himself.

ISSUED: September 24, 2009

Trenton, New Jersey

P.E.R.C. NO. 2009-64

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF FORT LEE,

Appellant,

-and-

Docket No. IA-2007-087

PBA LOCAL NO. 245,

Respondent.

SYNOPSIS

The Public Employment Relations Commission remands an interest arbitration award to the arbitrator to address comparability to private and public sector employees in general, as well as the \$1 million the arbitrator projected in savings to the Borough from his award of a new salary schedule given the Borough's hiring freeze. The Commission stayed the implementation of the award until the arbitrator issues a supplemental decision addressing the projected savings from the new salary schedule and the comparability of public and private sector employees in general. The arbitrator must issue his supplemental decision 30 days from the date of the Commission decision. The Borough may file a supplemental brief within seven days of the arbitrator's decision and the PBA will have seven days to respond.

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. 2009-64

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF FORT LEE,

Appellant,

-and-

Docket No. IA-2007-087

PBA LOCAL NO. 245,

Respondent.

Appearances:

For the Appellant, DeCotiis, Fitzpatrick, Cole &  
Wisler, LLP, attorneys (J. Sheldon Cohen, of counsel)

For the Respondent, Loccke, Correia, Schlager, Limsky &  
Bukosky, attorneys (Leon B. Savetsky, of counsel)

DECISION

On January 6, 2009, the Borough of Fort Lee appealed from an interest arbitration award involving a unit of approximately 109 police officers represented by PBA Local No. 245. See N.J.S.A. 34:13A-16f(5)(a). 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). A conventional award is crafted by an arbitrator after considering the parties' final offers in light of nine statutory factors. We stay implementation of the award and remand it for the arbitrator to address comparability to private and public sector employees

in general, as well as the \$1 million in projected savings from the revised salary schedule given a hiring freeze.

Both parties proposed a four-year agreement to run from January 1, 2007 to December 31, 2010 and the arbitrator awarded it. Regarding disputed issues, the PBA proposed a 5% across-the-board salary increase on each rank, step and position in each calendar year; the inclusion of holiday pay in base salary; a medical opt-out provision of 50%; the establishment of a Section 125(b) Cafeteria Plan to allow for the voluntary allocation on a pre-tax basis of various covered costs; an increase in the current \$700 clothing allowance to \$800 in 2007, \$900 in 2008, \$1,000 in 2009 and \$1,100 in 2010; and a modification of Article XLII to provide that the Borough pay the PBA \$150 annually for the provision of legal defense insurance for unit members.

The Borough proposed a 3% annual increase on January 1 and an additional 1% increase on June 1 for 2007, 2008, 2009 and 2010; a change in health insurance carriers from the current Traditional and Direct Access plans to the civilian Traditional and Direct Access plans; an amendment of Article XLII to eliminate paragraphs 2 and 3 and add a Borough payment of \$150 per year per officer toward legal defense insurance; to update text to reflect current order numbers; and an amendment of

Article XXIII to provide the Borough with a copy of a lawful and applicable Demand and Return System.<sup>1/</sup>

The key aspect of the arbitrator's award was the granting of the PBA's proposal to fold holiday pay into base pay. The arbitrator stated that he was offsetting the cost of the holiday pay fold-in by awarding wage increases smaller than the Borough's proposal, accepting the Borough's health care proposal, and adding two steps to the salary guide to save the Borough \$1 million over the course of the careers of any new hires. As required by N.J.S.A. 34:13A-16d(2), the arbitrator costed out the increases and offsets for each year of the agreement given the evidence presented and found that the net economic changes for each year of the agreement were reasonable.

More specifically, the arbitrator awarded wage increases of 3% on January 1 and 1% on July 1 of 2007 and 2008 and 2.5% on January 1 and 1% on July 1 of 2009 and 2010. Also, as of January 1, 2009, he awarded the following: 1) holiday pay to be included

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<sup>1/</sup> The Borough asserts that the arbitrator unreasonably refused to accept into evidence four additional exhibits that it submitted with its April 2008 post-hearing brief. N.J.A.C. 19:16-5.7(k) expressly 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." The arbitrator, relying on that regulation, noted that the Borough did not request special permission to introduce new factual material in its post-hearing brief. He also noted that the PBA did not have the opportunity to review such material before filing its post-hearing brief nor did it have an opportunity to offer argument in response to the new factual material submitted by the Borough.

in base salary as compensated time, paid with regular payroll and utilized for all computation purposes, resulting in increasing all steps and ranks by 5%<sup>2/</sup>; 2) the Borough's proposal to move unit members from the current PBA Traditional and Direct Access health care plans to the civilian Traditional and Direct Access plans; 3) new hires to be hired pursuant to a new salary schedule that would include two additional steps; 4) an opt out provision at 50% of the premium of health insurance costs; and 5) the Borough to make a \$150 annual contribution for each officer for the purchase of legal defense insurance.

The Borough appeals the following: 1) the roll in of holiday pay into base salary; 2) the additional two salary steps added to the salary schedule; and 3) the \$150 annual contribution for each officer for legal defense insurance. The Borough contends that the arbitrator erred:

1. In permitting the fold-in of holiday pay and ignoring statutory criteria and the bottom-line value and cost-out of the award;

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2/ On February 8, 2008, the Borough filed a scope of negotiations petition seeking a determination that the PBA proposal to include holiday pay in base salary is an illegal subject and may not be considered by an interest arbitrator for inclusion in a successor contract. On June 26, we dismissed the Borough's petition as untimely. P.E.R.C. No. 2008-70, 34 NJPER 261 (¶92 2008). We stated that the placement of holiday pay into base salary is mandatorily negotiable and that only the Division of Pensions may determine whether that form of holiday pay is creditable for pension purposes.

2. By awarding substantial increases in pension entitlements in violation of N.J.S.A. 34:13A-8-1 and -18;

3. By ignoring the Borough's "ability to pay" and by failing to discuss Borough evidence including evidence about the tax levy CAP, a hiring freeze, Borough wage reductions, and the pension contribution increase;

4. By including two new salary steps and finding that it would save money;

5. By ignoring evidence that the Borough's health insurance plan provides more and better coverage and that premiums would rise 17% in 2008;

6. By failing to give due weight to the Borough's pattern of settlement and its record of working well with the PBA;

7. By providing double legal coverage; and

8. By failing to consider Borough evidence.

However, the Borough's brief organizes its argument along nine point headings. We will respond to each of those points in the course of this decision.

The PBA responds that the arbitrator considered and discussed the evidence and the parties' arguments in light of the N.J.S.A. 34:13A-16(g) factors. It contends that each of the factors was considered, although the weight that the arbitrator gave to each factor varied. The PBA has not cross-appealed.

N.J.S.A. 34:13A-16(g) 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 leave, 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-16(g)]

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 judgement and discretion and an arbitrator will rarely be able to demonstrate that an award is the only "correct" one. See Borough of Lodi, P.E.R.C. No. 99-28, 24 NJPER 466 (29214 1998). Some of the evidence may be conflicting and an arbitrator's award is not necessarily flawed because some pieces of evidence, standing alone, might point to a different result.

Lodi. Therefore, within the parameters of our review standard, we will defer to the arbitrator's judgment, discretion and labor relations expertise. City of Newark, P.E.R.C. No. 99-97, 25 NJPER 242 (¶30103 1999). However, an arbitrator must provide a reasoned explanation for an award and state what statutory factors he or she considered most important, explain why they were given significant weight, and explain how other evidence or factors were weighed and considered in arriving at the final award. N.J.S.A. 34:13A-16g; N.J.A.C. 19:16-5.9; Lodi.

We begin with the folding in of holiday pay into base salary. Some background on the current structure and payment of holiday pay is necessary. Police officers must work on holidays since they do not work a traditional Monday to Friday schedule and are required to provide police services on a 24/7 basis. This results in police officers working more days than traditional schedule employees. Fort Lee police officers currently receive 13 paid holidays pursuant to Article VII and Appendix B of the parties' 2003-2006 agreement. The current practice is that officers are paid for their unused holidays in December. While the language of the agreement gives officers an option to receive time off or pay, the vast majority of officers elect to receive 13 days of pay. Police officers may or may not actually work on all 13 holidays. They do not get the time off

unless they are scheduled off on the holiday. (Arbitrator's decision at 85).

The value of holiday compensation is calculated by dividing an officer's annual salary by the required annual hours to determine the hourly rate. The 13 holidays equal 104 hours. This is equal to 5% of the annual work year of 2080 hours. (Arbitrator's decision at 86).

The Borough asserts that in awarding that holiday pay be folded into base salary, the arbitrator ignored:

the outrageous and unconscionable increase,  
the Borough's almost flawless pattern of  
settlement with the non-police unions;  
ignored the issue of the Borough's ability to  
pay, ignored massive State mandated pension  
contribution increases, ignored the actual  
economic cost-out of the holiday pay and its  
effect on overtime, longevity and compounding  
costs, ignored Borough evidence, and failed  
to provide a reasonable and consistent  
explanation of the basis of the award.  
(Brief at 18)<sup>3/</sup>

We are unpersuaded by the Borough's argument that the arbitrator ignored the economic cost of the holiday pay fold-in. The arbitrator acknowledged that folding holiday pay into base pay involved increased overtime costs and pension contributions. Using one of the Borough's exhibits (B-11), the arbitrator

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3/ We deny the Board's request to include a February 20, 2009 letter from the Division of Pensions and Benefits that could not have been considered by the arbitrator, whose record closed on April 23, 2008. With regard to the Borough's position that the Commission and the Division should jointly decide this appeal, see footnote 2.

calculated the additional cost of overtime over the course of the contract, both with and without the holiday pay fold-in. The arbitrator used the Borough's own calculation to confirm that the increase in the hourly rate is 5%, and the arbitrator assumed that with the holiday fold-in, the increase in holiday pay is 5%. (Arbitrator's decision at 84, 87-88).

The arbitrator identified the initial increase to overtime costs as being 5%, the value of the increase in base salary. He acknowledged that the actual increase will be above 5% because of the compounding of holiday pay on an officer's longevity pay, and estimated the range to be between 3% and 15%. While the arbitrator acknowledged that the total cost of overtime calculations, based on 20,000 annual overtime hours (as estimated by the Borough) could not be confirmed, he balanced the impact of the inclusion of holiday pay in base salary on overtime by awarding below average salary increases; by reducing the annual cost of the increases by "split" raises; by awarding a significantly less costly salary schedule for new hires; and by awarding the Borough's health care proposal. (Arbitrator's decision at 88-89).

With regard to the Borough's assertion that the arbitrator ignored the effect of the fold-in of holiday pay on pension

contributions, the award proves otherwise.<sup>4/</sup> Relying on a Borough exhibit (B-11), the arbitrator identified the additional cost of increased pension costs with the holiday pay fold-in for 2009 and 2010. He set forth the awarded salary increases for 2008, and noted that the new base salary was the same under the awarded salary increases as it was under the Borough's proposal.<sup>5/</sup> He acknowledged that in 2009, base salary would increase by 5%, and noted that the amount of the increase, with the 3.5% increase awarded in 2009, would be the same amount of holiday pay that the Borough would be obligated to pay under the terms of the 2003-2006 contract. Factoring in the higher pension contributions, based on data from the Division of Pensions and Benefits website, the arbitrator noted the Borough's annual pension contribution rate, and the increase in the rate that would occur on April 1, 2009. Using those figures, he calculated the additional cost in pension contributions to the Borough for

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4/ Although the arbitrator factored in the increased cost to the Borough for pension contributions, he unequivocally stated that he made no finding that holiday pay is creditable for pension purposes, since only the Division of Pensions and Benefits can make such a determination. The arbitrator, however, felt obligated to cost out the impact given the long history of holiday pay being considered creditable in the form that he awarded.

5/ Although the Borough argues that the arbitrator failed to consider the effect of the fold-in of holiday pay on longevity and the compounding costs, the arbitrator noted several times in the award that neither party submitted salary data on step movement and longevity.

holiday pay, calculated the total cost to the Borough in 2009 for increased pension contributions, and noted that it was consistent with the Borough's own calculations. The arbitrator acknowledged that the figures were approximate since the calculations do not take into account resignations, retirements, promotions or additional new hires. The arbitrator again stressed that he balanced the financial impact of the inclusion of holiday pay in base salary by awarding below-average salary increases; reducing the annual costs of such salary increases by "split" raises; awarding a significantly less costly salary schedule for new hires; and awarding the Borough's health care proposal. He found that all of those components of the award would offset the increased cost of higher pension contributions. (Arbitrator's decision at 89-90).

The arbitrator applied the traditional arbitration principle that a party seeking a change in an existing term or condition of employment has the burden of showing a need for such change. We are unpersuaded by the Borough's assertion that the PBA did not meet its burden in showing a need for holiday pay to be folded into base salary. As acknowledged by the arbitrator in his award, the inclusion of holiday pay into base salary was supported by the exhibits in the record that showed that a large number of municipalities in Bergen County include holiday pay in base salary. A review of the PBA and Borough exhibits shows that

75% of the jurisdictions cited include holiday pay in base salary. (Arbitrator's decision at 84).

We are also unpersuaded by the Borough's assertion that the arbitrator did not consider the overall compensation factor. The arbitrator noted that this factor was given considerable weight in his analysis of the Borough's health care proposal and the PBA's holiday pay proposal. He found the terms of the award were consistent with other external settlements in Bergen County and throughout the State, and maintained a consistent level of benefits.

The Borough also asserts that the arbitrator failed to consider the financial impact on the governing unit, its residents and taxpayers. However, the arbitrator provided a reasoned analysis on this factor, noting that his findings with regard to the lawful authority of the employer also apply to the financial impact on the governing unit. The arbitrator highlighted that his awarded salary increases cost less than the Borough's proposed salary increases in all four years of the contract. He also noted that the Borough proposed a 16% salary increase over four years, whereas his award provides for a 15% increase over four years. Based on the new salary schedule for new hires, effective January 1, 2009, the arbitrator projected savings to the Borough of nearly \$80,000 in cumulative earnings as each new officer progresses through the steps of the salary



schedule to the maximum step. The arbitrator estimated, based on past hiring patterns, that with the new salary schedule the Borough could save nearly \$1 million in cumulative earnings as new officers move through the salary guide with the two extra steps. The arbitrator also noted that he awarded the Borough's health care proposal, which he found would save the Borough \$125,000 annually in 2009 and 2010. He concluded that the combination of reduced salary increases and reduced salary payouts and the award of a new salary schedule will offset the impact of the inclusion of holiday pay in base salary. The arbitrator found no evidence that the terms of the award will cause the Borough to approach the limits of its financial authority or violate the constraints in N.J.S.A. 34:12A-16g(1), (5) and (9). (Arbitrator's decision at 98-99).

The Borough criticizes the arbitrator for failing to take into account the recent downturn in the economy and its impact on the State and local governments. It has included in its appendix copies of numerous newspaper articles and Bureau of Labor Statistics reports from December 2008 and January 2009, many of which were published after the arbitrator issued his award. The arbitration hearing in this case took place on February 14, 2008. The record closed on April 23, 2008. We will not fault an arbitrator for failing to consider evidence not in the record, particularly evidence that did not exist before he issued his

award. Nothing in our rules prohibits a party from seeking special permission of the arbitrator to introduce new factual material should circumstances change significantly after a record closes. N.J.A.C. 19:16-5.7(a) and (d) (conduct of proceeding under exclusive control of arbitrator; arbitrator may grant special permission to introduce new factual material in post-hearing briefs). On August 27, 2008, the arbitrator denied the Borough's request to introduce four rebuttal exhibits and evidence. However, the Borough did not seek special permission to appeal that determination. Nor has it explained what those exhibits were, their relevance, or whether they bear on the state of the economy.

Next, we turn to the Borough's assertion that the arbitrator "ignored uncontroverted evidence that the Borough's health insurance plan provides more and better coverage to PBA members." The arbitrator provided a comprehensive analysis and comparison of the plans and the resulting cost savings to the Borough. The award set forth the history of the provision of health benefits for Borough employees, and noted that until July 2006, health benefits for Borough employees were provided by the New Jersey State Health Benefits Program ("SHBP"). The Borough then moved from the SHBP to Horizon Blue Cross Blue Shield of New Jersey, where unit members elected to enroll in a Traditional Plan or a Direct Access Plan. Civilian employees were enrolled in a

similar Traditional Plan or Direct Access Plan. Since the Borough proposed that unit members move to the civilian plans, the arbitrator compared the PBA Direct Access plan to the civilian Direct Access plan, and noted that the comparison shows nearly identical plans, except the civilian plan covers 80% of out-of-network expenses and the PBA plan covers 70% of out-of-network expenses, and the prescription co-pays are higher in the civilian plan. He also found the PBA Traditional Plan to be nearly identical to the civilian Traditional Plan, but noted the following differences: under the PBA Traditional Plan, the out-of-pocket maximum is \$400 for an individual and \$800 for a family; under the civilian Traditional Plan, the out-of-pocket maximum is \$1000 for an individual and \$2000 for a family; the deductibles are \$100/\$200 under the PBA Traditional plan and \$300/\$600 under the civilian Traditional Plan. The arbitrator also noted that movement from the PBA Traditional Plan to the civilian Direct Access plan would involve cost saving measures for the member. The Borough rejects the notion that the award of its health benefits proposal was a "give back" from the PBA. Whether it was or was not, a certification from David J. Vozza, President of the Vozza agency, an insurance and consulting company retained by the Borough, states that movement of the PBA members to the civilian plans would generate \$124,558 annualized savings for the Borough based on the current enrollment of the

members. (Vozza Certification at 4, ¶12). The arbitrator used that figure in offsetting the costs of the inclusion of holiday pay in base salary.<sup>6/</sup>

The Borough also asserts that the arbitrator failed to consider the continuity and stability of employment. However, the award shows that this factor was assigned considerable weight in the awarding of a new salary schedule for new hires. The arbitrator found the cumulative salary savings generated by the new salary schedule to the Borough also benefits the negotiations unit as a whole. He found police officer salaries in Bergen County to be very competitive, and that Bergen County police officers are the highest in the state. Considering that, he found that the current salary schedule that allows movement to the maximum step in four to five years will eventually undermine the ability of the parties to negotiate salaries for maximum step police officers since a significant expenditure of available funds will be needed to pay less experienced officers high salaries. The arbitrator crafted the salary schedule in an effort to avert problems for the parties in future negotiations and to ensure that experienced officers continue to receive competitive salary increases. The arbitrator found that the

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<sup>6/</sup> Even though the cost of health benefits continues to rise, the award of the Borough's proposal means that the Borough will have to spend \$124,588 less annually than it would have had to without the award of its proposal.

modifications to the salary schedule will give the Borough considerable savings that will offset the cost of senior police officer salaries, maintaining a competitive salary and the continuity and stability of employment that is essential to a productive and effective police department. These changes will not impact the Borough's ability to recruit and retain police officers since the maximum salaries will remain the same on both salary schedules. (Arbitrator's decision at 101).

The Borough also contends that the arbitrator failed to consider the cost of living. However, the arbitrator acknowledged that while the awarded base salary increases are moderately higher than the increases in the cost of living in 2007 and 2008, he found that they provide for an acceptable increase in real earnings that must be measured against the continued delivery of quality services by the Borough's police officers. The arbitrator also highlighted that the Borough's final offer was above the Consumer Price Index in 2008. He found that the award provides for base salary increases that over the full term of the award will allow for a modest increase in real earnings consistent with historical trends. (Arbitrator's decision at 100).

With regard to the legal representation plan, the decision finds that while the PBA and the Borough may disagree about the contract language for the benefit, the parties appear to agree on

the major component of providing a \$150 payment for each unit member annually for the purchase of legal defense insurance. The arbitrator awarded such a payment effective January 1, 2009. He noted that this issue has been the subject of grievances and arbitrations in the past and that the parties desire to avoid disputes on the issue in the future. The arbitrator remanded the issue to the parties for development of the procedures for implementation of the legal defense insurance. He retained jurisdiction to issue a final and binding decision in the event the parties fail to agree on the final language within 30 days of receipt of the award. Given the arbitrator's willingness to give the parties an opportunity to resolve the issue, and his clear statement that he retained jurisdiction in the event attempts failed, the Borough's argument that the award should be vacated because it does not comply with N.J.S.A. 2A:24-8 is unavailing.

We are unpersuaded by the Borough's objection that the revised salary schedule was not proposed by either party. An award is not invalid if the arbitrator goes outside the parties' proposals on an issue in dispute. Hudson Cty. Prosecutor, P.E.R.C. No. 98-88, 24 NJPER 78 (¶29043 1997). Salary, and therefore salary schedules, was an issue in dispute. The Borough also asserts, however, that award incorrectly projects \$1 million in savings to the Borough from the revised salary schedule and that the decision incorrectly states that the new salary guide

balances, in part, the fold-in of holiday pay into base wages. Using evidence submitted into the record establishing that 12 police officers were hired between January 2005 and January 2007, the arbitrator approximated that the Borough could realize nearly \$1 million in cumulative savings if the same number of officers was hired between January 2009 and January 2011 (assuming an approximate savings of \$80,000 in cumulative earnings as each of the 12 new officers progresses through the steps of the salary schedule to maximum). The savings result from a lower starting salary and lower incremental costs resulting from the additional years it takes to get to maximum. (Arbitrator's decision at 92). The arbitrator projected a \$1 million savings based, in part, on the Borough's hiring 12 new officers during the last two years of the award. However, the Borough correctly argues that the evidence indicated that a hiring freeze began in 2008. The arbitrator determined that the holiday pay fold-in was offset by the new salary schedule, below-average and delayed wage increases, and the award of the Borough's health insurance proposal. However, the arbitrator's decision did not address the impact of the hiring freeze. Accordingly, we will remand this issue to the arbitrator to address the projected savings of the new salary steps in light of the Borough's hiring freeze.

The Borough asserts that the arbitrator failed to consider comparability of the wages, salaries, hours and conditions of

employment. A review of the award shows that the arbitrator provided an analysis of comparability of salary increases to other police officers in similar jurisdictions. The arbitrator found that all of the data on annual salary increases in 2007, 2008, 2009 and 2010 was supportive of the Borough's salary proposal and the awarded salary increases, and not the PBA's salary proposal. The arbitrator also highlighted that the awarded salary increases are 1/2 of 1% less than the Borough's settlement with other organized employees, noting that the Borough achieved a settlement with a negotiations unit representing blue collar, white collar, and department heads that provided for 3% salary increases on January 1, 2007 followed by a 1% increase on July 1, 2007. (Arbitrator's decision at 91-92). However, the arbitrator did not provide an analysis of comparability to private and public sector employment in general, or explain why such a comparison is not relevant. Accordingly, we will also remand the award for a more thorough analysis on the issues of comparability to private and public sector employment in general.

We direct the arbitrator to issue a supplemental decision addressing the remanded issues and, where appropriate, to modify his award no later than 30 days from the date of this decision. The Borough shall have seven days to file a supplemental brief



addressing the supplemental decision. The PBA shall have seven days to file a response to any supplemental brief filed.

ORDER

The award is remanded to the arbitrator to issue a supplemental decision addressing the projected savings from the new salary schedule and comparability to private and public sector employment in general and, if appropriate, to modify his award no later than 30 days from the date of this decision. The parties may file briefs in response to the supplemental decision consistent with this opinion. The award is stayed pending issuance of the arbitrator's supplemental decision.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Branigan, Buchanan, Fuller and Joanis voted in favor of this decision. None opposed. Commissioner Colligan recused himself. Commissioner Watkins was not present.

ISSUED: May 28, 2009

Trenton, New Jersey

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF PARAMUS,

Respondent,

-and-

Docket No. IA-2008-060

PBA LOCAL 186,

Petitioner.

SYNOPSIS

The Chairman of the Public Employment Relations Commission denies an application for special permission to appeal an interlocutory ruling of an interest arbitrator filed by the Borough of Paramus. The arbitrator ruled that the formal arbitration proceeding with PBA Local 186 would be limited to the issues listed on the interest arbitration petition, which include wages, but not an employee contribution to medical benefits. The Chairman finds that within the framework of the interest arbitration statute and regulations, the arbitrator carefully considered the Borough's arguments and did not abuse his discretion in rejecting those arguments. The Chairman notes that the net economic effect of a wage giveback as a contribution toward medical benefits is the same as a lower across-the-board wage increase and that the PBA has no objection to the Borough adjusting its wage proposal accordingly.

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 PARAMUS,

Respondent,

-and-

Docket No. IA-2008-060

PBA LOCAL 186,

Petitioner.

Appearances:

For the Respondent, Herten, Burstein, Sheridan,  
Cevasco, Bottinelli, Litt & Harz, L.L.C., attorneys  
(Steven B. Harz and Daniel C. Ritson, on the brief)

For the Petitioner, Loccke, Correia, Schlager, Limsky &  
Bukosky, attorneys (Richard D. Loccke, on the brief)

DECISION

On December 8, 2008, the Borough of Paramus requested special permission to appeal an interlocutory ruling of an interest arbitrator. The arbitrator ruled that the formal arbitration proceeding would be limited to the issues listed on the interest arbitration petition. On December 10, PBA Local 186 filed a response opposing the request. I deny the Borough's request.<sup>1/</sup>

The PBA filed its interest arbitration petition on February 6, 2008. The PBA listed seven issues in dispute: wages,

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<sup>1/</sup> In light of this ruling, the Borough's request for a stay of the arbitration hearing scheduled for December 15, 2008 need not be considered.

compensatory time bank, holidays, longevity, clothing, court time, and higher education.

N.J.A.C. 19:16-5.5(a) requires that a non-petitioning party, in this case the Borough, file a response to the interest arbitration petition within 14 days of receipt of a notice of filing. The response must set forth "[a]ny additional unresolved issues to be submitted to arbitration."

On February 29, the Borough filed its response. It stated that: "[t]he Borough is currently unaware of any additional unresolved issues between the parties."

N.J.A.C. 19:16-5.7(f) provides that at least ten days before the interest arbitration hearing, the parties shall submit to the arbitrator their final offers on each issue in dispute. The arbitrator may accept a revision of such offer at any time before the arbitrator takes testimony, or, if the parties agree and the arbitrator approves, before the close of the hearing.

On June 30, 2008, the Borough submitted a final offer on the seven issues listed on the PBA's petition plus an additional issue -- medical coverage. On that issue, the Borough proposed that employees contribute 1.5% of base salary yearly. That proposal was separate from the Borough's proposal for a 3.5% across-the-board wage increase.

At the commencement of the formal interest arbitration hearing on November 14, 2008, the PBA objected to consideration

of the Borough's medical coverage proposal. The PBA argued that the issue was not on the list of issues submitted by the PBA in its initial petition, nor added by the Borough in its response to the petition. The parties then filed briefs with the arbitrator on the motion.

On December 1, 2008, the arbitrator granted the PBA's motion and ruled that the issues to be submitted to formal arbitration are limited to those issues listed on the PBA's initial petition. The arbitrator stated that N.J.A.C. 19:16-5.5 is clear and unambiguous. The arbitrator considered the Borough's argument that the medical care issue is very important to the Borough and that it has been a continuous topic in the mediation phase of the arbitration. However, he concluded that it has been long established that without mutual agreement, an issue not listed in the petition or response may not be included for consideration in the formal proceeding -- to hold otherwise would violate the rules and open the door for either side to continuously propose additional issues and harm the arbitration process.

N.J.A.C. 19:16-5.17 authorizes the Commission to review interim orders of interest arbitrators. The Commission exercises that authority sparingly, in the interests of justice or for good cause shown. Middlesex Cty., P.E.R.C. No. 97-63, 23 NJPER 17(¶28016 1996). N.J.A.C. 19:16-5.17(c) gives the Chairman authority to grant or deny special permission to appeal.

An arbitrator has the authority to relax N.J.A.C. 19:16-5.5(a) and (b) to permit a respondent to submit proposals on issues not listed in the interest arbitration petition or in a timely response. See N.J.A.C. 19:10-3.1 (a) and (b); Middlesex Cty., P.E.R.C. No. 98-46, 23 NJPER 595 (¶28293 1997). The Commission defers to the arbitrator's decision to admit or exclude additional issues unless it finds an abuse of discretion. See Middlesex Cty., P.E.R.C. No. 98-46 (establishing this standard and affirming arbitral decision to exclude additional issues); see also Borough of Allendale, P.E.R.C. No. 98-27, 23 NJPER 508 (¶28248 1997); Borough of Bogota, P.E.R.C. No. 98-104, 24 NJPER 130 (¶29066 1998) (affirming arbitrator decisions to exclude additional issues).

The Borough characterizes its "medical coverage" proposal as a "wage giveback." It asserts that this issue was raised before the interest arbitration petition was filed and has been the most significant issue in dispute. It argues that it reasonably assumed that for purposes of the petition and response, "wages" included the issue of a wage giveback. The Borough also argues that the arbitrator abused his discretion by not relaxing the rules to prevent an injustice.

The PBA argues that the arbitrator properly applied the rule and Commission precedent. It adds that:

[i]f all the Employer wants is an adjustment to its wage position then there is no

opposition from the PBA. Wages are clearly an issue in the Interest Arbitration proceeding. . . . Wages are clearly "in play" in this proceeding and certainly may be the subject of each party's submission.

I am satisfied that, within the framework of the interest arbitration statute and regulations, the arbitrator carefully considered the Borough's arguments and did not abuse his discretion in rejecting those arguments. I particularly note that the net economic effect of a wage giveback as a contribution toward medical benefits is the same as a lower across-the-board wage increase and that the PBA has no objection to the Borough adjusting its wage proposal accordingly. For these reasons, I deny special permission to appeal.

ORDER

The request of the Borough of Paramus for special permission to appeal the interlocutory ruling of an interest arbitrator is denied.

BY ORDER OF THE COMMISSION

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Lawrence Henderson  
Chairman

ISSUED: December 11, 2008

Trenton, New Jersey

P.E.R.C. NO. 2009-23

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF POMPTON LAKES,

Respondent,

-and-

Docket No. IA-2007-055

POMPTON LAKES PBA LOCAL NO. 161,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission affirms an interest arbitration award on remand. The PBA had appealed only the health insurance portion of the initial award. The Commission concluded that the initial award did not adequately explain his reasons for awarding the health benefit change under the statutory factors and vacated and remanded the case to the arbitrator to provide a reasoned explanation for his award. The Commission finds that in his second decision, the arbitrator adequately explained his reasons for awarding the health benefit change under the subsection 16g factors.

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



P.E.R.C. NO. 2009-23

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF POMPTON LAKES,

Respondent,

-and-

Docket No. IA-2007-055

POMPTON LAKES PBA LOCAL NO. 161,

Charging Party.

Appearances:

For the Respondent, Struble Ragno, attorneys (Joseph J. Ragno, Jr., of counsel)

For the Charging Party, Loccke, Correia, Schlager, Limsky & Bukosky, attorneys (Richard D. Loccke, of counsel)

DECISION

On August 13, 2008, Pompton Lakes PBA Local No. 161 appealed an interest arbitration award involving a unit of approximately 25 police officers employed by the Borough of Pompton Lakes. See N.J.S.A. 34:13A-16f(5)(a). The award was issued by the interest arbitrator after a remand of an initial award. P.E.R.C. No. 2008-58, 34 NJPER 90 (¶38 2008) ("Pompton Lakes I"). We affirm the second award.

In the initial award, the arbitrator awarded a four-year contract with wage increases of 4% in the first year and 4.25% in the remaining three years. He also awarded premium sharing for

the first time for employees choosing certain health insurance plans.

The employer had proposed to continue providing fully-paid health care benefits by paying the full premium cost of NJ PLUS for all levels of coverage. If a unit member decided to choose another plan, the member would be responsible for the additional premium above the cost of NJ PLUS. In addition, the Borough offered an opt-out provision at 50% of the NJ PLUS rate for any member with another bona fide health care plan. The PBA opposed any change in the existing benefit.

Under the arbitrator's initial award, only NJ PLUS and the Aetna HMO would be provided without cost. Employees choosing a plan with a higher premium would be required to pay the difference. No extra credit would be given if the cost of the Aetna HMO falls below that of NJ PLUS.

The standard for reviewing interest arbitration awards is well established. We will not vacate an award unless the appellant demonstrates that: (1) the arbitrator failed to give "due weight" to the subsection 16g factors judged relevant to the resolution of the specific dispute; (2) the arbitrator violated the standards in N.J.S.A. 2A:24-8 and -9; or (3) the award is not supported by substantial credible evidence in the record as a whole. Teaneck Tp. v. Teaneck FMBA, Local No. 42, 353 N.J. Super. 289, 299 (App. Div. 2002), aff'd o.b. 177 N.J. 560 (2003),

citing Cherry Hill Tp., P.E.R.C. No. 97-119, 23 NJPER 287 (¶28131 1997). 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 appealed only the health insurance portion of the initial award arguing that it was not supported by substantial credible evidence in the record as a whole; failed to give due weight to certain subsection 16g factors; and failed to apply subsection 16c. In Pompton Lakes I, we concluded that the arbitrator did not adequately explain his reasons for awarding the health benefit change under the statutory factors. We vacated the award and remanded the case to the arbitrator to provide a reasoned explanation for his award and to state what statutory factors he 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.

On July 23, 2008, the arbitrator issued his second award. He considered each of the nine statutory factors and explained which of the facts were of the greatest importance and which he considered not to have a great bearing on this dispute. We briefly summarize that analysis.

1. The interests and welfare of the public. The arbitrator considered this factor to be of great importance because this is basically a financial matter, but one that could affect the loyalty and performance of this key group of employees.

2. Comparison of the wages, salaries, hours and conditions of employment . . . with . . . employees performing the same or similar services and with other employees generally. The arbitrator found that neither party made comparisons to private sector employees and that the health insurance issue is isolated from his salary award, which the parties have accepted.

3. The overall compensation presently received . . . . The arbitrator found the overall compensation factor to be of great importance in the original decision, but not for the remaining issue of health benefits alone.

4. Stipulations of the parties. There were none.

5. The lawful authority of the employer. The arbitrator found that nothing in the resolution of this dispute would impact this factor.

6. The financial impact on the governing unit, its residents and taxpayers. The arbitrator found this factor to be of great importance because of the long-range potential impact of costs related to health care.

7. The cost of living. The arbitrator stated that neither party expressed a position based on cost of living changes.

8. The continuity and stability of employment . . . . The arbitrator stated that the single element of the award that could provoke some disenchantment would be the changes in health care insurance plans. He found this factor to be of moderate concern and stated that it had to be considered along with the interests and welfare of the public.

9. Statutory restrictions imposed on the employer. The arbitrator stated that the resolution of the health care issue would not materially impact on the employer's ability to contain expenditures within those guidelines.

In his discussion, the arbitrator explained that his decision was based on the record as well as evaluations of likely long-term effects based on past trends. He stated that the PBA refused to compromise on the issue of health benefits, claiming that the award of the employer's proposal for employee contributions to the premiums of certain health plans would substantially limit employees' free choice as to providers of health services and require employees to change doctors with whom they had established relationships. The arbitrator explained that he was not able to produce precise data about the future costs of health insurance, but thought that he had made sound judgments as to the probability of insurance costs likely

continuing to rise at rates faster than the cost of living or wages.

The arbitrator dealt in some detail with the Borough's need for greater attention to its fiscal health. He noted that its pension contributions had increased; assessed valuations had risen only 8.5% between 2002 and 2007; the net asset valuation of real property improved only 1.9% from 2004 to 2007 and the increase from 2005 to 2007 was just over .5%; and the balance remaining after transfers deteriorated from \$1,580,893 in 2002 to \$378,105 in 2007. The arbitrator also noted that three employees would be returning to work after long suspensions with costs upwards of \$200,000 plus the addition of their salary and benefits to the payroll. The testimony of the Borough's Financial Officer added to the arbitrator's conclusion that significant attention should be given to the interests and welfare of the public and the financial impact on the government and the taxpayers.

The arbitrator also noted that between 2002 and 2007, the property tax rate increased 31% and that the Borough has little prospect of large new ratables. He concluded that the economic future was beginning to look bleak; costs were rising; sources of income falling; cash balances were dropping dramatically to a dangerously low level; and significant new expenses were threatening.

Given these conclusions, the arbitrator looked to savings in the area of health benefits, subject to the Borough's determination to continue a policy of providing at least one fully-paid health insurance plan. The arbitrator explained that total health insurance costs had increased 73% from 2002 to 2007. The Borough's proposal to provide only NJ PLUS at no cost would have reduced its annual cost by \$63,264 or 22.5%. This saving would be equivalent to a reduction of 2.94% of the combined cost of payroll and health insurance for these officers or 3.4% of just payroll costs in 2006.

The arbitrator did not award the Borough's proposal. However, his award would save approximately \$60,000 in the first year and \$75,000 in the following year and would substantially offset the basic wage increases awarded.

The arbitrator found that from 2002 to 2007, the rate for the Traditional Plan increased \$138%, while the increase for NJ PLUS was 98%. Because the base rate for the Traditional Plan was higher than the NJ PLUS plan in 2002, the cost growth in dollars was more than the 40 percentage points would suggest. As for future cost increases, the arbitrator stated that NJ PLUS and Aetna could be expected to continue their record of more efficient services and lower costs.

As for quality of services, the arbitrator found nothing to suggest that the Aetna HMO is not the equivalent of the Cigna

HMO, for which employees would now be required to pay a portion of the premium. He further detailed the many ways he found NJ PLUS to be equal to or better than the Traditional Plan. The arbitrator found that the change in the health plan will not have a major impact on employees except as to choice of providers. He concluded that the threat to the Borough's fiscal foundations outweighed the inconvenience and resistance to change affecting some employees. Finally, the arbitrator stated that the substance of the PBA's positions was considered and that the relative position of these employees as contrasted with the comparable group will not change appreciably. Their top pay will remain ahead of the vast majority of those communities and their benefits will be very comparable.

The PBA argues that the record lacks the factual detail necessary to calculate the cost of the health benefits proposal. It further argues that the record lacks any supportive comparability data upon which assessments can be made. The PBA asserts that the Borough is simply attempting to achieve a form of "beachhead" and get through arbitration what does not exist elsewhere. Finally, the PBA contends that because the State Health Benefits Program has eliminated the Traditional Plan and NJ PLUS and replaced them with NJ DIRECT 10 and 15, the arbitrator's award cannot be implemented. Finally, the PBA argues that certain "misplaced" comments in the arbitration award



suggest a loss of objectivity and require that any remand be to a different arbitrator.

The Borough responds that it proposed to continue paying the full cost of NJ PLUS and to offer several richer plans with employees paying any additional premium. The Borough recounts the evidence on costs of the current plans and recent increases in those costs. It states that the arbitrator was provided with a recent arbitration award from the Borough of Ringwood that provided for a substantially similar health care provision and dozens of contracts of other municipalities. It states that neither party produced testimony or evidence about health care premiums of other municipalities presumably because premiums under the State Health Benefits Program are set by the Program. As for internal comparability, the Borough states that neither party argued this point in arbitration, but that there is only one other negotiations unit in the Borough; that unit is in negotiations; and the Borough has offered the same proposal.

The Borough asserts that the arbitrator awarded the substance of its proposal and expanded upon it. It contends that the arbitrator carefully reviewed the historical data supporting the Borough's claim that health care costs were rising exorbitantly and that excellent coverage could be provided at no cost to employees. It concludes that the arbitrator determined that the Borough's position was reasonable and factual.

The Borough argues that the PBA has failed to satisfy any plausible showing that the arbitrator violated N.J.S.A. 2A:24-8 or 9 or failed to comply with the requirements of our initial decision. Finally, the Borough contends that the award can now be implemented more easily because there are fewer plans from which to now choose. According to the Borough, NJ DIRECT 15 effectively replaces NJ PLUS; Aetna remains an offered plan; and NJ DIRECT 10 or Cigna are available for a premium cost at the expense of the employee.

As we outlined above, the arbitrator has now addressed each statutory factor and explained its relevance and weight. He has explained his analysis of the Borough's current economic situation. He has examined the costs of health benefits and projected, to the extent possible, the future costs of the different plans. While the arbitrator did not provide a detailed explanation about internal and external comparability on the health benefits issue, the Borough has explained without contradiction that the parties did not present evidence or argument on those considerations.

We conclude that the arbitrator has complied with his requirements under the statute and as outlined in our initial decision. Within the parameters of our review standard, we defer

to the arbitrator's judgment, discretion, and labor relations expertise.<sup>1/</sup>

ORDER

The arbitrator's award is affirmed.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Branigan, Buchanan, Fuller, Joanis and Watkins voted in favor of this decision. None opposed.

ISSUED: November 25, 2008

Trenton, New Jersey

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<sup>1/</sup> Given this result, the PBA's request to remand to another arbitrator is moot.

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF POMPTON LAKES,

Respondent,

-and-

Docket No. IA-2007-055

POMPTON LAKES PBA LOCAL NO. 161,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission vacates an interest arbitration award and remands the matter to the arbitrator for reconsideration. The arbitrator awarded a four-year contract with wage increases of 4% in the first year and 4.25% in the remaining three years. He also awarded premium sharing for the first time for employees choosing certain health insurance plans. The PBA has appealed only the health insurance award arguing that it is not supported by substantial credible evidence in the record as a whole; fails to give due weight to certain subsection 16g factors; and fails to apply subsection 16c. The Commission, concluding that the arbitrator did not adequately explain his reasons for awarding the health benefit change under the statutory factors, vacates the award and remands to the arbitrator for a more thorough application of the statutory factors.

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

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF POMPTON LAKES,

Respondent,

-and-

Docket No. IA-2007-055

POMPTON LAKES PBA LOCAL NO. 161,

Charging Party.

Appearances:

For the Respondent, Struble Ragno, attorneys (Joseph J. Ragno, Jr., of counsel)

For the Charging Party, Loccke, Correia, Schlager, Limsky & Bukosky, attorneys (Gregory G. Watts, of counsel)

DECISION

On January 8, 2008, Pompton Lakes PBA Local No. 161 appealed an interest arbitration award involving a unit of about 25 police officers employed by the Borough of Pompton Lakes. See N.J.S.A. 34:13A-16f(5)(a). 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). He awarded a four-year contract with wage increases of 4% in the first year and 4.25% in the remaining three years. He also awarded premium sharing for the first time for employees choosing certain health insurance plans.

The PBA appeals only the health insurance award arguing that it is not supported by substantial credible evidence in the record as a whole; fails to give due weight to certain subsection 16g factors; and fails to apply subsection 16c. The Borough has not cross-appealed. After considering the PBA's arguments and the Borough's responses, we vacate the award and remand to the arbitrator for a more thorough application of the statutory factors.

The Borough provides health insurance through the State Health Benefits Program. The Borough proposed to continue to provide fully-paid health care benefits on an equalized basis by paying the full premium cost of NJ PLUS for all levels of coverage. If a member decided to choose another plan, the member would be responsible for the additional premium above the cost of NJ PLUS. In addition, the Borough offered an opt out provision at 50% of the NJ PLUS rate for any member with another bona fide health care plan. The PBA opposed any change in the existing benefit.

Under the arbitrator's award, only NJ PLUS and the Aetna HMO will be provided without cost. Employees choosing a plan with a higher premium will be required to pay the difference. No extra credit is given if the cost of the Aetna HMO falls below that of NJ PLUS. The option to make a change in selection of a plan is not changed.

The standard for reviewing interest arbitration awards is well established. We will not vacate an award unless the appellant demonstrates that: (1) the arbitrator failed to give "due weight" to the subsection 16g factors judged relevant to the resolution of the specific dispute; (2) the arbitrator violated the standards in N.J.S.A. 2A:24-8 and -9; or (3) the award is not supported by substantial credible evidence in the record as a whole. Teaneck Tp. v. Teaneck FMBA, Local No. 42, 353 N.J. Super. 289, 299 (App. Div. 2002), *aff'd o.b.* 177 N.J. 560 (2003), citing Cherry Hill Tp., P.E.R.C. No. 97-119, 23 NJPER 287 (¶28131 1997). 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.<sup>1/</sup>

Arriving at an economic award involving health benefits is not a precise mathematical process. Given that the statute sets forth general criteria rather than a formula, the treatment of health benefit proposals involves judgment and discretion and an arbitrator will rarely be able to demonstrate that an award is

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<sup>1/</sup> The PBA argues that the award violates N.J.S.A. 34:13A-16c because it differs from the Borough's final offer. However, a conventional award is not necessarily flawed if it goes outside the boundaries of the parties' positions. See Hudson Cty. Prosecutor, P.E.R.C. No. 98-88, 24 NJPER 78 (¶29043 1997).

the only "correct" one. See Borough of Lodi, P.E.R.C. No. 99-28, 24 NJPER 466 (¶29214 1998); Borough of Allendale, P.E.R.C. No. 98-123, 24 NJPER 216 (¶29103 1998). Some of the evidence may be conflicting and an arbitrator's award is not necessarily flawed because some pieces of evidence, standing alone, might point to a different result. Lodi. Therefore, within the parameters of our review standard, we will defer to the arbitrator's judgment, discretion, and labor relations expertise. City of Newark, P.E.R.C. No. 99-97, 25 NJPER 242 (¶30103 1999). However, an arbitrator must provide a reasoned explanation for an award and state what statutory factors he or she considered most important, explain why they were given significant weight, and explain how other evidence or factors were weighed and considered in arriving at the final award. N.J.S.A. 34:13A-16g; N.J.A.C. 19:16-5.9; Lodi.

The PBA's appeal focuses on health benefits. The arbitrator recognized that the key objective of the Borough was to continue to provide fully-paid health benefits on an equalized basis. The Borough's evidence showed that the cost of providing health insurance represented 10% of the Borough's total revenue in 2007, up from 7.1% in 2002. The Borough also showed a 73% increase in dollar cost for health benefits since 2002. The five-year increases in the offered plans were: 138% for the Traditional Plan; 98% for NJ PLUS; 92% for Cigna; 86% for Amerihealth; 76%



for Oxford; and 74% for Aetna. The arbitrator recognized that the increases far exceeded the cost-of-living or wage increases for the same period. For some employees, health care costs could reach 25% of their wages.

In exercising his authority to fix an award in light of the parties' offers, the arbitrator determined that the only solution was to limit the plan choices offered without cost to the employees. The arbitrator noted that premiums vary by as much as \$7,188 per plan. He awarded the NJ PLUS and Aetna HMO plans without cost. The remaining plan choices would require cost sharing of the difference in premiums. The arbitrator estimated a \$63,000 annual savings to the Borough at 2007 rates upon implementation of his award.

The PBA argues that the arbitration award is not supported by the record because it does not include the requisite health care data, calculations and projections. Specifically, the PBA contends that the arbitrator based his award on speculation about the rising costs of health care that was not presented by the parties; the employer did not present any factual data to support its health benefits proposal; calculations were not made on future health benefit costs; the arbitrator improperly weighed the value and preference of the officers for specific plans based upon the Borough's enrollment statistics; and the arbitrator did

not apply the statutory factors in his analysis of the health benefit award.

The Borough responds that the arbitrator did not speculate on health care costs and made comparisons of available plans in rendering his award. The Borough argues that the PBA did not offer evidence to the arbitrator regarding health insurance to refute the evidence it submitted. The Borough contends that it provided a substantial amount of information concerning the costs of health care including: the manner that health care electives are selected, the history of premium increases, the impact on total Borough appropriations, the potential projected costs of health care based on historic levels of increase, and a comparison of health benefits with other PBA locals. The Borough also submitted a document describing each of the available plans. The Borough asserts that it is impossible for anyone, including the arbitrator, to predict the future costs of health plans and that it provided history and census data that was more than sufficient to support the award.

We have reviewed the award and find that the arbitrator did not adequately explain his reasons for awarding the health benefit change under the statutory factors. For example, in discussing the interests and welfare of the public, the arbitrator stated that his consideration of that issue required salary and benefits that compare favorably with nearby

communities. However, the arbitrator did not explain how this benefit change compares with the neighboring communities he determined were comparable, nor did he compare the benefit levels with those of other Borough employees, or explain why that comparison is not relevant. In addition, the arbitrator did not state the total net economic effect of his award and how this aspect of the award affects that calculation. See N.J.S.A. 34:13A-16g; N.J.A.C. 19:16-5.9. When an arbitrator has not thoroughly explained the reasoning for an award in the context of the statutory factors, we will remand the award for a more thorough analysis. Salem Cty., P.E.R.C. No. 98-107, 24 NJPER 162 (¶29079 1998). On remand, the arbitrator must provide a reasoned explanation for his award and state what statutory factors he 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. Lodi. If he believes that any factor was not relevant, he must satisfactorily explain why. N.J.S.A. 34:13A-16g.

The PBA has argued that only the health benefit award is being appealed and therefore we should remand only the health benefit award to the arbitrator. Because the award of health benefits has economic consequences that may affect other parts of the award, we will vacate the award and remand to the arbitrator for a new award containing a thorough discussion of the statutory

factors. North Hudson Reg. Fire & Rescue, P.E.R.C. No. 2004-17, 29 NJPER 428, 452 (¶146 2003) (on appeal, an interest arbitration decision will not vacate one piece of an award without requiring a re-examination of the award as a whole). We stress that we express no opinion on the merits of the initial award or the parties' proposals. We direct that the arbitrator issue a new opinion and award in this matter no later than 60 days from the date of this decision.

ORDER

The award is vacated and remanded to the arbitrator to issue a new opinion and award in this matter no later than 60 days from the date of this decision in accordance with this decision.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Branigan, Fuller and Watkins voted in favor of this decision. None opposed. Commissioners Buchanan and Joanis were not present.

ISSUED: April 24, 2008

Trenton, New Jersey

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF RINGWOOD,

Appellant,

-and-

Docket No. IA-2005-082

RINGWOOD PBA LOCAL 247,

Respondent.

SYNOPSIS

The Public Employment Relations Commission affirms an interest arbitration award issued to settle successor contract negotiations between the Borough of Ringwood and Ringwood PBA Local 247. The arbitrator issued a conventional award that awarded salary increases, significant health insurance cost containment measures, and health benefits for retirees. The Borough argues that the arbitrator did not adequately consider the cost impact of a preexisting retiree prescription benefit; improperly considered the savings associated with the elimination of a retiree medical stipend; and failed to render a final and definite award concerning the retiree prescription benefit. The Commission finds that the arbitrator calculated the cost of the retiree insurance benefit over 15 years, subtracted the savings the Borough will achieve by not paying the \$2000 stipend and then balanced those costs with the cost containment achieved by changes to the health plan he awarded for active employees and a salary increase rate at the lower end of the range. The Commission also finds that the retiree prescription benefit was not a disputed issue before the arbitrator and the arbitrator was not required to consider its proposed elimination as part of the parties' unratified memorandum of agreement. Nor was the arbitrator required to separately address the cost of that benefit as part of his award. The Commission holds that the Borough has not presented a basis for disturbing the arbitrator's judgment, discretion and labor relations expertise.

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. 2008-7

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF RINGWOOD,

Appellant,

-and-

Docket No. IA-2005-082

RINGWOOD PBA LOCAL 247,

Respondent.

Appearances:

For the Appellant, Laufer, Knapp, Torzewski, Dalena & Sposaro, L.L.C., attorneys (Fredric M. Knapp, of counsel; Fredric M. Knapp and Lauren M. Walter, on the brief)

For the Respondent, Loccke, Correia, Schlager, Limsky & Bukosky, attorneys (Leon B. Savetsky, of counsel and on the brief)

DECISION

On January 17, 2007, the Borough of Ringwood appealed from an interest arbitration award involving a unit of approximately 20 police officers represented by Ringwood PBA Local 247. See N.J.S.A. 34:13A-16f(5)(a). 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). He awarded salary increases, significant health insurance cost containment measures, and health benefits for retirees. The Borough argues that the arbitrator did not adequately consider the cost impact of a preexisting retiree prescription benefit;

improperly considered the savings associated with the elimination of a retiree medical stipend; and failed to render a final and definite award concerning the retiree prescription benefit. After considering its arguments and the PBA's responses, we affirm the award.

The parties' final offers in arbitration were as follows:

The PBA proposed a four-year contract from January 1, 2005 through December 31, 2008 with 5% salary increases in each of the four years. It also proposed that 13 paid holidays be added and that retirees be provided with lifetime medical insurance paid by the Borough. The medical plan would be the plan provided to employees on the retiree's last day of service.

The Borough proposed a three-year contract from January 1, 2005 through December 31, 2007 with 3.0% salary increases in each of the three years. It also proposed that employees in the Aetna Health Plan or those joining that plan in the 2006 open period receive an additional one-half percent increase effective January 1, 2006; and that employees joining the Traditional Plan pay the difference between the Select 20 and Traditional Plans.

The Borough opposed the PBA's holiday and retiree health benefit proposals. It did not propose eliminating the retiree prescription benefit. The PBA opposed the Borough's health benefit proposal for active employees.

The arbitrator awarded a four-year contract with 3.8% salary increases in each year. He rejected the PBA's holiday proposal, but awarded retiree health benefits for those who retire after January 1, 2007, without cost to retirees choosing the Aetna Plan. He also required active employees who choose a plan other than the Aetna Plan to make premium contributions. Finally, the arbitrator ordered that any prior agreements intended to be implemented independent of the issues in interest arbitration be incorporated in the new contract and that the prior contract remain in effect except as modified by the 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. 289, 299 (App. Div. 2002), *aff'd* o.b. 177 N.J. 560 (2003), citing Cherry Hill Tp., P.E.R.C. No. 97-119, 23 NJPER 287 (¶28131 1997). 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 package is not a precise mathematical process. Given that the statute sets forth general criteria rather than a formula, crafting a package of economic benefits necessarily involves judgment and discretion and an arbitrator will rarely be able to demonstrate that an award is the only "correct" one. Borough of Lodi, P.E.R.C. No. 99-28, 24 NJPER 466 (¶29214 1998); Borough of Allendale, P.E.R.C. No. 98-123, 24 NJPER 216 (¶29103 1998). Some of the evidence may be conflicting and an arbitrator's award is not necessarily flawed because some pieces of evidence, standing alone, might point to a different result. Lodi. Therefore, within the parameters of our review standard, we will defer to the arbitrator's judgment, discretion, and labor relations expertise. City of Newark, P.E.R.C. No. 99-97, 25 NJPER 242 (¶30103 1999). However, an arbitrator must provide a reasoned explanation for an award and state what statutory factors he or she considered most important, explain why they were given significant weight, and explain how other evidence or factors were weighed and considered in arriving at the final award. N.J.S.A. 34:13A-16(g); N.J.A.C. 19:16-5.9; Lodi. Once an arbitrator has provided a reasoned explanation for an award, an objection will not be entertained unless an

appellant offers a particularized challenge to the arbitrator's analysis and conclusions. Cherry Hill; Lodi; Newark.

We begin with an overview of the arbitrator's award. In crafting that award, the arbitrator explained how he balanced the long-term cost of retiree health benefits with substantial immediate cost containment provisions and salary increases at the lower end of the range. He also noted that the cost of retiree health benefits was not all new because the Borough had previously given retirees a stipend of about \$2000. The arbitrator stated:

Although there are other factors under the statutory criteria that suggest somewhat higher salary increases, those factors have been balanced to . . . keep the costs within the bounds of fiscal responsibility for this jurisdiction and therefore, within the public interest.

\* \* \*

Additionally, the Arbitrator has carefully considered the Borough's position as to increasing health insurance costs and the PBA's position as to the lack of competitive retiree insurance, in crafting changes to both the contractual health benefits for active employees and future retirees. These changes seek to address the retiree insurance shortfall, recognizing the significant long term cost implications, while providing the Employer with substantial immediate cost containment.

\* \* \*

In all, the health benefit package is balanced and reasonable; it addressed the stated needs of both parties and is clearly

in the public interest in its design to offset future costs with current and future cost containment. [Award at 31-33]

The arbitrator stated that due to his awarded changes in health insurance for active employees, the long-term cost of the benefit for future retirees would be substantially below the cost of the benefit proposed by the PBA. The arbitrator recognized that the Borough had previously provided an annual stipend of about \$2000 toward the purchase of insurance and the prescription coverage for those retiring after 30 years service, but he noted that the five other jurisdictions in the regional (contiguous) comparison group provided retiree health insurance. In looking at the overall compensation received by police officers and comparing the retiree coverage with other jurisdictions, he concluded that the coverage offered retirees was not good or substantial by comparison and should be significantly expanded (Award at 42-44, 51). He also found that the Borough's costing mechanism with respect to retiree insurance was substantially flawed. The arbitrator calculated the cost of the benefit over 15 years, subtracted the savings the Borough will achieve by not paying the \$2000 stipend, and then balanced those costs with the cost containment achieved by changes to the health plan he awarded for active employees and a salary increase rate at the lower end of the range. The Borough has not disputed the arbitrator's economic analysis in part or in whole.

Although the Borough does not directly challenge the award of retiree health benefits, it does argue that the arbitrator did not adequately consider the cost of a non-contractual retiree prescription benefit for employees with over 30 years of service and improperly considered the savings associated with the elimination of a retiree stipend. In particular, the Borough argues that the arbitrator did not give due weight under N.J.S.A. 34:13A-16g(3) (overall compensation) and g(6) (financial impact) to the issue of retiree prescription coverage. The material facts concerning the prescription benefit follow.

In 1979, the Borough Council enacted a resolution approving retiree prescription benefits for employees with over 30 years' service. In April 2006, the Borough eliminated the benefit, but the PBA filed an unfair practice charge. The parties settled that dispute with an agreement that the benefit would be continued unless changed through negotiations. In reciting the parties' negotiations history in the instant case, the arbitrator noted that the parties had entered into a memorandum of agreement that was not ratified. That memorandum included retiree health benefits, but stated that the "[r]etiree prescription benefit for persons with 30 years is not included in the benefit package." While noting the memorandum, which was placed in evidence by both parties, the arbitrator did not accord it dispositive weight.

The Borough argues that the arbitrator did not discuss the economic impact of the retiree prescription benefits plan as it applied to his award on retiree medical insurance despite testimony and evidence of the plan and its cost.

The retiree prescription benefit was not a disputed issue before the arbitrator. It was a long-standing benefit that neither party sought to change through the interest arbitration process. The arbitrator was not required to consider its proposed elimination as part of the parties' unratified memorandum of agreement. Had that agreement been ratified, there would have been no need for an arbitration award. Nor was the arbitrator required to separately address the cost of that benefit as part of his award. In performing his analysis under the "comparability" factor found in N.J.S.A. 34:13A-16g(2), the arbitrator explained that his salary rate increases were lower than those found in the comparison group and reflected the balancing process warranted under several of the statutory factors and the balancing involved in structuring an economic package significantly expanding retiree insurance coverage (Award at 42-43). This specific reference to 16g(2) and general reference to several other statutory factors shows that the arbitrator carefully balanced the costs associated with expanding retiree insurance coverage beyond the preexisting stipend and prescription plan.

The Borough also argues that the award regarding the prescription benefit is unclear. Noting that the arbitrator ordered that any prior agreements between the parties intended to be implemented independent of the issues in dispute at interest arbitration shall be incorporated in the new contract, the Borough suggests that the arbitrator may have adopted the provision of the unratified memorandum of agreement eliminating the retiree prescription benefit. We disagree.

Although the record does not indicate what prior agreements the parties may have reached, it does make clear that they did not reach a final agreement on eliminating prescription benefits. While elimination of the benefit was an element of the failed memorandum of agreement, so was a 4% wage increase for 2006 and 2007. We also note that in settling an unfair practice charge, the parties agreed that the prescription benefit would continue unless changed through negotiations. There was no change through negotiations because the parties' memorandum of agreement eliminating the benefit was not ratified. The arbitrator described both the prescription benefit and a retiree medical stipend and explained that the stipend and the new cost-containment measures would offset the cost of the significantly expanded retiree insurance coverage. The prescription benefit was not in issue, was not disturbed, and was not treated as a

cost offset as it surely would have been had the arbitrator meant to eliminate it.

Finally, the Borough argues that the arbitrator erroneously gave weight to the retiree medical stipend that had been found to be not mandatorily negotiable in a prior scope decision. See Borough of Ringwood, P.E.R.C. No. 2006-96, 32 NJPER 232 (¶96 2006). The arbitrator stated that the existing retiree medical stipend would be replaced by the retiree health insurance coverage he was awarding. He also stated that the full premium cost of the retiree coverage would not be a new or added cost because retirees with more than 25 years of service currently receive a stipend of about \$2000 annually. The Borough argues that the arbitrator erred because the Borough was not required to continue providing the stipend and thus the arbitrator incorrectly issued an award on a matter not submitted to him.

We agree that the Borough was not required to continue the stipend into a new agreement. See P.E.R.C. No. 2006-96. But in calculating the new cost of the retiree health benefit, it was permissible for the arbitrator to consider that the Borough had been paying approximately \$2000 per year per retiree under the old contract and that the amount of the former stipend could effectively be deducted from the new cost of the retiree health insurance plan. The arbitrator did not issue an award concerning

that stipend. He just recognized that the Borough would be going into the new contract with a \$2000 savings per retiree.<sup>1/</sup>

The Borough has not presented a basis for disturbing the arbitrator's judgment, discretion and labor relations expertise. Accordingly, we affirm the arbitrator's award.

ORDER

The arbitrator's award is affirmed.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Buchanan, DiNardo, Fuller and Watkins voted in favor of this decision. None opposed.

ISSUED: August 9, 2007

Trenton, New Jersey

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<sup>1/</sup> In its reply brief, the Borough asserts that continuing the prescription benefits program would force the Borough to pay for two prescription benefits plans for each retiree, because the retiree health benefits plan awarded by the arbitrator also contains a prescription plan. The PBA has since clarified its understanding that the retiree health benefit awarded by the arbitrator does not include prescription benefits. Duplicate benefits, therefore, does not appear to be an issue.



P.E.R.C. NO. 2007-33

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SOMERSET COUNTY SHERIFF'S OFFICE,

Appellant,

-and-

Docket No. IA-2005-083

SOMERSET COUNTY SHERIFF'S  
FOP LODGE #39,

Respondent.

DECISION

The Public Employment Relations Commission affirms an interest arbitrator's award issued to settle successor contract negotiations between the Somerset County Sheriff and a unit of Sheriff's Officers represented by Somerset County Sheriff's Officers FOP Lodge #39. The arbitrator issued a conventional award absent the parties' agreement to use another terminal procedure. The employer has appealed the arbitrator's salary ruling asserting that he gave undue controlling weight to evidence of the County's internal settlement patterns. The employer also asserts that the arbitrator did not properly calculate the total net economic changes for each year of the agreement. The Commission has considered all of the employer's arguments and concludes that the employer has not presented a basis for disturbing the arbitrator's judgment, discretion and labor relations expertise. The Commission also holds that the arbitrator satisfied his obligations under N.J.S.A. 34:13A-16d(2) to determine that the total net annual economic changes for each year of the agreement are reasonable.

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. 2007-33

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SOMERSET COUNTY SHERIFF'S OFFICE,

Appellant,

-and-

Docket No. IA-2005-083

SOMERSET COUNTY SHERIFF'S  
FOP LODGE #39,

Respondent.

Appearances:

For the Appellant, Drinker Biddle & Reath LLP,  
attorneys (Daniel F. O'Connell and Marion B. Johnson,  
on the brief)

For the Respondent, Loccke, Correia, Schlager, Limsky,  
& Bukosky, attorneys (Leon B. Savetsky, of counsel and  
on the brief)

DECISION

On September 20, 2006, the Somerset County Sheriff's Office  
appealed from an interest arbitration award involving a unit of  
approximately 53 Sheriff's Officers represented by Somerset  
County Sheriff's Officers FOP Lodge #39. See N.J.S.A.  
34:13A-16f(5)(a). 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).

Both parties sought a three-year contract from January 1,  
2005 through December 31, 2007. The remaining elements of their  
final offers were as follows:

The employer proposed that effective January 1, 2005, January 1, 2006, and January 1, 2007, officers would receive a 1% adjustment in addition to step increases for steps 1-11. Step increases for steps 1-10 are 3.5% and 4% for step 11. Officers at step 11 as of December 31, 2005 would receive a 3.3% increase as of January 1, 2006; and officers at step 11 as of December 31, 2006 would receive a 3.3% increase as of January 1, 2007. The employer also proposed that it be awarded flexibility in changing health insurance carriers.

The FOP proposed that officers would receive a 6% across the board increase effective January 1, 2005 and 5% across the board increases effective January 1, 2006 and January 1, 2007. In addition, it proposed modifying the 3.75% longevity benefit to move the last two steps from the 25th and 24th years to the 23rd year.

Finding that the County was on sound financial footing and giving substantial weight to internal settlements and settlement patterns within the County's law enforcement units, the arbitrator awarded 3.5% increases for officers at steps 1 through 10 and 4% increases for officers at step 11 effective January 1, 2005, January 1, 2006 and January 1, 2007, exclusive of step increases. He rejected the FOP's longevity proposal and granted the employer's health benefits proposal, noting in both instances that his rulings were consistent with the benefits and provisions

covering other law enforcement officers employed by the Sheriff's Office and the County.<sup>1/</sup>

The employer has appealed the salary ruling. The FOP did not cross-appeal that ruling or the health insurance or longevity rulings.

The standard for reviewing interest arbitration awards is well established. We will not vacate an award unless the appellant demonstrates that: (1) the arbitrator failed to give "due weight" to the subsection 16g factors judged relevant to the resolution of the specific dispute; (2) the arbitrator violated the standards in N.J.S.A. 2A:24-8 and -9; or (3) the award is not supported by substantial credible evidence in the record as a whole. Teaneck Tp. v. Teaneck FMBA, Local No. 42, 353 N.J. Super. 289, 299 (App. Div. 2002), aff'd o.b. 177 N.J. 560 (2003), citing Cherry Hill Tp., P.E.R.C. No. 97-119, 23 NJPER 287 (¶28131 1997). 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 a salary award is not a precise mathematical process. Given that the statute sets forth general criteria

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<sup>1/</sup> The parties agreed to modifications in the Overtime, Personnel Files and FOP Rights provisions.

rather than a formula, the setting of wage figures necessarily involves judgment and discretion and an arbitrator will rarely be able to demonstrate that an award is the only "correct" one.

Borough of Lodi, P.E.R.C. No. 99-28, 24 NJPER 466 (¶29214 1998);

Borough of Allendale, P.E.R.C. No. 98-123, 24 NJPER 216 (¶29103

1998). Some of the evidence may be conflicting and an

arbitrator's award is not necessarily flawed because some pieces of evidence, standing alone, might point to a different result.

Lodi. Therefore, within the parameters of our review standard,

we will defer to the arbitrator's judgment, discretion, and labor relations expertise. City of Newark, P.E.R.C. No. 99-97, 25

NJPER 242 (¶30103 1999). However, an arbitrator must provide a

reasoned explanation for an award and state what statutory

factors he or she considered most important, explain why they

were given significant weight, and explain how other evidence or

factors were weighed and considered in arriving at the final

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

arbitrator has provided a reasoned explanation for an award, an

objection will not be entertained unless an appellant offers a

particularized challenge to the arbitrator's analysis and

conclusions. Cherry Hill; Lodi; Newark.

The employer's main argument is that the arbitrator gave undue controlling weight to evidence of the County's internal settlement patterns. It asserts that after deciding that neither

party's wage proposal was reasonable, the arbitrator focused almost exclusively on evidence of internal settlements and the County's ability to pay. It then asserts that the arbitrator failed to properly consider and weigh evidence regarding: private sector employment; comparables in other public sector jurisdictions; stability of the work force and that Sheriff's Officers are not underpaid; and the value of benefits received by Sheriff's officers. The employer also asserts that the arbitrator did not properly calculate the total net economic changes for each year of the agreement.

Interest arbitrators have traditionally found that internal settlements involving other uniformed employees are of special significance. Essex Cty. Sheriff's Office, P.E.R.C. No. 2005-52, 31 NJPER 86, 92 (¶41 2005). Maintaining an established pattern of settlement promotes harmonious labor relations, provides uniformity of benefits, maintains high morale, and fosters consistency in negotiations. Ibid. In this case, the arbitrator determined that each party's proposal would alter the relationships among the County's various law enforcement units and undermine the need for reasonable consistency during the collective negotiations process absent a demonstrated need for deviation. He fashioned a result that "ensures reasonable consistency be maintained among the law enforcement units while honoring the need for the adjustment of differences in individual

units that are justified in order to accommodate specific problems" (Arbitrator's award at 38). And he concluded that the deviation from internal comparability sought by the employer had the potential to undermine the continuity and stability of employment that is desirable in the negotiations process by attempting to tie a result to external evidence while paying little attention to internal negotiations patterns. He specifically found that the County's law enforcement units shared strong common interests and performed coordinated and integrated work and that the relationship between the units of Corrections Officers and Sheriff's Officers and the County's negotiated agreement with that unit deserved the most weight and provided an appropriate model for structuring this award. The arbitrator's decision to give significant weight to the employer's own internal settlements was a proper exercise of his discretion.

Essex Cty. Sheriff's Office.

As for a comparison with private sector employment, the employer acknowledges that the arbitrator took note of its submissions demonstrating that its proposed increases compare favorably with private sector increases and CPI adjustments over the past several years. Specifically, the arbitrator noted the employer's evidence that a New Jersey Department of Labor report indicated that private sector wages in Somerset County increased by only 0.9% in 2004, and the state-wide private sector wage

increase was 3.6% and the local government average was 3.2%. The arbitrator also noted that the employer had submitted data compiled by the Bureau of National Affairs for 2005 that indicates that average contract settlements were 3.3% for state and local governments and 3.1% for all settlements. In fashioning his award, the arbitrator found that all of the statutory criteria have some relevance, directly or indirectly, when setting salary modifications. However, he concluded that the cost of living and private sector data could not be found to be controlling given an award consistent with internal law enforcement settlements, all of which are at levels above the cost of living.

The employer argues that increases in private sector wages of only 0.9% and average settlements for state and local governments of 3.3% are probative of the need for increased fiscal conservatism within Somerset County, even in light of its current financial standing.<sup>2/</sup> It contends that the arbitrator failed to explain why the County citizens cannot say "no" to an award that maintains a pattern among the County's negotiations units. However the employer has not justified why its own internal settlement pattern should not be maintained and why

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<sup>2/</sup> Although Somerset County had the lowest private sector wage increase in the State in 2004, 0.9% compared with a statewide average of 3.6% and a local government average of 3.2%, its citizens enjoyed the highest average annual wages of \$62,888 in 2004.



consideration of private sector wages should outweigh the impact of the employer's own settlements with other negotiations units. Accordingly, we reject this challenge to the award.

We next consider the employer's argument that the arbitrator failed to properly weigh evidence demonstrating that Sheriff's officers are not underpaid and are a stable work force. The arbitrator noted that the employer offered evidence that the salary and benefits of Sheriff's Officers compare favorably with the salary and benefits of other officers in other counties and that maximum salaries are \$4348 above the State average. However, he concluded that the County gave virtually no weight to internal comparisons with other law enforcement agencies administered by Somerset County: Corrections, Corrections Superiors, Sheriff's Officer Superiors and Prosecutor's Officers. In addition, because the impact of an award on the continuity and stability of employment cannot be precisely measured, we will not disturb an arbitrator's award for concluding that reducing relative compensation for one of an employer's negotiations units would strain the ongoing relationship between those negotiations units. Again, the County has not presented a basis for disturbing the arbitrator's judgment, discretion and labor relations expertise.

We next consider the employer's argument that the arbitrator failed to properly weigh evidence of the value of overtime and

other benefit time received by Sheriff's officers. It recites the relative costs of the two parties' proposals on overtime, benefit time, and benefit costs and asserts that the arbitrator did not explain why they were or were not relevant to his decision. We disagree. The arbitrator noted that the County estimated that the cost of overtime under its proposal would increase by \$4,484 while under the FOP proposal it would increase by \$27,157. He also noted the County's estimates that the cost of paid time off for personal days, vacation days, bereavement leave, sick days and holidays would increase by \$4,916 under its proposal and \$18,989 under the FOP's proposal. After reviewing all the evidence, arguments and statutory criteria, the arbitrator found that the FOP's salary proposal was unreasonable and not supported by application of the statutory criteria. Likewise, he found that the employer's proposal was unreasonable when viewed in its totality. The arbitrator then issued an award based on sound labor relations principles and a reasonable exercise of his statutory discretion in judging the relative importance of the statutory criteria.

Finally, we consider the employer's argument that the arbitrator did not properly calculate the total net economic changes for each year of the agreement pursuant to N.J.S.A. 34:13A-16d(2). It asserts that the arbitrator did not consider

the total "new money" costs for each year of the agreement, including salary step movement and longevity costs.

As for salary step movement, the arbitrator laid out the costs of the award for each year of the agreement for employees at the maximum step of the guide and for employees moving up the guide. The arbitrator found that the cost of the award will be \$36,873 for the 14 employees who were at or who reached maximum in 2005, \$49,320 for the 18 employees who were at or who reached maximum in 2006, and \$59,808 for the 21 employees who will be at or who will reach maximum in 2007. For those employees at steps 1 through 10, the 3.5% increase will cost approximately \$66,000 in 2005, \$68,000 in 2006, and \$70,000 in 2007. In addition, he found that the step movement towards maximum will represent additional costs of approximately \$85,000 in 2004, \$77,000 in 2005, and \$69,000 in 2007. The interest arbitrator then addressed the eight statutory criteria again, specifically finding that the costs could be "borne without conflicting with the County's statutory spending limitations and without adverse financial impact on the governing body, its residents and taxpayers" (Arbitrator's award at 40).

As for longevity, the arbitrator rejected the FOP's proposal to modify the 3.75% longevity benefit to move the last two steps from the 25th and 24th years to the 23rd year. Therefore, the award made no changes in the longevity benefit that generated any

new costs and the arbitrator was not required to include longevity in his calculation of the net annual economic changes.<sup>3/</sup>

The employer has thus provided no support for its argument that the arbitrator did not properly calculate the net economic changes. Accordingly, we hold that the arbitrator satisfied his obligation under N.J.S.A. 34:13A-16d(2). Rutgers, The State Univ., P.E.R.C. No. 99-11, 24 NJPER 421, 424 (¶29195 1998); Union Cty., P.E.R.C. No. 2004-58, 30 NJPER 97 (¶38 2004) (arbitrator effectively found that net economic changes were reasonable).

ORDER

The arbitrator's award is affirmed.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Buchanan, Fuller and Watkins voted in favor of this decision. None opposed. Commissioner DiNardo was not present.

ISSUED: November 21, 2006

Trenton, New Jersey

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<sup>3/</sup> We calculate that the longevity costs generated by the changes in base salary would increase the total three-year cost of the award by approximately \$3500.

P.E.R.C. NO. 2006-39

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CHERRY HILL TOWNSHIP  
BOARD OF EDUCATION,

Respondent,

-and-

Docket No. IA-2005-086

FRATERNAL ORDER OF POLICE,  
LODGE 28,

Petitioner.

SYNOPSIS

The Public Employment Relations Commission dismisses a motion made by the Cherry Hill Township Board of Education to dismiss a Petition to Initiate Compulsory Interest Arbitration filed by the Fraternal Order of Police, Lodge 28. The Board objected to the processing of the petition on the ground that the Board was not covered by the interest arbitration statute, N.J.S.A. 34:13A-15. The Commission concludes that the Board has a public police department and that the Legislature did not intend to exclude its campus police officers from interest arbitration. The Commission remands the case to the Director of Arbitration for processing.

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

CHERRY HILL TOWNSHIP  
BOARD OF EDUCATION,

Respondent,

-and-

Docket No. IA-2005-086

FRATERNAL ORDER OF POLICE,  
LODGE 28,

Petitioner.

Appearances:

For the Respondent, Schwartz Simon Edelstein Celso &  
Kessler, attorneys (Paul H. Green, of counsel)

For the Petitioner, Markowitz & Richman, attorneys  
(Stephen C. Richman, of counsel)

DECISION

On April 27, 2005, Fraternal Order of Police, Lodge 28 filed a Petition to Initiate Compulsory Interest Arbitration with respect to a unit of "school resource officers/police officers" employed by the Cherry Hill Township Board of Education. On May 9, the Board objected to the processing of the petition on the ground that the Board is not covered by the interest arbitration statute, N.J.S.A. 34:13A-15. On July 5, the FOP responded that the Board's police officers were a "police department" under N.J.S.A. 34:13A-15 and that its petition should be processed. It also contended that the Board's objection was "belated" because, when the FOP filed for interest arbitration during the last round

of negotiations, the Board participated in the selection of an interest arbitrator and a settlement was reached without the need for a formal hearing.

On July 15, 2005, the case was transferred to the Chairman pursuant to N.J.A.C. 19:16-5.2(b). The Board filed a reply brief maintaining that Lodge 28's entitlement to compulsory interest arbitration was never adjudicated; reiterating its position that boards of education are not subject to the interest arbitration statute; and contending that unit members do not perform police services. At our request, both parties submitted certifications describing the job duties of unit members. The FOP submitted the certification of Richard Bogin, one of the Board's campus police officers.<sup>1/</sup> The Board submitted the certification of Michael Nuzzo, its Director of Security. No material facts are in dispute and this is the pertinent background.

#### Background

N.J.S.A. 18A:6-4.2 et seq. authorizes the governing body of any school or other institution of learning to appoint "policemen for the institution." Applicants for such positions must first be approved by the police chief in the municipality where the school is located, or by the Superintendent of the State Police. Approved applications are then forwarded to the school's

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<sup>1/</sup> This is the Board's terminology, which we will use in this decision.

governing body, which issues a commission to the candidate.

N.J.S.A. 18A:6-4.5 specifies that:

Every person so appointed and commissioned shall possess all the powers of policemen and constables in criminal cases and offenses against the law anywhere in the State of New Jersey, pursuant to any limitations as may be imposed by the governing body of the institution which appointed and commissioned the person.

Since at least 1995, the Board has appointed "campus police" pursuant to N.J.S.A. 18A:6-4.2<sup>2/</sup> and it currently employs five such officers. Officers work 7:00 a.m. to 3:30 p.m. or 7:30 a.m. to 3:30 p.m., ten months per year. Four officers are assigned to the district's two high schools and one has responsibility for the district's three middle schools and all of its elementary schools. The officers assigned to the high schools patrol the facilities, while the officer assigned to the elementary and middle schools primarily makes the rounds of the district's three middle school buildings.

As required by N.J.S.A. 18A:6-4.4, campus police officers have completed a police training course at a police academy approved by the Police Training Commission. They are sworn as police officers; have access to certain restricted items such as

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<sup>2/</sup> The Board at one point suggests that this statute appears to be primarily directed at institutions of higher learning. However, Nuzzo certifies that campus police officers are appointed pursuant to the statutory scheme. Further, N.J.S.A. 18A:6-4.2 pertains to "the governing body of any school or other institution of learning" - language that includes boards of education.



criminal history and juvenile justice records; and complete annual firearms, domestic violence, and deadly force training as mandated by the New Jersey Attorney General's office.

The Board's "school police officer" job description states that, under the administration's supervision, an officer:

[I]s responsible for the discharge of police activities designed to provide assistance and protection for persons, to safeguard school district property, provide required services to the School District of Cherry Hill, assure observance of the laws of the Township of Cherry Hill, the State of New Jersey, rules and regulations of the School District of Cherry Hill and shall possess all the powers of policemen and constables in criminal cases and offenses against the law. [Emphasis supplied]

The underscored language incorporates N.J.S.A. 18A:6-4.5. The job description adds that, among other duties, officers apprehend, warn, cite and take into custody violators of the law; provide police protection when large sums of money are in transit; provide security and surveillance of their assigned area; and receive and investigate complaints.

Campus police officers also have traffic enforcement and crime detection responsibilities that complement and sometimes intersect with those of the Cherry Hill Township municipal police. For example, campus police officers issue school parking permits and enforce traffic regulations on school property. They also issue traffic summonses on both Board property and contiguous public roadways and assist municipal police with

traffic control when needed. Traffic summonses are processed through Cherry Hill Township Municipal Court in the same manner as those issued by Cherry Hill Township police officers.

Campus police officers have filed police reports using forms from the Cherry Hill Township police department, collected evidence, arrested and fingerprinted students, and released students to their parents' recognizance. Police reports and collected evidence are turned over to the Cherry Hill Township Police Department. According to Nuzzo, campus police do routine crime scene processing and municipal police are not called to respond to in-school incidents unless a serious crime is involved, such as a violent crime or possession of a weapon.<sup>3/</sup> Bogin maintains that campus police officers function in the same way as municipal or county police who are assigned to schools as "school resource officers."

The Board does not permit campus police officers to carry firearms while at work, although they may do so when off duty. While on duty, officers are equipped with batons and handcuffs

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3/ The FOP has submitted a November 2, 1996 memorandum from Nuzzo to school principals that directs high school principals to continue the "present practice" of simultaneously notifying both township and campus police in the event of an emergency. The memorandum also includes protocols for when middle and elementary school principals should contact municipal police and when they should call for campus police. Any factual dispute as to when municipal police are called is not material to our decision on this motion.

and wear a nameplate and metallic shield inscribed with the words "Police" and "Board of Education, Township of Cherry Hill." See N.J.S.A. 18A:6-4.8 (requiring such identification). Their I.D. cards identify them as members of the Campus Police Department.

In 1996, the Board received a Community Oriented Policing Services (COPS) grant from the United States Department of Justice to hire two campus police officers. The application identified the "agency" as the Cherry Hill Campus Police; included an IRS "law enforcement agency" identification number; and designated the assistant superintendent as "chief law enforcement executive." The Board was listed as the applicant organization and governmental entity.

Subject to N.J.S.A. 18A:6-4.3, campus police officers are hired and fired by the Cherry Hill Board of Education, as recommended by the Superintendent of Schools. They are evaluated annually by the building principal or principals with whom they work, as well as by Nuzzo, a retired Cherry Hill Police Department lieutenant and the Board's Director of Security since 1996. Nuzzo certifies that he supervises the "police aspects" of the officers' job performance. Campus police officers are members of the Public Employment Retirement System (PERS), not the Police and Fire Retirement System (PFRS). According to the FOP, complaints about an officer's conduct are handled by the

internal affairs department of the Cherry Hill municipal police department.

### Analysis

We start with the threshold procedural issue of whether the Board may object to the petition. We hold that it can. The Board's participation in the selection of an interest arbitrator was not a determination of Lodge 28's rights, and we note that an employer may agree to arbitrate an ongoing negotiations dispute involving employees other than police or fire officers. N.J.S.A. 34:13A-7; City of Trenton, P.E.R.C. No. 95-13, 20 NJPER 332 (¶25173 1994).

We turn to the substance of the Board's objections.

N.J.S.A. 34:13A-16 sets forth procedures for resolving a negotiations impasse between a public fire or police department and an exclusive representative, including the right of either party to petition for binding interest arbitration. N.J.S.A. 34:13A-15 defines "public police department" as:

[A]ny 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 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.

This definition was included in the 1977 interest arbitration legislation, L. 1977, c. 85, §2, and was not changed by the Police and Fire Public Interest Arbitration Reform Act, L. 1995, c. 425.

In determining whether FOP Lodge 28 is entitled to invoke compulsory, binding interest arbitration, we consider whether: (1) the Board meets the definition of "public police department"; and (2) campus police officers are engaged in performing police services. Camden Cty., P.E.R.C. No. 85-11, 10 NJPER 501 (¶15229 1984); New Jersey Institute of Technology, P.E.R.C. No. 84-47, 9 NJPER 666 (¶14287 1983); see also Rutgers, The State Univ., P.E.R.C. No. 94-45, 19 NJPER 579 (¶24275 1995), aff'd 21 NJPER 45 (¶26029 App. Div. 1994), certif. den. 140 N.J. 276 (1995) (addressing definition of "public police department"). We answer both questions in the affirmative, and deny the Board's motion to dismiss the petition. We detail the reasons that lead to this conclusion, starting with the question of whether campus police officers are engaged in "performing police services."

N.J.S.A. 34:13A-15 does not define "performing police services" and our decisions have not done so either. Instead, we have examined the duties, responsibilities, and required training

of the employees in question, with emphasis on whether they have statutory police powers. Camden; NJIT. Our case law in this area is related to decisions considering whether employees are police for the purposes of N.J.S.A. 34:13A-5.3, providing that police generally do not have the right to join employee organizations that admit non-police. That analysis was in turn shaped by Gloucester Cty. v. PERC, 107 N.J. Super. 150, 158 (App. Div. 1969), aff'd o.b. 55 N.J. 333 (1970), where the Appellate Division held that corrections officers were "police" under 5.3 because they had the statutory authority "to act as officers for the detection, apprehension, arrest and conviction of offenders." See N.J.S.A. 2A:154-4. While our contrary ruling in Gloucester had emphasized that corrections officers were unarmed and did not exercise their statutory powers, the Court reasoned that those factors did not negate the officers' statutory duty to detect, apprehend and arrest in appropriate circumstances.

Following Gloucester, we have held that employees are "police" for purposes of 5.3 if they have the statutory authority to make arrests, even if the authority is limited to a particular class of violations. Warren Cty., P.E.R.C. No. 86-11, 12 NJPER 357 (¶17134 1986) (weights and measures officers were police because they had statutory power to arrest with respect to violations of weights and measures statutes). Conversely, we have held that a lack of statutory arrest power weighs heavily,

if not conclusively, against a finding that an employee is a police officer under 5.3. See, e.g., Mercer Cty., P.E.R.C. No. 88-85, 14 NJPER 244 (¶19090 1988) (county juvenile detention officers are not police, regardless of whether their duties are similar to those of corrections officers, because they do not have arrest power); Monmouth Cty., P.E.R.C. No. 88-10, 13 NJPER 647 (¶18244 1987), aff'd NJPER Supp.2d 169 (¶171 App. Div. 1998) (park rangers' authority to act as police officers to enforce park regulations not equivalent to arrest authority in Gloucester and Warren or to full police powers accorded to park police).

In Camden, we drew on Gloucester in holding that court attendants, whose primary duty was to maintain order in the court, were entitled to interest arbitration. We noted that the attendants were statutorily empowered to "act as officers for the detention, apprehension, arrest and conviction of offenders against the law" - authority that was virtually identical to that possessed by the Gloucester corrections officers. We then stated:

While the issue in Gloucester is somewhat different from that involved here, it cannot be seriously disputed that employees who are vested with the same powers and duties as the corrections officers in that case are "employees engaged in performing police services" within the meaning of N.J.S.A. 34:13A-15. 10 NJPER at 502.

NJIT adopted the same approach in concluding that there was "no doubt" that college police officers appointed under N.J.S.A.

18A:6-4.2 were performing police services. We emphasized the police powers accorded them by N.J.S.A. 18A:6-4.5 and noted that NJIT officers carried service revolvers and performed such functions as foot and vehicular patrol; arresting violators of the law; enforcing traffic and parking regulations; and protecting the transport of large sums of money. 9 NJPER at 667. Similarly, in Rutgers, where the employer argued that it was not a "public police department", we noted that university police appointed pursuant to N.J.S.A. 18A:6-4.2 et seq. performed most traditional police functions.

Against this backdrop, we are satisfied that, by virtue of their statutory police powers and their performance of many police functions, campus police perform police services within the meaning of N.J.S.A. 34:13A-15. In light of our case law; the centrality of N.J.S.A. 18A:6-4.5 to our analysis; and the Legislature's directive to liberally construe the statute, N.J.S.A. 34:13A-14, the Board's objections do not weigh in favor of a contrary conclusion.

For example, while the Board emphasizes that campus police are not armed while on duty, that factor is not determinative in light of Camden and the Court's analysis in Gloucester. Similarly, we are not persuaded that unit members fall outside N.J.S.A. 34:13A-15 because "school security guards" are not among the listed titles in the statute. The Board itself has



characterized these employees as "campus police officers" or "school police officers" in its job description and federal grant applications. In any case, N.J.S.A. 34:13A-15 states that "employees performing police services" includes "but is not necessarily limited to" the listed titles, thus indicating that other positions may be encompassed within the definition. NJIT; see also Assembly Labor Industry and Professions Committee, Statement to S. 482 (December 6, 1976) (section was intended to delineate the "principal titles" covered by the statute).

The Board also urges that the policy reasons underlying the interest arbitration statute - to prevent strikes by critical public safety employees and recognize the life-threatening dangers they face - do not pertain to these employees, who do not face the same dangers or have the same responsibilities as municipal or university police officers. It stresses that, in Rutgers, the Appellate Division commented that the functions and responsibilities of university police were "virtually indistinguishable" from any other local police force. 21 NJPER at 46.

For the purposes of this decision we accept that campus police officers' scope of responsibility is not identical to that of municipal or Rutgers University police. But this does not foreclose the unit from petitioning for compulsory interest arbitration where N.J.S.A. 34:13A-15 lists many positions whose

law enforcement responsibilities are more specialized than those of municipal or Rutgers University officers. We also note that in 1991, the Legislature expressed its view that campus police are comparable to other police when it amended N.J.S.A. 18A:6-4.5 and 4.8 to give them police powers and the right to carry firearms "at all times", instead of, as before, during the performance of their duties and en route to and from work. See Statement to Assembly No. 3559, Assembly County Government Committee (bill provides "parity" for campus officers).

Nor is interest arbitration foreclosed because campus police are not among the eligible titles listed in the PFRS statute. N.J.S.A. 43:16A-1(2)(a)(I) defines a "policemen" as an individual required to carry firearms while on duty, a condition not present in N.J.S.A. 34:13A-15 and one which Gloucester decided against imposing in the related context of N.J.S.A. 34:13A-5.3. Finally, we are not persuaded that campus police officers fall outside the ambit of N.J.S.A. 34:13A-15 because they are not mentioned in the statutes authorizing the creation of municipal and county police forces. N.J.S.A. 18A:6-4.2 sets forth a comparable statutory scheme for the appointment of police at educational institutions.

We turn next to the second prong of our analysis: whether this board of education, defined as a public employer under N.J.S.A. 34:13A-3.3(c), has a public police department within the meaning of the interest arbitration statute.

N.J.S.A. 34:13A:-15 defines a "public police department" as "[a]ny police department or organization of a municipality, county or park, or the State or any agency thereof, having employees engaged in performing police services." In Rutgers, we observed that this language was susceptible to two readings. One reading, urged by the university in Rutgers, is that an employer is not subject to the statute, even if it has a police department, unless it is a municipality, a county, a park, the State or any agency thereof. Under a second interpretation, the statute applies to two types of entities: first, all "police departments" and second, "any organization" of a municipality, county, park, the State or any agency thereof that, while not a police department, has "employees performing police services." We observed that under this construction, the interest arbitration statute would apply to Rutgers' police department, regardless of whether Rutgers was a State agency. 19 NJPER at 579.

Rutgers found this latter reading preferable, reasoning that it explained why the language following "organization" was added. It also commented that "performing police services" would be redundant if it referred back to both "police department" and "organization." Nevertheless, we assumed for purposes of the decision that Rutgers' interpretation was correct, and we held

that Rutgers was a State agency for purposes of the interest arbitration statute.

Rutgers is pertinent here, where the Board also contends that it is not subject to N.J.S.A. 34:13A-15 because the statute does not mention boards of education.

As one basis for our decision, we reiterate Rutgers' conclusion that the statute applies to all public "police departments", even if they are located within, for example, public school systems or universities. Under this construction, this unit can fairly be said to constitute a police department given that it is comprised exclusively of employees who have full police powers; are required to have police training; perform many police functions; and are supervised in part by a Director of Safety who is a retired police lieutenant. The campus police unit is not unlike a force of several officers in a small municipality that reports directly to a Director of Public Safety - a member of the governing body - rather than a police chief. See N.J.S.A. 40A:14-118 (authorizing municipality to create a police force as a department, division, bureau, or other agency; making appointment of police chief discretionary; and requiring promulgation of governance rules by an appropriate authority). We note that the campus police were described as a "department" in the DOJ grant application, a term also used on officer I.D. cards. Thus, the Board's "police department" is covered by the

interest arbitration statute and the Board's motion must be denied for that reason.

Nevertheless, as in Rutgers, we will also carefully consider, as an alternative ground for our ruling, whether the Board is subject to the statute under a reading that assumes that a public employer with a police department must also be a "municipality, county, park, State, or any agency thereof" to be covered by the statute.

A school board is not a "state agency" in the sense of, e.g., the Department of Corrections, and it is also a legal entity that is distinct and separate from the municipality in which it is located. Otchy v. Elizabeth Bd. of Ed., 325 N.J. Super. 98, 109 (App. Div. 1999), certif. den. 163 N.J. 79 (2000); N.J.S.A. 18A:10-1; N.J.S.A. 18A:11-2. However, in a broader sense, a board is an instrumentality of the State obligated to provide for the educational needs of the district's children and charged with implementing the State constitutional mandate to provide a thorough and efficient education. Durgin v. Brown, 37 N.J. 189, 199 (1962); Hamel v. State of New Jersey, 321 N.J. Super. 67, 76 (App. Div. 1999). A local board is a "creature of the State" that may exercise only those powers granted to it by the Legislature either expressly or by necessary and fair implication. Atlantic City Ed. Ass'n v. Atlantic City Bd. of Ed., 299 N.J. Super. 649, 655 (App. Div. 1997), certif. den. sub

nom. Keyport Teachers' Ass'n v. Keyport Bd. of Ed., 152 N.J. 192 (1997), citing Fair Lawn Ed. Ass'n v. Fair Lawn Bd. of Ed., 79 N.J. 574, 579 (1979).

Given these well-accepted principles; the directive to liberally construe the interest arbitration statute, N.J.S.A. 34:13A-14d; the grant of police powers to campus police; and the Court's affirmance of Rutgers, we think the critical inquiry is whether the Legislature intended to exclude from interest arbitration those campus officers who are appointed by boards of education rather than universities or colleges. We conclude that it did not. NJIT is instructive on this point.

In that case, we found that the institution had a public police department; rejected the employer's argument that only taxing authorities were subject to the statute; and cited New Jersey Inst. of Technology v. City of Newark, 164 N.J. Super. 516 (App. Div. 1978), for the proposition that while the State had a considerable role in the management and operation of the institution, NJIT was "essentially an instrumentality of the City of Newark as part of its school district." 9 NJPER at 666. We rejected Newark's argument that NJIT was therefore not a State agency, declining to read the term "agency" so narrowly. 9 NJPER at 667 n.3. A similar analysis pertains here. The Board is indisputably a governmental body exercising State-conferred powers and implementing a State constitutional mandate,

regardless of whether it is a State agency or instrumentality for all purposes. Contrast Rutgers, 21 NJPER at 46 (Court noted that Rutgers was a private entity for some purposes and a public body for others); accord Fine v. Rutgers, 163 N.J. 464 (2000).

We recognize that the Legislature could have chosen to separately list boards of education as employers under N.J.S.A. 34:13A-15, just as it did in N.J.S.A. 34:13A-3.3c. However, we do not think that omission signals an intent to exclude units such as these from the statute, given that school districts - like universities and state colleges - would not likely be the employers most evidently in the Legislature's mind when it enacted impasse procedures for police and fire employees. Further, if we are to liberally construe the interest arbitration statute so as to achieve its purposes, we discern no rationale for excluding police officers appointed by the Board where they have full statutory police powers; they perform duties that might otherwise be performed by municipal or county officers assigned to the schools; and the Board does not assert that applying the statute to these officers would interfere with its educational mission. See Rutgers (police officers do not provide educational services and the terminal procedure of interest arbitration would not interfere with the university's educational mission).

For the foregoing reasons, we deny the Board's motion to dismiss the interest arbitration petition and remand the case to the Director of Arbitration for processing.

ORDER

The motion of the Cherry Hill Board of Education to dismiss the interest arbitration petition is denied. The case is remanded to the Director of Arbitration for processing.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Buchanan, DiNardo and Watkins voted in favor of this decision. None opposed. Commissioners Fuller and Katz were not present.

ISSUED: November 22, 2005

Trenton, New Jersey



STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF ESSEX and  
ESSEX COUNTY SHERIFF,

Appellants,

-and-

Docket No. IA-2003-037

ESSEX COUNTY SHERIFF'S  
OFFICERS, PBA LOCAL 183,

Respondent.

Appearances:

For the Appellants, Genova, Burns & Vernoia, attorneys  
(Angelo J. Genova, of counsel; Brian W. Kronick and  
Kenneth A. Rosenberg, on the brief)

For the Respondent, Loccke & Correia, attorneys (Leon  
B. Savetsky, of counsel)

DECISION

The County of Essex and the Essex County Sheriff appeal from an interest arbitration award involving a unit of approximately 358 sheriff's officers represented by Essex County Sheriff's Officers, PBA Local 183. Pursuant to N.J.S.A. 40A:9-117.6, these officers are appointed by the County Sheriff subject to the County's budget.

Approximately 70% of the unit is assigned to one of the statutorily-based functions of court security, transportation, service of process, or ballistics identification. See N.J.S.A. 40A:9-117.6. The remaining unit members serve in a variety of specialized assignments such as the canine unit, bomb squad or narcotics bureau.

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).

The parties agreed to a four-year contract from January 1, 2002 through December 31, 2005. The remaining elements of their final offers were as follows.

Effective July 1, 2002, the County proposed a "3% lump sum bonus payment to all PBA Local 183 members for half a year." All eligible employees would receive the same dollar amount, regardless of current salary. Eligibility was tied to employment by the County on both July 1, 2002 and the date the County ratified the contract. Effective January 1, 2003, the County proposed a 0% increase but also proposed to distribute the "July 1, 2002 lump sum bonus of three percent (3%) total" in order to increase by 3% the base salary of each employee who was on the payroll on January 1, 2003 and the date of ratification. For calendar year 2004, the County proposed a 0% increase and, for 2005, it proposed a 2% increase effective January 1 and a 2% increase effective July 1.

The County also sought to modify the prescription drug benefit. Effective one month after full ratification of the agreement, it sought to increase prescription co-payments from \$1 to \$5 for generic drugs and from \$5 to \$10 for name-brand drugs. Effective January 1, 2005, it sought to increase prescription co-payments to \$10 for generic drugs and \$15 for name-brand drugs.

In addition, the County proposed to continue its mail order prescription plan and add a "compensatory overtime option" to the agreement. Finally, it sought a provision allowing the Sheriff to reopen the contract to negotiate work schedule changes as required by operational need.

The PBA proposed 5% annual across-the-board increases on January 1 of each contract year and proposed that all holiday benefits be "paid on a folded in basis and utilized for all computation purposes." It also sought a 20-year senior officer differential salary guide step, to take effect on January 1, 2004; increased vacation time; critical event excusal time; a new definition of "grievance"; and full release time, at full pay, for two Local 183 members to perform union business.

The arbitrator awarded 3.5% increases effective July 1, 2002 and July 1, 2003; a 4% increase effective April 2004, and a 4% increase effective January 1, 2005. He awarded prescription co-payments of \$5 for generic drugs and \$10 for name-brand drugs, to take effect no earlier than September 15, 2004. Effective January 1, 2005, he increased co-pays to \$10 for generic drugs and \$15 for name-brand drugs. He directed the County to continue the mail order prescription plan and awarded its compensatory time proposal. He denied all other proposals.

The County appeals, contending that its wage proposal should have been awarded in light of what it describes as an internal settlement pattern and its dire financial circumstances. It

maintains that the arbitrator did not analyze or give due weight to the statutory criteria or issue an award supported by substantial credible evidence.

The County also challenges the arbitrator's denial of its reopener proposal and objects to certain of the arbitrator's procedural rulings, including his denial of its motion to dismiss the PBA's interest arbitration petition at the close of the PBA's case. It asks that the award be vacated and the case be remanded to another arbitrator. Finally, it maintains that the Police and Fire Public Interest Arbitration Reform Act (Reform Act), N.J.S.A. 34:13A-14 et seq., is unconstitutional because it is assertedly special legislation; an undue delegation of legislative power; and violative of the Equal Protection Clauses of the New Jersey and United States Constitutions.<sup>1/</sup>

The PBA counters that the award is thorough and well-reasoned and adheres to statutory standards. It stresses that the New Jersey courts have upheld the constitutionality of interest arbitration.

Preliminarily, we do not address the County's constitutional claims because we do not have jurisdiction to rule on the constitutionality of a statute that we are charged with implementing. Hunterdon Cty., P.E.R.C. No. 2003-24, 28 NJPER 433 (¶33159 2002), aff'd 369 N.J. Super. 572 (App. Div.), certif.

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<sup>1/</sup> We deny the County's request for oral argument. The matter has been thoroughly briefed.

denied 183 N.J. 139 (2004); Boonton Bd. of Ed., P.E.R.C. No. 84-3, 9 NJPER 472 (¶14199 1983), aff'd as mod. sub. nom. Boonton Bd. of Ed. v. Kramer, 99 N.J. 523 (1985), cert. den. 106 S.Ct. 1388 (1986). However, we note that our Supreme Court has upheld the constitutionality of the interest arbitration section of the County Improvement Authorities Law, N.J.S.A. 40:37A-96, against contentions that it violated the Equal Protection Clause and unduly delegated legislative authority. See Division 540, Amalgamated Transit Union v. Mercer Cty. Improvement Auth., 76 N.J. 245 (1978).

We turn first to the County's challenge to the arbitrator's denial of its motion to dismiss.

The gravamen of the County's motion was that the PBA had presented insufficient evidence bearing on the public interest, overall compensation, financial impact, and continuity and stability of employment criteria to support the salaries and contract changes it sought. The County urged the arbitrator to apply the analytical framework set out in court rules governing civil actions, see R. 4:37-2(b), and to dismiss the PBA's petition on the grounds that the PBA's offer could not be justified under the statutory criteria.

The arbitrator concluded that granting the County's motion would undermine the aim of the interest arbitration process: to provide for an expeditious, binding, and effective means for resolving labor disputes. He reasoned that the statute requires

an analysis of the evidence and criteria in the final award, not during the hearings, and that it contemplates that both parties will have the right to have all unresolved issues decided so that they will have a contract. He added:

Both parties have the right to have their evidence considered no matter how clear it may appear at [the] end of its case that its final offer is unlikely to be granted. In a conventional arbitration proceeding, it is the arbitrator's responsibility to weigh the evidence and fashion an award. In a conventional arbitration proceeding, arbitrators do not normally grant either party's final offer on economic issues. The evidence in the record must support the terms of the conventional arbitration award - not the final offer submitted by the PBA or the Employer. [T129-T133]

The arbitrator also found no basis to rule the PBA's submission inadequate.

We affirm the arbitrator's ruling and accept his analysis. Interest arbitration is an extension of the negotiations process, City of Clifton, P.E.R.C. 2002-56, 28 NJPER 201 (¶33071 2002), and throughout formal arbitration proceedings the arbitrator may continue to mediate and assist the parties in reaching a mutually agreeable settlement. N.J.S.A. 34:13A-16f(3).<sup>2/</sup> Absent such an agreement, the filing of an interest arbitration petition

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2/ There is a significant trend towards interest arbitrators assisting parties in reaching voluntary settlements rather than issuing formal awards. See Biennial Report of the Public Employment Relations Commission on the Police and Fire Public Interest Arbitration Reform Act, p.2 (January 2004). In addition, parties are invoking the interest arbitration process less frequently than before the Reform Act. Ibid.

initiates a compulsory impasse procedure that entitles the parties to a final and binding award. Thus, interest arbitration is a labor relations process, not a civil action, and we do not believe that the Legislature intended that the process could be terminated by a motion to dismiss for insufficient evidence - or that it could proceed based only on the evaluation of one party's evidence.

A different result is not warranted by our interest arbitration decisions, cited by the County, stating that a party proposing a change bears the burden of justifying it. First, that principle applies to an arbitrator's analysis of the evidence in rendering an award. See Teaneck Tp., P.E.R.C. No. 2000-33, 25 NJPER 450, 455 (¶30199 1999), aff'd in part, rev'd and remanded in part on other grounds, 353 N.J. Super. 289 (App. Div. 2002), aff'd o.b. 177 N.J. 560 (2003). It is not appropriately applied to dismiss an interest arbitration petition, given that an arbitrator may ask for additional information if he or she believes a party's presentation is insufficient. PBA Local 207 v. Bor. of Hillsdale, 137 N.J. 71, 82 (1994). Second, the "burden" principle was articulated in cases where one of the parties had proposed work schedule or health benefits changes and the other party sought to maintain the status quo on that issue. See Union Cty., P.E.R.C. 2003-87, 29 NJPER 250 (¶75 2003); Clifton; Teaneck. The burden concept does not apply where, as here, both parties have salary

proposals; neither party seeks a continuation of the pre-award salary guide; and the award must contain a salary ruling.

For these reasons, we find no basis to disturb the arbitrator's ruling. Accordingly, we turn to the County's challenge to the award. In the course of so doing, we will consider the County's evidentiary objections to some of the PBA's submissions.

The standard for reviewing interest arbitration awards is now established, and was recently affirmed by the Supreme Court. 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. 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 a salary award is not a precise mathematical process. Given that the statute sets forth general criteria rather than a formula, the setting of wage figures necessarily involves judgment and discretion and an arbitrator will rarely be able to demonstrate that an award is the only "correct" one.



Borough of Lodi, P.E.R.C. No. 99-28, 24 NJPER 466 (¶29214 1998); Borough of Allendale, P.E.R.C. No. 98-123, 24 NJPER 216 (¶29103 1998). Some of the evidence may be conflicting and an arbitrator's award is not necessarily flawed because some pieces of evidence, standing alone, might point to a different result. Lodi. Therefore, within the parameters of our review standard, we will defer to the arbitrator's judgment, discretion, and labor relations expertise. City of Newark, P.E.R.C. No. 99-97, 25 NJPER 242 (¶30103 1999). However, an arbitrator must provide a reasoned explanation for an award and state what statutory factors he or she considered most important, explain why they were given significant weight, and explain how other evidence or factors were weighed and considered in arriving at the final award. N.J.S.A. 34:13A-16g; N.J.A.C. 19:16-5.9; Lodi. Once an arbitrator has provided a reasoned explanation for an award, an objection will not be entertained unless an appellant offers a particularized challenge to the arbitrator's analysis and conclusions. Cherry Hill; Lodi; Newark.

#### **Overview of Arbitration Proceeding**

The parties' salary proposals were the major focus of the proceeding and their arguments and evidence centered on the nature of sheriff's officers' duties; comparability issues - including the alleged internal settlement pattern - and the County's fiscal situation.

With respect to unit members' duties, the PBA stressed the range and potentially dangerous nature of assignments; asserted that the sheriff's officers were comparable to municipal police officers; and contended that the unit had the lowest salary of any comparable law enforcement agency - a group it defined as municipal police departments in Essex County and sheriff's officers in five other counties. It stated that its offer was intended to keep the unit from falling farther behind, and that true equity could not be achieved without far higher increases and an award of the longevity benefit that most police officers enjoy. With respect to the internal settlements, the PBA maintained that they were distinguishable from the offer to this unit and further, that sheriff's officers were not County employees and were instead appointed by the County Sheriff, an independent constitutional officer.

By contrast, the County contended that while sheriff's officers were law enforcement personnel, their work was distinct from that of municipal police officers. In terms of external comparisons, the County maintained that the sheriff's officers were most appropriately compared to sheriff's officers in other counties. It asserted that unit members were the third-highest paid sheriff's officers in the State; had the second-highest salary among Essex County law enforcement units - e.g., corrections officers, prosecutor's investigators, and County police - and had a far higher salary than non-law enforcement

County employees. It stressed that the unit had not suffered the layoffs experienced by other County units and many private sector employees. The County urged that award of its offer was required in light of what it maintained was a settlement pattern with nine negotiations units comprising one-third of its employees.<sup>3/</sup> It also urged that an award of its offer was compelled by its severe fiscal problems.

In that vein, the County emphasized that its bond rating was the lowest of any New Jersey county and reflected concern by bond rating agencies with its structural deficit; reliance on one-shot revenues; extremely low fund balance; and a \$20 million deficit for calendar year 2002, which forced it to issue tax anticipation notes. The County noted that it had implemented a \$14.2 million tax increase in 2003, the second highest in County history, which in turn had triggered interest by four municipalities in seceding from the County. It pointed to increased future expenses, including the reinstitution of the employer's share of pension contributions, beginning in 2004. It maintained that if its revenue-producing initiatives did not materialize, it would be compelled to reduce all executive agency budgets by 10%, including the Sheriff's office.

While the PBA acknowledged that the County was not wealthy, it maintained that it was strong, growing and in improving fiscal

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<sup>3/</sup> On appeal, the County states that there are 20 other negotiations units, including eight law enforcement units.

condition. It highlighted that the County had not used all of its CAP flexibility in 2001 and 2003, and asserted that the Sheriff had access to monies from two law enforcement trust funds that were not part of the County's operating budget. It contended that the growth of the Sheriff's office budget since the 1990s - a point highlighted by the County - was in part attributable to the department's absorption of the County police and a two-person emergency management unit (T383). It also maintained that the 2002 deficit occurred because three transactions did not close at the end of 2002, as anticipated. However, those transactions were completed in early 2003 and the tax anticipation notes were paid off by the time of the arbitration hearing.

#### **Summary of Arbitrator's Award**

Against this backdrop, the arbitrator stressed that the public interest was an essential factor in arriving at an award and that neither the County's offer nor the PBA's offer was justified under this criterion. He found that awarding of the PBA's offer would undermine the County's efforts to regain its financial health, while awarding of the County's proposal would seriously reduce the salary base of sheriff's officers and erode their real earnings in future years. The arbitrator reasoned that the public interest required him to balance two interests: the need to provide fundamental fairness to employees who deliver services and the interest of the taxpaying public in the cost-

effective delivery of an appropriate level of services (Arbitrator's award, pp. 111-112).

The arbitrator concluded that the award's delayed increases in 2002, 2003 and 2004 would result in reduced annual salary costs that, while somewhat higher than the County's proposed costs, were significantly less than the costs of comparable salary increases received by other sheriff's officers, other law enforcement officers, and other public and private sector employees generally. The arbitrator gave considerable weight to the financial impact criterion; quoted extensively from the assessment of the County by Moody's Investor's Service; and found that Paul Hopkins, the County Treasurer, had testified convincingly as to the need for strict financial planning. The arbitrator explained that the deferred salary increases for the first three years of the agreement limited the County's retroactive obligations and he concluded that the net annual economic changes for each year of the agreement were reasonable. He determined that the award would have a minimal financial impact on the governing unit, its residents and taxpayers and would not conflict with the County's lawful authority (Arbitrator's award, pp. 112, 136-140).

The arbitrator concluded that the statutory factors as a whole supported increases well above the average annual 1.75% base salary increases proposed by the County and well below the more than 5% annual increases proposed by the PBA. He agreed

with the County that the job of a sheriff's officer was not comparable to that of a municipal police officer for maximum salary purposes and found that comparison with sheriff's officers in other counties was the most relevant subfactor under N.J.S.A. 34:13A-16g(2)(c). He considered the internal settlements but, as we detail later, declined to give them controlling weight (Arbitrator's award, pp. 115; 121-124).

In arriving at percentage salary increases, he noted that for 2002 through 2005, sheriff's officers statewide received average annual increases ranging from 4% to 4.23%, figures that did not include the much higher increases received by sheriff's officers in Passaic, Monmouth and Burlington counties due to circumstances unique to those locales. He cited our statistics for public safety officers statewide, which showed that settlements averaged increases of 4.05% and 4.01% for 2002 and 2003; awards averaged increases of 3.83% and 3.82% for the same years; and data as of August 1, 2004 had shown somewhat higher increases for both settlements and awards. He took notice of private sector wage figures showing increases of between 3% and 3.6% for 2002 through 2004 and referred to data showing that New Jersey public employees averaged 3% increases in 2000 (Arbitrator's award, pp. 125-127).

The arbitrator also evaluated actual salaries in conducting his comparability analysis. See Fox v. Morris Cty. PBA, 266 N.J. Super. 501, 518 (App. Div. 1993), certif. denied 137 N.J. 311

(1994) (statute contemplates a discussion of actual dollar figures). He noted that the maximum salary for unit members in 2001 was \$59,238 - the sixth highest among the counties but \$1,608 less than the average sheriff's officer salary in the top ten counties. He calculated that the average 2005 salary for officers in this top ten grouping would be \$71,793 whereas, if the County's offer were awarded, unit members would receive a top salary of \$63,480 and their "relative standing" would drop to tenth. By contrast, he reasoned that with the awarded increases the 2005 maximum salary would be \$68,635; the unit would maintain its overall compensation package and relative ranking (although dropping from 6 to 7); and the Sheriff would be able to continue to attract and retain officers (Arbitrator's award, pp. 129-132). We describe the arbitrator's analysis of the cost of living, overall compensation and other criteria in addressing the County's challenges.

The County contends that the arbitrator simply awarded the "going rate" for other law enforcement officers; did not accord due weight to the public interest and the County's financial circumstances; and mistakenly focused on maintaining the high morale of unit members as a component of the public interest. It asserts that the arbitrator did not address how the County would pay for increases above its final offer and contends that the award contravenes the decisions in Hillsdale and Washington Tp. v. New Jersey PBA Local 206, 137 N.J. 88 (1994), as well as the

Reform Act's directive that the public interest and the taxpayers' interests be given paramount importance. The PBA counters that the County fundamentally misperceives interest arbitration when it asserts that an award conflicts with the public interest if it exceeds an employer's budget.

We conclude that the arbitrator duly considered the County's financial arguments; reached a reasonable determination of the issues; and issued an award supported by substantial credible evidence. We detail the considerations that underpin this conclusion. We start with these observations about the Reform Act.

The Reform Act reflects the Legislature's intent that arbitrators focus on the full range of statutory factors - not just public safety salaries in surrounding jurisdictions or the governing body's ability to pay the other party's offer.

Hillsdale, 137 N.J. at 85-86; Washington Tp., 137 N.J. at 82; Fox v. Morris Cty., 266 N.J. Super. at 516-517; Cherry Hill.

Accordingly, the Act expressly requires the arbitrator to indicate which of the statutory factors are deemed relevant, satisfactorily explain why the others are not relevant, and analyze each relevant factor. N.J.S.A. 34:13A-16g; Cherry Hill.

It also expressly requires the arbitrator to consider the limitations imposed on the employer by the CAP law. Cf. New Jersey State PBA, Local 29 v. Irvington, 80 N.J. 271, 293 (1979) (inferring that obligation under predecessor statute). However,



while the Act directs that "due weight" be given to the taxpayers' interests, it does not automatically equate the employer's offer with the public interest. Middlesex Cty., P.E.R.C. No. 98-46, 23 NJPER 595 (¶28293 1997). The Legislature also recognized "the unique and essential" duties of law enforcement officers and found that an effective interest arbitration process was requisite to maintaining their "high morale," thereby ensuring the efficient operation of public safety departments and the protection of the public. N.J.S.A. 34:13A-14. Accordingly, arbitrators have viewed the public interest as encompassing the need for both fiscal responsibility and the compensation package required to maintain an effective public safety department with high morale. We have affirmed that analysis. Teaneck. 25 NJPER at 459.

We also reiterate that the Reform Act does not specify a formula for arriving at an award. Lodi; Allendale. The Legislature rejected proposals that would have amended the predecessor statute to limit increases to the statutory CAP rate, or otherwise set a numerical standard for arriving at an award.<sup>4/</sup>

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<sup>4/</sup> For example, Assembly Bill No. 336 (1992) would have limited awards to 5% or the index rate, whichever was less. Also, the recommendations included in Governor Whitman's conditional veto of Senate Bill No. 1144 (1995), would have required the arbitrator to make a preliminary determination as to the contract amount that the governmental entity could afford. The recommendations would also have provided specific direction as to the final award, depending on whether the offer of one, both, or neither of the parties was within the "range of fiscal prudence." The

(continued...)

Instead, the Legislature directed that disputes be resolved by conventional arbitration, thereby vesting arbitrators with the responsibility and discretion to weigh the evidence and fashion an award.

In exercising that discretion, an arbitrator unquestionably must take into account financial constraints and budget caps, and determine that the net annual economic changes for each year of the agreement are reasonable. Hillsdale, 137 N.J. at 86; N.J.S.A. 34:13A-16d(2). However, the CAP law is only one of many factors an arbitrator must consider. Cf. Irvington, 81 N.J. at 296 (holding that an award that exceeded the CAP rate was reasonable, even though it would force the municipality to effect economies). Moreover, in enacting both the interest arbitration law and local finance statutes, we believe the Legislature understood that negotiations and interest arbitration would require public officials to consider and plan for settlements and awards that might require budget adjustments. A New Jersey textbook for municipal finance managers states as follows:

Demands for improved wages and benefits will not always coincide with adopted budgets. Difficulties are often experienced in meeting statutory deadlines. Retroactivity of contract provisions may create financing problems. Finance officers have to develop flexible budget timetables, provide for operating reserve funds or contingencies, and make supplemental appropriations (with

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4/ (...continued)  
recommendations were not adopted and the Reform Act was enacted less than one month later.

governing body approval) in order to finance increased salaries and benefits. [Robert Benecke, Municipal Finance Administration in New Jersey, I-18 (July 2004), prepared for Rutgers, The State Univ. of New Jersey, Center for Government Services]<sup>5/</sup>

In sum, an arbitrator must consider the financial evidence and explain how he or she weighed the financial impact and lawful authority criteria, along with the other factors deemed relevant. However, the Reform Act does not require an arbitrator to award the amount the employer has budgeted. Middlesex. Further, an arbitrator does not have the statutory responsibility or the legal authority to direct an employer as to how to finance or comply with an award. See Irvington, 81 N.J. at 296 (in formulating how to pay for an award, municipal officials must determine whether appropriations for non-payroll costs should be reduced or whether and to what extent, public safety or other personnel should be laid off).

Within this framework, we find that the arbitrator carefully 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. We find no grounds to disturb his conclusions about the financial evidence or the internal settlements, the primary focus of the County's

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<sup>5/</sup> This publication is the text for the Center's "Municipal Finance Administration" course, one of the requirements for obtaining a municipal finance officer certification. See [www.policy.rutgers.edu/cgs/finance.php](http://www.policy.rutgers.edu/cgs/finance.php)

objections. We turn first to the County's challenges to the arbitrator's financial impact and lawful authority analysis.

N.J.S.A. 34:13A-16g(5) and (6).

#### **Financial Impact of Award and Lawful Authority**

The arbitrator gave considerable weight to the financial factors the County highlighted and, in light of those factors, deferred the effective date of the 2002, 2003 and 2004 increases. He also awarded rate increases for 2002 and 2003 that were lower than those proposed by the PBA or those included in public safety settlements and awards statewide.

The linchpin of the arbitrator's analysis was that while the County had both long and short-term financial concerns, those concerns were more severe in 2002 and 2003, the first years of the award, and would be ameliorated somewhat by 2004 and 2005, the final two years of the award. Substantial evidence supports that conclusion including, in particular, the Moody's analysis quoted extensively by the arbitrator.

While the County stresses that it had to issue tax anticipation notes to cover a deficit in 2002, those notes were paid off in 2003 after the consummation of financial transactions that had been expected to close in 2002. Hopkins testified that a new County Executive took office in January 2003 and Moody's noted approvingly the County's "new commitment" to fiscal health (Aa369).

In that vein, Hopkins explained that, shortly after the new administration took office, officials met with representatives from the bond rating agencies who, among other things, expressed frustration at the prior executive's refusal to raise taxes during the past eight years (T261-T263).<sup>6/</sup> The new administration took that step and Moody's analysis of the County's "fiscal 2004 and 2005 budgetary pressures" led it to conclude that the tax increase, together with a bond restructuring, savings from the opening of a new county jail, and continued vigilance on the expenditure side, "should enable the county to return to near structural balance." The assessment also stated that a pension refunding bond issue would provide the County with \$2.5 million in expenditure relief in 2003. A 2003 newspaper article submitted by the County quoted Hopkins as stating that, with continued vigilance, the fund balance would "at the very least" double in three years (Aa368; Aa431).

With respect to the County's overall financial status, Moody's noted such items as the County's low fund balance, low bond rating, and the tax anticipation notes issued in 2002. However, it also highlighted the County's substantial and diverse tax base of \$51 billion - the fifth largest in the State; its moderate debt burden; and its wealthy suburbs. The 2002 financial audit showed that property valuations had increased

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<sup>6/</sup> The only increases implemented were those initiated by the Board of Freeholders (T261-T263).

each year from 1998 through 2002 and that the tax rate had declined each year during that period.<sup>7/</sup> Hopkins certified that property taxes accounted for 53.5% of County revenues, a lower percentage than all but two other counties (Aa243; Aa1246).

Given these positive financial indicators, the arbitrator reasonably viewed the County as an entity that was moving towards fiscal stability. However, he did not disregard the County's financial problems and did not award the union's offer based on the County's alleged ability to pay it. Contrast Hillsdale. Nor did he simply award the average increases included in public safety settlements and awards. Instead, based on financial and other factors, he awarded what he found to be lower than average increases. Thus, out of an annual budget of approximately \$570 million, or more than \$2.2 billion over the contract term, the award for 358 officers exceeded the County's offer by: \$506,755 for 2002 and 2003 combined; \$1,451,491 in 2004; and \$1,721,823 in 2005.<sup>8/</sup> The arbitrator structured the award to limit the

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<sup>7/</sup> The record does not indicate the impact of the 2003 tax increase on the County's tax rate.

<sup>8/</sup> These figures indicate the cumulative differences between the County's offer and the award. Further, the figure for 2002 and 2003 reflects the County's calculations and assumes that the 3% bonus effective July 1, 2002 amounts to \$296,781. By contrast, the arbitrator reasonably interpreted the County's final offer as 3% of the total annual payroll figure, or \$593,563, payable on July 1, 2002. This calculation issue does not require a remand given that the arbitrator accurately calculated the cost of the award. In this vein, while the County at one point contends that the arbitrator overstated the cost of his award for 2002 and  
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County's retroactive obligations, and awarded its prescription co-pay proposal to offset a portion of the 2004 and 2005 salary award. Hopkins estimated that the prescription drug proposal, if implemented for all County units, would save the County \$1 million per year. By contrast, the PBA's proposal would have exceeded the County's offer by: \$1.4 million in 2002; almost \$1.35 million in 2003; \$2.6 million in 2004; and \$3.15 million in 2005 (Arbitrator's award, p. 135).

The County contends that the same data that it highlighted in arguing against the award of the PBA's offer - e.g., the 2002 deficit, low fund balance, and low bond rating - also weigh against affirming the award. However, we are satisfied that the arbitrator gave due weight to these factors, as well as more positive financial markers, in arriving at his award. While the County objects to the arbitrator's analysis of such matters as its CAP situation and tax rate, it has not shown that the evidence on these points either compelled the award of its own offer or rendered the award unreasonable.

For example, the County maintains that the arbitrator did not analyze the CAP law; did not address the July 1, 2004

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8/ (...continued)  
2003, at another point it seems to concede that his figure of \$1,397,099 is correct. We are satisfied that it is. It represents the cost of the deferred 2002 increase (\$346,245), the recurring cost of that increase in 2003 (\$692,490), and the cost of the deferred 2003 increase (\$358,364). Moreover, even if the arbitrator had overstated the costs of his award, such an error in its favor would not prejudice the County or justify a reversal or remand.

amendments to that statute; and assumed that because the County had not exceeded its CAP, it did not have budgetary problems. With respect to the latter point, the arbitrator found that the award would not require the County to exceed its statutory spending limitations, but he also separately analyzed the parties' evidence concerning the County's overall fiscal situation (Arbitrator's award, pp. 135-140). He did not equate lack of a CAP problem with fiscal health.

Turning to the substance of the arbitrator's CAP analysis, we note that the arbitrator cited Hopkins' testimony that there was no CAP problem in 2003 (T396), and commented that the County's arguments with respect to the CAP centered on its inability to fund the PBA's offer (Arbitrator's award, p. 135). On appeal, the County does not state what further evidence the arbitrator should have considered or explain how the terms of the award would create a CAP problem. We add that at the hearing, Hopkins stated that he had not done the 2004 CAP calculation and the appellate record includes no information on the County's 2004 budget cap situation.

Nor has the County shown that the July 1, 2004 amendments to the statute - enacted two months before the award was issued - require a remand. These amendments limit the amount by which a county tax levy may be increased each year to the lesser of 2.5% or a bi-annually established "cost of living adjustment" (CLA). N.J.S.A. 40A:4-45.1a; N.J.S.A. 40A:4-45.2. Prior to July 1, the



cap was the lesser of 5% or the CLA (then termed the "index rate"). For 2004, the index rate was 2.5%.

Preliminarily, it does not appear that the County asked to supplement the record so that it could explain how the new legislation would affect the County. Thus, the arbitrator cannot be faulted for not addressing an issue that was not raised to him. In any case, the amendments take effect for budget years beginning on or after July 1, 2004, and thus first pertain to the County's budget for calendar year 2005, the last year of the award. In terms of the increase in salary costs from 2004 to 2005, the County proposed split increases for 2005 totaling 4% and effective January 1 and July 1 while the arbitrator awarded a 4% increase effective January 1. The County has not shown either that the difference in cost between its proposal and award, or the CAP law changes, will impede its ability to fund the award within its legal authority. Compare Irvington, 80 N.J. at 282 (CAP law pertains to the budget as a whole; individual components may be increased by more than the CAP rate). Indeed, Hopkins stated that the County was unable to raise taxes to the pre-2004 maximum CAP rate of 5% (Aa244) and, for 2003, the County used only 2% of the available 5% (Arbitrator's award, p. 45).

The County also objects that the arbitrator did not specify the effect of the award on the County's tax rate or on residents at various income levels. N.J.S.A. 34:13A-16g(6) requires an arbitrator to consider the impact of an award on such items "to

the extent that evidence is introduced."<sup>9/</sup> Middlesex. Before the arbitrator, the County maintained that any offer higher than the County's would require the County to raise taxes. However, it did not offer any projections as to how various levels of potential awards would affect either the tax rate or particular categories of residents. Absent such projections, the arbitrator was not required to specify the effect his award would have on the tax rate or various income levels. Middlesex.

Similarly, the County maintains that the arbitrator erred by not considering the impact of his award on the 20 other County negotiations units that have not reached an agreement, including eight law enforcement units. The County does not point to evidence or arguments that the arbitrator did not consider in this vein and it appears that, before the arbitrator, the County primarily focused on the number of units that had already settled, as opposed to the number of units still working under expired contracts. Absent particularized arguments and evidence concerning the payroll costs of other units, the arbitrator could not have meaningfully weighed how the award would affect other units, even were he to assume that they would receive the same

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<sup>9/</sup> This statutory language reflects the Supreme Court's decision, which held that an arbitrator need not require the production of evidence on each factor. The Supreme Court rejected the Appellate Division's contrary holding, 137 N.J. at 84, and reasoned that the lower court's mandate would have undermined the purpose of interest arbitration as an expeditious means of resolving contract negotiations. Ibid.

increases in settlements or interest arbitration. Middlesex. Accordingly, the County's argument in this vein provides no grounds to disturb the award.

In addition, the County contends that the arbitrator did not consider such circumstances as the County's renewed pension costs; the increased number of pay periods in 2004; potential cuts in Medicaid and Medicare reimbursements to County facilities; the possibility that several wealthy municipalities could try to secede from the County; and the County's potential obligation to take over the City of Newark's general assistance welfare program. These items were described in Hopkins' certification and testimony. We are satisfied that the arbitrator gave some weight to them, given that he found Hopkins' testimony "convincing" as to the need for strict financial planning and issued an award that cost considerably less than the PBA's proposal. However, the County has not explained why these factors require us to disturb the award, given the positive financial indicia we have reviewed and the non-financial evidence, discussed later, that the arbitrator found weighed in favor of an award above the County's offer.

In any case, the foregoing eventualities are, except for the pension obligation, speculative. Hopkins explained that the process for municipalities trying to secede from a County was not clear and that they might be required to assume a portion of the County's debt (T294-T295). A County exhibit indicates that the

State reimburses counties for every general assistance client served, whereas municipalities are not similarly reimbursed (Aa416-Aa417). The Medicaid and Medicare cuts described would take effect only if the County does not correct deficiencies in its facilities (Aa247).

Finally, the County maintains that it does not have the funds to pay the award, particularly the retroactive costs. It objects that the arbitrator did not explain how it could fund the retroactive payments required by the award without using its minuscule fund balance, especially since 2002 and 2003 have elapsed and it does not have cash on hand to pay the increases.

With respect to the increases for 2004 and 2005, the August 2004 award gave the County some time to make adjustments to the 2004 budget to implement the 2004 increases and to plan for those in 2005 - a year in which the County had proposed an increase close to that awarded.<sup>10/</sup> While the County's arguments center on its resources in 2002, particularly its low fund balance, the record shows that financial analysts expected that, by 2004 and 2005, the County's finances would improve.

With respect to the retroactive payments for 2002 and 2003 and part of 2004, an employer must plan for potential retroactive

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<sup>10/</sup> Transfers between appropriations are permitted during the last two months of the fiscal year and during the first three months of the succeeding year. Benecke, Municipal Finance Administration, III-28.

payments under an interest arbitration award, just as it must anticipate other potential expenses in the budget planning process. This is particularly so given that it would have had an obligation to pay negotiated salary increases that might have been agreed to earlier. North Hudson Reg. Fire & Rescue, P.E.R.C. No. 2004-17, 29 NJPER 428 (¶146 2003). The County's own offer would have cost \$890,344 in new money in the first two years and the County has not given us a particularized description of how it intended to fund it. Without such a context, the County has not shown that the retroactive payments ordered by the arbitrator are per se unreasonable, particularly since, in light of the County's financial arguments, the arbitrator awarded below average deferred increases for 2002 and 2003.

Moreover, while it is not our role or that of the arbitrator to direct an entity as to how to fund an award, Irvington, we stress that because settlements and awards do not always coincide with adopted budgets, the planning process for salary increases includes budgeting for reserves and contingencies within the current operating fund. Benecke, Municipal Finance Administration, at I-18. An employer has an obligation to use such standard budget practices and to anticipate that the interest arbitration statute might result in an award above its offer.

Finally, while the arbitrator recognized and gave weight to the County's low fund balance during 2002 and 2003, the arbitrator reasonably concluded, based on the testimony and budget documents before him, that the County had some flexibility within its annual budget of approximately \$570 million to fund an award approximately \$500,000 above its offer for those years. He also reasonably concluded that the County had the flexibility to fund the 2004 increase. The record shows that, in addition to the current operating fund, the County has numerous other funds and accounts that, consistent with accepted budget practices, could be used either as a direct source of funds for retroactive or current year salary increases or as a resource for non-salary expenses, thereby allowing other monies to be used for salaries. In that vein, Hopkins acknowledged that the Sheriff could draw on the law enforcement trust funds for non-recurring expenses (T382). See also Benecke, Municipal Finance Administration at V-3 (many local governments depend on investment income to support the budget).

For these reasons, the arbitrator reasonably concluded that the County had the capability to fund an award above its offer for 2002 and 2003, as well as for 2004 and 2005. And while this circumstance does not automatically entitle this unit to draw on those resources, we find that the awarded increases are supported by the record and by the arbitrator's analysis of the non-

financial statutory criteria. We turn next to the County's challenge to that analysis.

**Arbitrator's Analysis of Comparability, Overall Compensation, Cost of Living, and Continuity and Stability of Employment**

The rationale underlying the awarded increases was that they would accommodate the County's financial situation while also providing officers with reasonable, but lower than average, salary increases over the four-year contract term, thereby maintaining the current high morale in the Sheriff's office (Arbitrator's award, p. 113). In reaching this conclusion, we are satisfied the arbitrator gave due weight to the comparability, overall compensation, cost of living and continuity and stability of employment criteria and that the County has shown no basis to disturb the arbitrator's discretionary judgment in arriving at the increases he did after considering all of the statutory factors and the evidence presented.

We start with the County's contention that, in considering the internal settlements, the arbitrator did not adhere to our decisions in Union Cty., P.E.R.C. No. 2003-33, 28 NJPER 459 (¶33169 2002) and Union Cty., P.E.R.C. No. 2003-87, 29 NJPER 250 (¶75 2003).

The arbitrator acknowledged the importance of maintaining an established pattern of settlement and stated that such a pattern promotes harmonious labor relations, provides uniformity of

benefits, maintains high morale, and fosters consistency in negotiations. While the arbitrator considered the County's settlements with nine of its 29 negotiations units, he declined to give the settlements controlling weight.<sup>11/</sup> He reasoned that even if the settlements constituted a pattern among those units, the County's offer would result in lower increases than those received by sheriff's officers and public safety employees statewide and by employees in public and private employment in general. He also observed that none of the settlements involved any of the eight other County law enforcement units. In addition, he commented that he would have given greater weight to the County's offer if awards or settlements involving the County's law enforcement units had included the same terms (Arbitrator's award, pp. 128-129; 134-135).

The arbitrator's analysis comports with the Reform Act and our case law, including Union Cty.

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<sup>11/</sup> The arbitrator made no finding concerning the PBA's contention that the County's pattern argument was flawed because some of the settlements cost more than the County claimed. However, the arbitrator did properly find that any pattern did not encompass one of the nine units cited, the 130-member assistant prosecutors' unit. As the arbitrator noted, for that unit the record included an agreement for 2002 and 2003 only. (Arbitrator's award, p. 133). Thus, the County did not show that the assistant prosecutors were subject to the pattern for either 2004 - where the other settlements included a 0% increase - or 2005. We add that the terms of the assistant prosecutors' agreement are also different for 2002. The assistant prosecutors received a 3% increase in base salary effective July 1, 2002, instead of the 3% bonus outside of base included in the other settlements (Aa604).



As contemplated by that decision, the arbitrator recognized that, in appropriate cases, arbitral adherence to settlement patterns fosters labor relations stability and encourages future settlements. However, Union Cty. did not require that an arbitrator follow internal settlements in all instances. Instead, it underscored that the arbitrator should specify the reasons for adhering or not adhering to a pattern and should consider the impact of deviating from a pattern on the continuity and stability of employment. P.E.R.C. No. 2003-33, 28 NJPER at 461-462. The arbitrator followed these principles when he concluded that the settlements were out of line with all of the other comparability data submitted and that award of the County's offer would erode officers' real earnings and undermine the continuity and stability of employment by impairing the County's ability to attract and retain sheriff's officers (Arbitrator's award, pp. 128, 134).

Moreover, the arbitrator did not err in stating that he would have given more weight to the internal settlements if they had also involved law enforcement units. Union Cty. did not address the distinction between settlements involving uniformed units vis-a-vis those involving non-uniformed employees, given that the alleged pattern in that case involved both types of units - as well as a majority of the County's employees. 28 NJPER at 460-461. However, interest arbitrators have traditionally found that internal settlements involving other

uniformed employees are of special significance, a position set forth in one of the awards cited by the County, where the arbitrator, in arriving at an award for a police unit, gave significant weight to a fire settlement. He reasoned that there is often a direct relationship between police and fire negotiations and found that a settlement with a white collar unit did not provide as meaningful a comparison.

This arbitrator's comment that pattern bargaining is most appropriate among units with a common relationship - e.g., rank and file and superior units; police and fire units; and multiple county public safety units - reflects the common arbitral view that settlements are of particular significance when they involve units that traditionally have been aligned for negotiations purposes (Arbitrator's award, p. 133). See Anderson, Krause and Denaco, Public Sector Interest Arbitration and Fact Finding: Standards and Procedures, 48.05[2], contained in Bornstein and Gosline, Ed., Labor and Employment Arbitration (Matthew Bender 1999) (in assessing comparability, one of the most common factors considered by arbitrators is the relationship between police and firefighters). Since interest arbitration is an extension of the negotiations process, Clifton, the arbitrator's articulation of this approach provides no basis to disturb the award. In addition, we note that interest arbitrators have also considered that public safety settlements reflect the parties' own

distillation of the statutory factors. That analysis is also consistent with the arbitral view that public safety settlements are particularly significant.

In a similar vein, the award is not undermined by the arbitrator's comment that, in an extreme case, interest arbitration would be rendered meaningless if it required the imposition of very low wage increases that were agreed to with units that did not have the right to have those terms evaluated against statutory standards. The Reform Act requires an analysis of a range of statutory factors and expressly mandates comparisons with other County employees eligible for interest arbitration - e.g., "employees performing the same or similar services" in the same jurisdiction. N.J.S.A. 34:13A-16g(2) and g(2)c). These components of N.J.S.A. 34:13A-16g(2) would be read out of the statute if the interest arbitrator were necessarily compelled to follow settlements involving only non-uniformed employees - especially if, as here, those settlements pertained to at most one-third of the jurisdiction's employees and only eight out of its 20 civilian units.

At the same time, we stress that we would not endorse an analysis that automatically disregarded internal settlements because they had not been tested in interest arbitration or did not involve public safety units. That approach would negate the requirement to compare employees involved in the proceeding with

"other employees generally" in the same jurisdiction, see N.J.S.A. 34:13A-16g(2) and g(2)c; and, to the extent it emphasized interest arbitration awards, would also run counter to the overall importance of settlements in labor relations. In this case, however, the arbitrator did consider the settlements and did not automatically discount them. Indeed, he awarded the prescription drug component of that pattern.

Finally, the arbitrator was not required by Union Cty. to make more extensive findings about the settlements in the eight units. In Union Cty., the arbitrator had stated that internal settlements covering a majority of County employees were "supportive but not persuasive" and it was unclear whether he had decided not to follow a settlement pattern or whether he had concluded, as the union had urged, that the settlements were different from the offer to the corrections officers' unit. Therefore, we asked the arbitrator to make findings as to whether the settlements differed from the offer to the corrections unit; the significance of any differences; and whether in fact there was a pattern. However, the essence of our Union Cty. decisions was that an arbitrator should carefully consider evidence and arguments concerning internal settlements and explain the reasons for adhering or not adhering to any alleged internal settlement pattern. We add now that Union Cty.'s requirement pertains whether or not an alleged settlement pattern involves other

uniformed units. While an arbitrator may articulate the view that internal settlements are of special significance if they involve other public safety units, he or she must carefully weigh the terms of any civilian settlements and may not presume that they should not be extended to public safety units.

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

Within this framework, we find that the arbitrator complied with his obligations under Union Cty. The arbitrator in this case reasonably found that the assistant prosecutors' unit should not be considered part of the pattern of civilian settlements, but also reasonably assumed for purposes of analysis that a

pattern did exist in eight other units of civilian employees and did cover the four contract years in question. Given this finding and assumption, the arbitrator then reasonably explained why, based on the record as a whole and his balancing of the statutory factors, he decided not to award the wage increases included in the pattern encompassing the eight units. He also explained the basis for awarding the prescription drug component of that pattern. Given these reasonable assumptions and explanations, no purpose would be served by remanding for more specific findings about the actual settlements and overall pattern in the eight units. For the reasons we have stated, we also conclude that there was no error in the arbitrator stating that he would have given the wage settlements stronger consideration if they had involved uniformed units.

The County also objects that the arbitrator did not properly consider the cost of living; the continuity and stability of employment; its private sector comparability evidence; data showing 0% increases in several public sector jurisdictions; and the overall compensation of unit members. It further contends that, given the financial status of the County and its residents, the arbitrator overemphasized the importance of maintaining the unit's relative standing and placed too much weight on the percentage increases received by municipal police officers. For

the reasons stated below, none of these challenges warrants disturbing the award.

With respect to the cost of living, the County does not point to any evidence that the arbitrator did not consider, but argues generally that the arbitrator did not state the weight he gave to this criterion. In analyzing the evidence on this factor, the arbitrator explained that the awarded increases would afford some increase in real earnings over the contract term but that, consistent with his financial analysis, would not match the rate of inflation in the award's first two years. Thus, he noted that the CPI was 2.6% for 2002 and 3.1% for 2003; stated that the 3.5% rate increases for those years were somewhat higher than these figures; but commented that the actual payout generated by the deferred increases was lower than the CPI statistics. He found that the CPI for the first half of 2004 was 4.3% but noted that most of that increase was attributable to a one-month surge. He found it unlikely that the CPI would continue to trend upward, and concluded that the awarded increases for 2004 and 2005 would probably slightly exceed the CPI, thereby resulting in an increase in unit members' real earnings (Arbitrator's award, p. 140-141). The arbitrator thus explained how the cost of living shaped and supported the award, Union Cty., P.E.R.C. No. 2003-33, and, accordingly, satisfied his obligation under N.J.S.A. 34:13A-16g(7).

Similarly, the arbitrator agreed with the County that the unit's overall compensation was competitive, thus rejecting the PBA's position that the unit's salary and benefit structure was "the lowest of all compared." Again, the arbitrator explained how his award was shaped by this criterion when he reasoned that the award would maintain the unit's overall compensation and would come close to maintaining its relative standing vis-a-vis other sheriff's officer units (Arbitrator's award, p.135).

The latter objective is an appropriate one. Relative standing is one of the concepts traditionally considered by arbitrators, N.J.S.A. 34:13A-16g(8) and, absent unusual circumstances, they aim not to significantly change it, given that a salary and benefit structure has been negotiated over time and with consideration to the overall compensation received by comparable units.

We will not second-guess the arbitrator's decision not to sharply decrease the unit's relative standing among other sheriff's officers units, particularly where that decision was intertwined with the arbitrator's conclusion, urged by the County, that sheriff's officers were not comparable to municipal police officers for purposes of maximum salary comparisons. While the County contends that the arbitrator placed too much weight on relative standing, that was not the only factor that drove his analysis. He considered the County's financial



problems; declined to award the increases the PBA sought; denied the PBA's proposals to add new benefits; awarded the prescription drug benefit adjustments sought by the County; and, in fact, slightly decreased the unit's relative standing vis-a-vis sheriff's officers in other counties.

Finally, while the County stresses that the per capita income of its residents is less than half the pre-award maximum salary for this unit, it does not state why this statistic should have been given particular prominence in considering overall compensation. As discussed earlier, the arbitrator gave due weight to the County's financial circumstances.

The arbitrator also fully considered various components of the County's comparability evidence, including three items it highlights on appeal. For example, the arbitrator noted this unit's high education allowance, but observed that it was unclear how many officers received it (Arbitrator's award, p. 132 n.15). He therefore reasoned that the allowance did not change the unit's ranking for maximum salary purposes. Similarly, the arbitrator noted that several multi-year interest arbitration awards and settlements had included 0% increases for some contract years before 2002. However, he reasoned that they did not justify awarding the County's offer, because the average annual increase in the awards and settlements were well above the 1.75% average annual base salary increase in the County's offer.

The County does not point to additional information in the record on these points, or offer particularized challenges to the arbitrator's analysis.

In evaluating private sector data, the arbitrator reasoned that a sheriff's officer is a uniquely public position and that there was no data that would allow him to compare unit members with "private employees performing the same or similar services." Accordingly, he gave that subfactor no weight and the County does not challenge that conclusion. While the arbitrator stated that the wages, hours, and working conditions of sheriff's officers could be compared to individuals in "private employment in general," he found that neither party had provided sufficient data to make such comparisons. Therefore, he took notice of the well-established BNA and Labor Relations Reporter statistics and we find no error in his doing so.

While the County contends it should have been offered the opportunity to comment on the data, it does not indicate what objections it would have made or suggest that these standard sources of labor relations data contain unreliable statistics. In a similar vein, we decline to disturb the arbitrator's judgment that the approximately 15 private-sector New Jersey settlements that the County cited were "anecdotal at best" (Arbitrator's award, p. 114). The County does not explain how

these settlements could provide insight into the average salary increases received by private sector employees in general.

We also find that the arbitrator did not err in his consideration of the percentage increases received by municipal police officers in the County. The arbitrator weighed this data along with that pertaining to the increases received by private and public sector employees in general, sheriff's officers, and all public safety employees statewide. While the County asserts that the arbitrator gave undue weight to the municipal increases, we find that the arbitrator considered them as one of several pieces of salary data that pointed to percentage increases above the County's offer and below the PBA's. This limited reliance on the municipal data is not inconsistent with his finding that the sheriff's officer position was distinct from that of a municipal police officer for purposes of comparing maximum salaries.

We are also satisfied that the arbitrator complied with the Reform Act when he concluded that his award would maintain the continuity and stability of employment for sheriff's officers and enable the Sheriff to continue to recruit and retain officers. The County objects that the arbitrator disregarded evidence of layoffs suffered by other County employees - and employees generally - as well as the unit's comprehensive compensation package and guaranteed pension benefit. The arbitrator acknowledged the County's arguments in this vein and agreed with

the County that the unit had stable employment and competitive compensation. He also found that it was not necessary to award the PBA's offer to maintain the unit's stability, but concluded that the County's offer would undermine it. While the County challenges this latter judgment as speculative, it was rooted in the arbitrator's concern that a sharp decrease in unit members' maximum salaries vis-a-vis other sheriff's officers could lead to turnover, which could ultimately prove more expensive to the County and result in a deterioration in services. That concern was grounded in part in the arbitrator's experience with another sheriff's officers unit, where comparatively low salaries led to officers leaving the department for municipal police forces (Arbitrator's award, pp. 141-142).

Given that arriving at a salary award is not a precise mathematical process, we will not disturb the arbitrator's labor relations judgment that his award would maintain continuity and stability of employment while an award of the County's offer could jeopardize it.

#### **Evidentiary Issues; Overtime Proposals**

The County urges that the arbitrator's treatment of several evidentiary points demonstrates that the arbitrator imperfectly executed his powers, and did not issue a mutual, final and definite award. N.J.S.A. 2A:24-8. It also challenges the arbitrator's denial of its overtime proposal.

For example, the County contends that the arbitrator erred in taking arbitral notice of a newspaper article describing a settlement for 2004 and 2005 involving the Essex County assistant prosecutors' unit, in which the increases agreed to were allegedly greater than those that the County proposed for this unit. The County argues that neither party presented evidence on the settlement and, therefore, it contends that the arbitrator improperly relied on the article to find that a settlement pattern did not exist.

We need not address the propriety of noticing the article, given that the arbitrator did not rely on it as comparability evidence to support the salary increases he awarded, but instead to support his point that the civilian settlement pattern did not encompass the assistant prosecutors' unit. That point was evident from the record, which included an agreement for that unit for 2002 and 2003 only.

With respect to the County's other evidentiary objections, we are not persuaded that the arbitrator should have found inadmissible the PBA's PowerPoint presentation and contracts. The Rules of Evidence are not strictly applied in arbitration proceedings. Fox, 266 N.J. Super. at 515 n.7. In any case, the PowerPoint presentation appears to have been designed to provide an overview of the diverse functions of the Sheriff's office, including some officers' surveillance and investigative duties,

and was thus relevant to the PBA's contention that unit members' maximum salaries should be compared to those of police officers. We need not resolve the County's objection that it was an improper outline of testimony, given that the arbitrator agreed with the County that unit members' maximum salaries should not be compared to those of municipal police officers. Cf. Cherry Hill, 23 NJPER at 290 (appellant should focus on deficiencies that resulted in those aspects of the award adverse to its position).

Finally, the County maintains that of the sixteen law enforcement contracts submitted by the PBA, most are irrelevant because they are from jurisdictions that are not comparable. Further, it contends that eight of the documents are unsigned and were not authenticated.

The County's relevance objections are unfounded. The various law enforcement contracts from the State, counties and municipalities were admissible for the purpose of allowing the arbitrator to evaluate the parties' competing comparability arguments. One of an arbitrator's tasks is to determine what jurisdictions or units are comparable. A final determination of comparability is not a condition of admissibility. With respect to the authentication issue, the County does not state which contracts are unsigned or contend that it has obtained official copies of the documents that indicate that the submissions were

inaccurate. In this posture, we find no basis to disturb the award.

Similarly, the County has not shown that the arbitrator's ruling on its overtime proposal warrants a remand. The County proposed the following:

At the request of the Sheriff the contract may be reopened to negotiate changes in the existing work schedule as required by operational need. Such negotiations may include weekend work as part of regularly scheduled work days and work schedules covering a fourteen day cycle with straight time and overtime as authorized by law. This provision shall not infringe or change the Sheriff's managerial prerogative regarding manpower, work schedules, staffing or manning. [Emphasis supplied]

The arbitrator denied the proposal. He reasoned that the County had not proposed specific work schedule changes and that there was no basis to permit the reopening of a 2002-2005 contract that would, at the time of the award, expire in less than eighteen months.

The County objects that it presented testimony that the opening of the new county jail might require steady shifts or other work schedule changes and it maintains that the above-noted paragraph constitutes a concrete proposal.

The arbitrator reasonably found that the County's proposal listed illustrative changes that the Sheriff might seek, but no specific work schedule modifications. We will not second-guess his discretionary judgment that it was not advisable to include a

reopener in a contract that was finalized after two and one-half years of negotiations and interest arbitration and which is now due to expire in less than one year. We add that an employer has a non-negotiable managerial prerogative to make work schedule changes where negotiations over such changes would substantially limit governmental policy. Maplewood Tp.; P.E.R.C. No. 97-80, 23 NJPER 106, 113 (¶28054 1997); see also City of North Wildwood, P.E.R.C. No. 97-83, 23 NJPER 119 (¶28057 1997) (restraining arbitration over work schedule change effected to provide a "command presence" on weekends).

For all these reasons, we hold that the arbitrator duly considered the County's financial arguments; reached a reasonable determination of the issues; and fashioned an overall award supported by substantial credible evidence. In so holding, we stress that while the Reform Act may have been triggered in part by a concern about increases in public safety salaries, the process the Legislature ultimately enacted does not establish a defined formula based solely on an employer's financial data; it requires consideration of employee interests as well. Stated another way, the CAP law and other financial statutes are not the only expression of public policy. Our Act in general, and the interest arbitration process in particular, also further the public policy of promoting labor peace and stability and improving the efficiency of police and fire departments by



maintaining high morale. N.J.S.A. 34:13A-14. See also State of New Jersey, Department of Corrections v. IFPTE, Local 195, 169 N.J. 505, 537 (2001) (citing this public policy). While implementation of the award could require the County to adjust its budgetary plans, that circumstance does not render the award unreasonable. Irvington. Accordingly, we affirm the arbitrator's award.

ORDER

The arbitrator's award is affirmed.

BY ORDER OF THE COMMISSION

A handwritten signature in black ink, appearing to read 'Lawrence Henderson', is written over a horizontal line.

Lawrence Henderson  
Chairman

Chairman Henderson, Commissioners Buchanan, Fuller and Watkins voted in favor of this decision. Commissioner Mastriani abstained from consideration. Commissioners DiNardo and Katz were not present.

DATED: January 27, 2005  
Trenton, New Jersey  
ISSUED: January 27, 2005

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF SURF CITY,

Appellant,

-and-

Docket No. IA-2001-59

PBA LOCAL 175,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the Borough of Surf City's motion to file a late appeal of an interest arbitration award involving police officers represented by PBA Local 175. The Commission concludes that the Legislature did not intend that the time limits in N.J.S.A. 34:13A-16f(5)(a) be relaxed except in the most unusual circumstances. The Commission concludes that the Borough has not presented any exceptional and extraordinary circumstances to warrant relaxing the deadline for filing an 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.

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF SURF CITY,

Appellant,

-and-

Docket No. IA-2001-59

PBA LOCAL 175,

Respondent.

Appearances:

For the Appellant, Citta, Holazpfel, Zabarsky, Leahey & Simon, attorneys (Robert A. Grietz, of counsel)

For the Respondent, Schaffer, Plotkin & Waldman, a Professional Labor Relations Corporation (Myron Plotkin, consultant)

DECISION

On April 30, 2004, the Borough of Surf City filed a notice of appeal from an interest arbitration award involving the Borough's police officers. The notice challenged the arbitrator's award of a clause stating that an officer's shift schedule shall allow for at least ten hours off duty between the end of one shift and the beginning of another.

N.J.S.A. 34:13A-16f(5) and N.J.S.A. 34:13A-16f(5)(a) state that an interest arbitration award shall be final, binding and irreversible except where, within 14 days of receiving an award, a party files a notice of appeal with the Commission. See also

N.J.A.C. 19:16-8.1(a). An unappealed award must be implemented immediately. N.J.S.A. 34:13A-16f(5)(b).

This award was received by both parties on April 13, 2004. Thus, the notice of appeal should have been filed on or before April 27. Accordingly, the Chairman advised the Borough that the April 30 filing was not timely and that the Commission could not decide whether to entertain the appeal absent a motion to file a late appeal. On May 11, the Borough filed such a motion, together with a certification of its attorney.<sup>1/</sup>

The attorney certifies that, after receipt of the award, members of the governing body had numerous discussions about whether to appeal it. The attorney explains that the Borough believed that it had 30 days to appeal and that by the time it learned otherwise, the deadline had passed. He also states that the appeal decision was complicated by the fact that, after receipt of the award, the Borough had to review language that the PBA had proposed for inclusion in the parties' contract.<sup>2/</sup>

In urging us to grant its motion, the Borough emphasizes that the interest arbitration statute is intended to be liberally construed, N.J.S.A. 34:13A-14d, and that the appeal was filed only three days late. It maintains that the public interest must

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<sup>1/</sup> We deny the Borough's request for oral argument on its motion. The matter has been fully briefed.

<sup>2/</sup> The Borough does not state whether the PBA proposed language to implement the award or language on some other topic.

be considered and that, if the appeal deadline is not tolled, the taxpaying public will be burdened with the costs of the award. By contrast, it contends that the PBA will not be prejudiced by allowing the appeal to go forward because the arbitrator awarded a benefit it did not have before and the PBA was advised of the Borough's appeal decision three days after the statutory deadline. It argues generally that the award constitutes a mistake of law and that the arbitrator did not fully analyze the statutory factors pertaining to the public interest, the financial impact of the award, and the continuity and stability of employment. N.J.S.A. 34:13A-16g(1), (6), and (8).

The PBA urges us to deny the Borough's motion to accept a late appeal. It maintains that the Borough has not offered any legitimate, extenuating circumstances for its delayed filing. It contends that there would be no basis for us to hold any party to the statutory filing deadlines if we were to excuse the Borough's delay because it was allegedly de minimis and the Borough was unaware of N.J.S.A. 34:13A-16f(5)(a).

In Borough of Cliffside Park, P.E.R.C. No. 98-71, 24 NJPER 15 (¶29010 1997), we noted several Court decisions holding that statutory time limits for appeals to administrative agencies are mandatory, jurisdictional and not capable of enlargement by the agency or the courts. Schaible Oil v. N.J. Dept. of Environmental Protection, 246 N.J. Super. 29, 31 (App. Div. 1991),

certif. denied, 126 N.J. 387 (1991) (Department of Environmental Protection lacked jurisdiction to hear appeal filed 25 days after receipt of administrative order where statute and regulations set 20-day time period); Department of Community Affairs v. Wertheimer, 177 N.J. Super. 595, 599-600 (App. Div. 1980) (where statute required that appeals be filed within 15 days of receipt of administrative order, Department lacked authority to hear appeal filed after that date); Midland Glass Co. v. Dept. of Environmental Protection, 136 N.J. Super. 194, 197-98 (App. Div. 1975) (15-day time period for requesting hearing on administrative order could not be extended by agency or court); see also Borough of Park Ridge v. Salimone, 21 N.J. 28, 47 (1956); Hess Oil & Chem. Corp. v. Doremus Sport Club, 80 N.J. Super. 393, 396 (App. Div. 1963), certif. denied, 41 N.J. 308 (1964); Scrudato v. Mascot Sav. & Loan Ass'n v. Newark, 50 N.J. Super. 264, 269-71 (App. Div. 1958). Contrast Kaczmarek v. N.J. Turnpike Auth., 77 N.J. 329, 339-40 (1978) (six-month statute of limitations for filing unfair practice charges not jurisdictional because statute expressly tolls limitation period where charging party is prevented from timely filing charge).

At the same time, Cliffside Park noted that our Supreme Court, while endorsing the results in Scrudato and Park Ridge, had also held that time restrictions on an administrative agency's authority to hear a claim may be tolled in particular

circumstances if the legislative purpose underlying the statutory scheme would be effectuated. See White v. Violent Crimes Compensation Bd., 76 N.J. 368, 379, 397 (1978).<sup>3/</sup> In Caravallo 556 Valley St. Corp. v. Div. of Alcoholic Bev. Control, 351 N.J. Super. 33 (App. Div. 2002), the Appellate Division characterized the approach in Scrudato, Schaible and similar cases as "jurisdictional" and that in White as a "statutory scheme" analysis.

Cliffside Park did not resolve whether we could ever entertain an appeal from an interest arbitration award filed after the time period specified in N.J.S.A. 34:13A-16f(5)(a). The appellant in Cliffside Park filed its appeal 18 days late but did not explain why. Absent a particularized description of the reasons for the delay, Cliffside Park stated that we would not consider whether the 14-day period could be tolled. Accord Peguannock Tp., P.E.R.C. No. 2004-66, 30 NJPER \_\_\_\_ (¶ \_\_\_\_ 2004).

By contrast, the Borough has offered reasons for its delayed filing and we will consider those reasons in light of the above noted framework. We note that, since Cliffside Park, Cavallaro has discussed and harmonized the different judicial approaches to deciding whether an agency has the authority to relax a statutory

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<sup>3/</sup> The Court's holding applied to statutorily-created rights and "substantive" statutes of limitations, 76 N.J. at 379. The latter are defined as limitations found in legislation creating causes of action that did not exist at common law. LaFage v. Jani, 166 N.J. 412, 422 (2001).

deadline. Cavallaro reasoned that even the "jurisdictional" approach, which reflects the principle that administrative agencies have only such authority as is granted them by the Legislature, is ultimately grounded in legislative intent. 351 N.J. Super. at 42. "[I]f it is unclear that the Legislature intended to permit relaxation of any particular time frame, then however the statute is described should not matter. What the Legislature intended controls." Ibid. Cavallaro proceeded to examine the text of, and policy underlying, a statutory scheme that had no express tolling provisions and established deadlines for applying for renewals of liquor licenses. We similarly examine the text and legislative history of the interest arbitration statute, as well as the labor relations process it establishes, in order to decide the following question. Did the Legislature intend to give the Commission the authority to relax the appeal deadline and, if so, under what circumstances?

The Police and Fire Public Interest Arbitration Reform Act (Reform Act), P.L. 1995, c. 425, was enacted in 1996 after a period of intense legislative and judicial scrutiny of the interest arbitration process under the predecessor statute. See PBA Local 207 v. Bor. of Hillsdale, 137 N.J. 71 (1994) and Washington Tp. v. New Jersey PBA Local 206, 137 N.J. 88 (1994) (requiring arbitrators to focus on the full range of statutory factors) and Senator Robert J. Martin, Fixing the Fiscal Police



and Firetrap: A Critique of New Jersey's Compulsory Interest Arbitration Act, 18 Seton Hall Legis. J. 59, 93-99 (1993)

(describing series of bills introduced, beginning in 1992, to amend the predecessor interest arbitration statute). The Reform Act was the product of this examination process and it amended the prior statute in several significant respects. See Biennial Report of the Public Employment Relations Commission on the Public Interest Arbitration Reform Act at 2-4 (1998). We are obligated to give effect to all these legislative changes, of which N.J.S.A. 34:13A-16f(5)(a) is one.

In its statement of legislative findings, N.J.S.A. 34:13A-14 provides that it is New Jersey's public policy to provide an expeditious, effective and binding procedure for the resolution of disputes between law enforcement officers or firefighters and their public employers. The Legislature found that such a procedure was requisite to maintaining the morale of public safety employees; the efficient operation of public safety departments, and the general well-being of the citizens of the State. Ibid.

The impetus for the legislative goals of expedition and finality is apparent when the overall interest arbitration process is considered. Parties engage in negotiations; file for interest arbitration if they are unable to resolve any impasse; engage in mediation and interest arbitration hearings with an

arbitrator; and then receive an award. Parties are without a successor contract during this period; employees do not know what their future wages and benefits will be; and the parties' working relationship may be unsettled. The Reform Act encourages settlement efforts throughout interest arbitration, N.J.S.A. 34:13A-16f(3), and requires that arbitrators fully consider the parties' arguments and evidence and issue reasoned awards, N.J.S.A. 34:13A-16g. However, the Legislature also wanted to ensure that interest arbitration did not continue indefinitely. Cf. PBA Local 292 v. Bor. of North Haledon, 158 N.J. 392, 403 (1999) (finality of grievance arbitration awards enhances their utility as a means of resolving disputes between parties with ongoing relationships).

The 14-day appeal period directed by N.J.S.A. 34:13A-16f(5)(a) is not a mere technicality. Rather, it is directly tied to the implementation of the award and thus the conclusion of the interest arbitration process: an award that is not appealed must be implemented immediately, whereas an award that is appealed is stayed pending the Commission's review. N.J.S.A. 34:13A-16f(5)(b). Further, N.J.S.A. 34:13A-16f(5)(a) apparently was the product of careful legislative consideration, given that it significantly shortened the time period for challenging interest arbitration awards from that which pertained under the predecessor statute. See N.J.S.A. 34:13A-20 (repealed) (arbitrator's order reviewable by Superior Court) and N.J.S.A.

2A:24-7 (action to vacate arbitrator's award must be filed in Superior Court within three months after an award is delivered).

Finality and expedition are not the only aims of the Reform Act. As the Borough emphasizes, N.J.S.A. 34:13A-14b directs that the interest arbitration process should fairly and adequately recognize and give all due consideration to the interests and welfare of the taxpaying public. N.J.S.A. 34:13A-14b. Those objectives are expressed, for example, in Reform Act provisions explicitly requiring arbitral consideration of the CAP law in connection with the public interest, and by amendment of the financial impact criterion to provide more specific direction as to the type of financial evidence that an arbitrator must consider if it is introduced. N.J.S.A. 34:13A-16g(1) and (6).

However, consideration of the public interest, and that of taxpayers, is not typically thwarted by, or in conflict with, the appeal deadline. The public interest also favors finality, as is clearly expressed by the legislative findings in N.J.S.A. 34:13A-14 stating New Jersey's public policy of providing an expeditious, effective and binding procedure for resolving disputes. We appreciate that the 14-day appeal period requires prompt consideration by the parties of their appeal options. However, we believe that this result was understood and intended by the Legislature and was part of its design to provide for an effective and binding procedure. In that vein, the text of

N.J.S.A. 34:13A-16f(5)(a) uses these exceptionally strong words to reflect the Legislature's findings in N.J.S.A. 34:13A-14 and its insistence on achieving finality: "[t]he decision [of the arbitrator] shall be final and binding upon the parties and shall be irreversible" except where a party files an appeal within 14 days of receiving the award. Given these findings and this language, we conclude that the Legislature did not intend to give us the authority to relax N.J.S.A. 34:13A-16f(5)(a) except in the most unusual circumstances. Stated another way, the policies of the Reform Act are not effectuated by allowing a late appeal, absent exceptional and extraordinary circumstances. Such circumstances are not present here.

The Borough primarily argues that it was unaware of the 14-day deadline and believed it had 30 days to decide whether to appeal. This explanation does not constitute grounds to relax a statutory provision that has been in place for eight years, especially where our 1997 decision in Cliffside Park alerted the interest arbitration community to the importance of the deadline and the possibility that it could never be relaxed. While we recognize that the Reform Act is to be liberally construed, N.J.S.A. 34:13A-14d, that liberal construction is intended to further all the purposes enumerated in N.J.S.A. 34:13A-14, including provision for a binding and expeditious procedure. In

a paradoxical but true sense, a liberal construction requires a searching standard for permitting a late appeal.

Further, the Borough has not presented any particularized arguments in its motion as to how adherence to N.J.S.A. 34:13A-16f(5)(a) in this case would contravene the legislative directive to give due weight to the interests of the taxpaying public. Moreover, we note that the awarded contract will expire in six months and the parties will soon be in negotiations for a successor contract. N.J.S.A. 34:13A-16a(1). If the Borough is dissatisfied with the awarded provision requiring ten hours off between shifts, it is not precluded from seeking to adjust it in the upcoming round of negotiations. Compare Horrobin v. Director, Div. of Taxation, 172 N.J. Super. 173, 184 (Tax Court 1979) (circumstances surrounding a homestead rebate application fundamentally different from those in White, where failure to toll timeline would have forever barred plaintiff from relief; in Horrobin homeowner barred in one year could file for rebate the next year).<sup>4/</sup>

For all these reasons, we deny the Borough's motion to file a late appeal. In so holding, we note that the courts have reached similar conclusions in applying a White "statutory scheme" analysis. See Cavallaro (agency had no authority to

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<sup>4/</sup> We note the employer's inherent right to deviate from a normal work schedule in the event of an emergency. Franklin Tp., P.E.R.C. No. 85-97, 11 NJPER 224, 226 (¶16087 1995)

allow late applications for license renewals beyond 60-day statutory grace period); Schaible (applying jurisdictional analysis but also holding that legislative purpose would not be furthered by extending deadline for appealing environmental penalty assessment); Horrobin. By contrast, statutory timelines for appeals to administrative agencies appear to have been relaxed in cases raising compelling equitable or constitutional concerns. See White (statutory time limit tolled during period where rape victim was incapacitated by her injuries and rape trauma syndrome); Rivera v. Bd. of Review, 127 N.J. 578 (1992) (permitting late appeal by migrant farmworker who did not receive notice of the agency's initial rejection of unemployment benefits; Court cited White and constitutional due process concerns).

ORDER

The Borough's motion to file a late appeal is denied.

BY ORDER OF THE COMMISSION

A handwritten signature in black ink, appearing to read "Lawrence Henderson", is written over a horizontal line.

Lawrence Henderson  
Chairman

Chairman Henderson, Commissioners Buchanan, DiNardo, Mastriani and Sandman voted in favor of this decision. None opposed. Commissioner Katz was not present.

DATED: May 27, 2004  
Trenton, New Jersey  
ISSUED: May 28, 2004

P.E.R.C. NO. 2004-66

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PEQUANNOCK PBA LOCAL NO. 172,

Appellant,

-and-

Docket No. IA-2002-033

TOWNSHIP OF PEQUANNOCK,

Respondent.

SYNOPSIS

The Commission denies the request of Pequannock PBA Local No. 72 to file an appeal nunc pro tunc from a February 20, 2003 interest arbitration award involving the Township of Pequannock's police officers. If leave to appeal is granted, the PBA asks that the case be remanded to the arbitrator to resolve the parties' dispute over a senior officer differential provision that he awarded. In the alternative, the PBA asks that a new interest arbitrator be appointed to resolve the parties' impasse on this point. The Commission concludes that the PBA has not explained why it did not move to file a late appeal until more than one year after the issuance of the award and over five months after the dispute over the senior officer differential emerged. The Commission also declines to refer the matter to the Director of Arbitration for the appointment of a new arbitrator.

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

PEQUANNOCK PBA LOCAL NO. 172,

Appellant,

-and-

Docket No. IA-2002-033

TOWNSHIP OF PEQUANNOCK,

Respondent.

Appearances:

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

For the Respondent, Laufer, Knapp, Torzewski & Dalena, L.L.C. (Fredric M. Knapp, of counsel)

DECISION

On March 16, 2004, Pequannock PBA Local No. 172 requested leave to file an appeal nunc pro tunc from a February 20, 2003 interest arbitration award involving the Township's police officers. If leave to appeal is granted, the PBA will ask that the case be remanded to the arbitrator to resolve the parties' dispute over a senior officer differential provision that he awarded. In the alternative, the PBA asks that a new interest arbitrator be appointed to resolve the parties' impasse on this point.<sup>1/</sup>

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<sup>1/</sup> On October 3, 2003, the PBA filed an unfair practice charge against the Township, alleging that it had refused to fully implement the interest arbitration award and sign the contract arising out of it. This motion was filed after an  
(continued...)



On March 19, 2004, the Township opposed the request to file a late appeal, contending that we have no authority to relax the 14-day statutory deadline for appealing an award. N.J.S.A. 34:13A-16f(5)(a).

N.J.S.A. 34:13A-16f(5) states that an interest arbitration award shall be final, binding and irreversible except where, within 14 days of receiving an award, a party files a notice of appeal with the Commission. See also N.J.A.C. 19:16-8.1(a). This award was received by the parties on February 26, 2003. Thus any appeal should have been filed by March 12, 2003.

In Borough of Cliffside Park, P.E.R.C. No. 98-71, 24 NJPER 15 (¶29010 1997), we noted that statutory time limits for appeals to administrative agencies have been held to be mandatory, jurisdictional and not capable of enlargement by the agency or the courts. At the same time, our Supreme Court has held that time restrictions on an administrative agency's authority to hear a claim may be tolled in particular circumstances, if consistent with the underlying legislative scheme. See White v. Violent Crimes Compensation Bd., 76 N.J. 368, 379, 387 (1978); see also Cavallaro 556 Valley St. Corp., 351 N.J. Super. 33 (App. Div. 2002).

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1/ (...continued)  
exploratory conference did not produce a settlement agreement.

Cliffside Park did not decide whether we could ever entertain an appeal from an interest arbitration award filed after the time period specified in N.J.S.A. 34:13A-16f(5)(a). The appellant in Cliffside Park did not explain why its appeal was filed 18 days late. Absent such a particularized description of the reasons for the delay, Cliffside Park stated that we would not consider whether the 14-day period could be tolled. We reach the same conclusion here. The PBA has not explained why it did not move to file a late appeal until more than one year after the award was issued and more than five months after the dispute over the senior officer differential emerged and it filed its unfair practice charge. Therefore, we deny the motion to file an appeal nunc pro tunc.

We also decline to refer this matter to the Director of Arbitration for appointment of a new interest arbitrator. This post-award interpretation question does not trigger the right to invoke a new compulsory interest arbitration proceeding. See N.J.A.C. 19:16-2.1 (setting forth the procedures for commencement of negotiations, and subsequent interest arbitration, within the context of negotiations for a new or successor agreement or an agreed-upon reopener); N.J.A.C. 19:16-5.1 (interest arbitration petition may be filed on or after date on which agreement expires). The PBA may seek its remedies through the pending unfair practice proceeding. It may also grieve any disputes

arising under an awarded contract. See North Hudson Reg. Fire & Rescue, P.E.R.C. No. 2004-17, 29 NJPER 428, 451 (¶146 2003).

ORDER

The motion for leave to file an appeal nunc pro tunc is denied. The motion to refer the case to the Director of Arbitration for appointment of a new interest arbitrator is denied.

BY ORDER OF THE COMMISSION

A handwritten signature in black ink, appearing to read 'Lawrence Henderson', is written over a horizontal line.

Lawrence Henderson  
Chairman

Chairman Henderson, Commissioners Buchanan, DiNardo, Katz and Mastriani voted in favor of this decision. Commissioner Sandman abstained from consideration. None opposed.

DATED: April 29, 2004  
Trenton, New Jersey  
ISSUED: April 30, 2004

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

UNION COUNTY CORRECTIONS OFFICERS,  
PBA LOCAL 199,

Appellant,

-and-

Docket No. IA-2001-46

COUNTY OF UNION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission affirms, with a modification, an arbitrator's award issued to settle successor contract negotiations between the Union County Corrections Officers, PBA Local 199 and the County of Union. The PBA appealed from a third interest arbitration award, contending that the arbitrator did not apply the principles of conventional arbitration; placed too much weight on an alleged pattern of settlement between the County and its other negotiations units; did not adequately consider the PBA's stipend and non-salary proposals; and did not calculate the total net annual economic changes for each year of the agreement. The PBA asked that the award be vacated and remanded to another arbitrator, or in the alternative, that the award be modified to reflect that the County withdrew its proposals concerning the number of officers per day permitted to be on vacation, religious or personal leave. The Commission affirms the award, but grants the PBA's modification request.

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

UNION COUNTY CORRECTIONS OFFICERS,  
PBA LOCAL 199,

Appellant,

-and-

Docket No. IA-2001-46

COUNTY OF UNION,

Respondent.

Appearances:

For the Appellant, Loccke & Correia, attorneys  
(Leon B. Savetsky, of counsel)

For the Respondent, Schenck, Price, Smith & King,  
attorneys (Kathryn V. Hatfield, of counsel)

DECISION

Union County Corrections Officers, PBA Local 199 appeals from an interest arbitration award involving approximately 200 corrections officers. See N.J.S.A. 34:13A-16f(5)(a). The award was issued by the second arbitrator appointed in this case, after we vacated earlier awards issued by the first arbitrator. See Union Cty., P.E.R.C. No. 2003-33, 28 NJPER 459 (133169 2002); Union Cty., P.E.R.C. No. 2003-87, 29 NJPER 250 (175 2003). The second arbitrator relied on the record developed at the hearing before the original arbitrator, together with material subsequently submitted.

The parties' final offers, submitted before the first award, were as follows. The County proposed a four-year contract from 2001 through 2004, with a 1.5% across-the-board salary increase effective January 1, 2001 and a 1.5% increase effective June 23, 2001. For 2002 through 2004, it proposed increases of 4% for officers at the maximum guide step and increases of 3.5% for officers "in guide." Almost all officers are at the maximum step. The County also proposed to increase the clothing allowance by \$25 in each of the first three years of the agreement.

The County also sought health benefits changes for both new and current employees. For current employees, it proposed to increase prescription co-payments and institute an employee contribution towards health benefit premiums. In 2002, employees earning under \$65,000 would pay a \$10 per month premium contribution; those earning between \$65,000 and \$75,000 would pay \$25; and those earning over \$75,000 would pay \$35. In 2003 and 2004, employees earning over \$75,000 would pay \$40 per month. For members of Horizon PPO (Blue Select), the County proposed a \$5 doctor visit co-pay for 2002 and a \$10 co-pay for 2003 and 2004. For all unit members, it sought an increase in the out-of-network cost share from 80/20 to 70/30. The County also proposed a health benefit buyout option where an officer covered under a spouse's plan could decline additional health coverage

and receive \$2,500 annually. Effective January 1, 2003, the County proposed to reduce the deductible for any single benefit period.

The County also sought a provision that, effective January 1, 2002, new employees would be limited to a choice of Physician's Health Service (PHS) or Blue Choice coverage, unless they paid the difference between these plans and the plan selected. Those choosing PHS or Blue Choice would pay \$15 per month for single coverage and \$25 per month for family coverage. Those contributions would be increased by the proportionate annual increase in the plan cost.

The County also proposed enhancements to sick leave and retiree and vacation benefits, but linked these enhancements to the award of the noted health benefits proposals. Thus, it proposed to increase its subsidy of retiree health benefits from approximately 25% to approximately 75%; raise the maximum reimbursement for unused sick leave, on a graduated basis, for those with more than 200 accumulated sick days; and grant additional vacation days for each year of service from 25 through 30.

Finally, the County also sought the award of several proposals that it described as "operational." These proposals were described in Union Cty. I, 28 NJPER at 459, but are not at issue in this appeal.

The PBA proposed a three-year contract from 2001 through 2003 with 5% increases in each year. It sought to increase the 10-year senior officer differential from \$1365 to \$1520 and the 15-year differential from \$2365 to \$2500 and also proposed that the 20-year differential be increased by the same percentage as base salaries were increased, as provided for in the expired contract. In addition, the PBA sought a \$1500 stipend for employees in the Special Operations Unit (SOU) and an increase in the County contribution to the PBA Insurance Development fund from \$135 to \$158 per employee. It proposed that any overtime worked could, at the employee's option, be paid either at time and one-half or placed in a compensatory time off bank of up to 100 hours, with time off subject to the employer's approval. It also sought eye care and orthodontic coverage, with the latter funded by employees through payroll deductions -- an arrangement it maintained was in effect for some other County employees. It proposed that grievances pursued to arbitration be heard by a member of the Commission's arbitration panel, instead of by one of the five arbitrators designated in the agreement. Finally, it sought time off for one employee per shift to pick up food for other officers.

The arbitrator awarded a four-year contract with the wage increases and health benefits changes proposed by the County, together with its sick leave, vacation, retiree health benefits,



and clothing allowance proposals. In addition, she awarded the eye care and orthodontic coverage that the PBA had sought, as well as its grievance procedure proposal. Finally, she modified Articles 14 and 16 of the expired contract to reduce the number of officers per day permitted to use vacation, personal and religious leave.

The PBA appeals, contending that the arbitrator did not apply the principles of conventional arbitration; placed too much weight on an alleged pattern of settlement between the County and other of its negotiations units; did not adequately consider the PBA's stipend and non-salary proposals; and did not calculate the total net annual economic changes for each year of the agreement. It asks that the award be vacated and remanded to another arbitrator. In the alternative, it requests that we modify the award to reflect the County's April 2002 withdrawal of its proposals concerning the number of officers per day permitted to be on vacation, religious or personal leave.<sup>1/</sup>

The County responds that the arbitrator analyzed the evidence in the context of the statutory factors and reasonably

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<sup>1/</sup> In addition, the PBA's Notice of Appeal had objected to what it contended was the arbitrator's award of retroactive health benefits changes. However, the record includes a November 17, 2003 letter from the County's attorney to the PBA's attorney stating that health benefits changes would be prospective only. The County maintained that the PBA's objection was moot. The PBA's brief notes the County's position and does not further address the point. Therefore, we do not do so either.

concluded that several criteria supported an award that conformed to the County's settlement pattern. It also maintains that conventional arbitration does not bar an arbitrator from awarding one or the other party's proposal. In addition, the County asserts that the arbitrator considered the evidence on each of the PBA's stipend and non-salary proposals; explained her reasons for denying them; and calculated the total net annual economic changes for each year of the agreement. It acknowledges that it withdrew its proposals to amend Articles 14 and 16 and states both that it will continue to honor that agreement and that it is unnecessary to modify the award.

The standard for reviewing interest arbitration awards is now established and has been affirmed by the Supreme Court. 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., P.E.R.C. No. 2000-33, 25 NJPER 450 (¶30199 1999), aff'd in part, rev'd and remanded in part on other grounds, 353 N.J. Super. 289 (App. Div. 2002), aff'd o.b. 177 N.J. 560 (2003); Cherry Hill Tp., P.E.R.C. No. 97-119, 23 NJPER 287 (¶28131 1997). Because the Legislature entrusted arbitrators with weighing the evidence,

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

Within this framework, we have interpreted Reform Act provisions and provided direction concerning the analysis required of arbitrators. An arbitrator must provide a reasoned explanation for an award and state what statutory factors he or she considered most important in arriving at the award, explain why they were given significant weight, and explain how other evidence or factors were weighed and considered in arriving at the final award. N.J.S.A. 34:13A-16g; N.J.A.C. 19:16-5.9; Borough of Lodi, P.E.R.C. No. 99-28, 24 NJPER 466 (¶29214 1998). Once an arbitrator provides such an explanation, the burden is on the appellant to offer a particularized challenge to his or her analysis. Lodi; Cherry Hill.

A major issue before both the first and second arbitrators was the alleged pattern of settlement between the County and majority representatives of other negotiations units. At the November 13, 2001 hearing, the County asserted that its health benefits proposals had been accepted in six other negotiations units, including three law enforcement units. The County maintained that the representatives of these units had also accepted the salary, sick leave, retiree health benefit and

vacation proposals that it was offering this unit. It urged the arbitrator to maintain this alleged pattern and argued that to do otherwise would disrupt labor relations stability because it would discourage future settlements and undermine the morale of employees in other units. Before the second arbitrator, the County submitted two interest arbitration awards that it argues support the award of its wage and health benefits proposals -- an April 2002 award involving the County's police superiors unit and a January 2003 award, clarified in April 2003, involving the unit of detectives in the County prosecutor's office.

The County stressed that its health benefit premium costs had increased 10.5% overall during 2001 and argued that award of its proposals would help offset these escalating costs. In the remand proceedings before the first and second arbitrators, the County submitted a statement of actual and projected health care costs for this unit for 2001-2004, as well as projected savings should its proposals be implemented.

The PBA countered that the settlements the County reached with other law enforcement units in fact supported the award of its offer, because the County had agreed to substantial economic benefits in addition to the package offered to this unit. It also maintained that unit members were comparable to municipal police officers and were poorly compensated by that measure. Finally, it stressed that one-third of the unit had been laid off

in April 2001, resulting in an increased workload, forced overtime, and stressful working conditions. It maintained that this circumstance justified a somewhat differential treatment of corrections officers.

The original arbitrator issued two awards directing 4% increases for all unit members for each year of the agreement; awarding the County's clothing allowance proposal; and denying the remainder of both parties' proposals.<sup>2/</sup> The County appealed both awards, arguing in part that the arbitrator did not properly consider the settlements with other of its negotiations units. Our decisions emphasized that we expressed no opinion on the merits of the parties' proposals and made no finding either that there was a County-wide pattern on wages or health benefits or that an arbitrator should follow any such pattern. Union Cty. I set out the following principles:

N.J.S.A. 34:13A-16g(2)(c) requires an 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.

Pattern is an important labor relations concept that is relied on by both labor and management.

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

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<sup>2/</sup> His first decision awarded a three year contract for 2001-2003, with 4% increases each year. The second decision awarded 4% increases for 2001 through 2004.

and as one of the items traditionally considered in determining wages. Thus, 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. [28 NJPER at 461]

After setting out this framework, we noted that while the arbitrator had stated that other units' acceptance of the proposals was "supportive but not persuasive," he had made no findings as to whether the settlements differed from the offer to this unit; the significance of any differences; and whether in fact there was a settlement pattern among the County's negotiations units. We remanded the award for him to make those determinations; discuss and apply the above-noted principles; and explain his weighing of the County's arguments and evidence concerning the settlements vis-a-vis the PBA's. 28 NJPER at 462. In Union Cty. II, we determined that the arbitrator had not made these findings and we therefore vacated the second award. We also remanded the case to the Director of Arbitration for appointment of a new arbitrator. Our second decision thus did not consider whether the arbitrator had complied with the other grounds of the initial remand.<sup>3/</sup>

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3/ P.E.R.C. No 2003-33 had also directed the arbitrator to: (1) discuss the evidence on all of the County's operational proposals and explain his basis for accepting or rejecting them and (2) explain the salary award in the context of the statutory criteria, as well as his findings and analysis concerning internal settlements.

Against this backdrop, the second arbitrator's opinion and award reviewed the Union Cty. decisions and summarized the testimony presented at the November 2001 hearing, together with the supplemental material submitted. At the outset of her discussion, she stated that the awards of the three experienced arbitrators who had reviewed the County's proposals were relevant to her analysis and she framed the central issue as "whether the pattern of settlement within the County should dispose of the wages and health care issues." The arbitrator also made several factual findings. First, she concluded that "health care costs are a substantial portion of the new money costs" for the 2001-2004 contract, and cited the County's submissions showing actual increases in health costs for this unit of \$140,799 in 2001; \$159,997 in 2002; and projected increases of \$157,068 and \$176,775 for 2003 and 2004, respectively. Based on the County's documents, she found that its health benefits proposals would offset these amounts by \$108,433.<sup>4/</sup> Second, she concluded that the officer-inmate ratio was the about the same as before the April 2001 layoff and that the workload increases, disruptions and forced overtime that had followed in its wake had been ameliorated to some extent by the time of the interest arbitration hearing. Finally, she stated that her review of the

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<sup>4/</sup> The County stated that its 2004 costs would be offset by this amount if its proposals were awarded.

various settlements and awards showed that, except for minor differences, "the essence of the deals is the same as the one offered here."

The arbitrator also analyzed the evidence and arguments - including those pertaining to internal comparability and the alleged pattern of settlement - in light of the statutory criteria. For example, she wrote that the public interest was of paramount importance in deciding all of the disputed issues.

With respect to the comparability criterion, N.J.S.A. 34:13A-16g(2), she found that the most relevant comparisons were with other County law enforcement employees and corrections officers in other counties, as opposed to municipal police officers in Union and other counties. She noted that this conclusion had also been reached by the original arbitrator in this case and by the arbitrators in the police superiors and prosecutor's detectives units. Further, the arbitrator found that the substantial similarities among the settlements and awards created a "strong presumption" that a compatible result was warranted in this case.

The arbitrator gave "little weight" to the overall compensation and lawful authority criteria, stating that there was no evidence that award of either party's position would have an adverse impact on the County and commenting that the unit's



benefits were similar to, and compared favorably with, those of corrections officers in other counties.

In terms of the financial impact of the award and the continuity and stability of employment, she concluded that the County needed relief from burdensome and persistent increases in health care costs and that the award of its health care proposal would be beneficial to taxpayers in "small measure" in the near future but more significantly in the long run. She found the chief impact of an award that differed from the County's position would be to "disrupt the stability and harmony of labor relations within the jurisdiction."

Within this framework, the arbitrator concluded that the same wage pattern that had prevailed with respect to other County employees should be extended to this unit. She stated that there was a relatively small difference between the parties' proposed wage increases and that, because almost all officers were at the maximum step, the PBA's wage proposal would result in a maximum salary, by the end of the contract, only slightly higher than that proposed by the County. The arbitrator reiterated that the differences between the offer to this unit and the various settlements and awards were not significant, adding that in some cases the settlements reflected benefit enhancements that this unit had gained in earlier contracts. She noted that employees in this unit continue to enjoy benefits that other employees do

not and that unit members were at the higher end of the salary range for the various County negotiations units. She found that post-layoff working conditions and inmate-officer ratios were "insufficient to overcome the persuasiveness of the pattern argument."

Based on a similar analysis, she awarded the County's health benefits proposals, together with its proposed enhancements to sick leave, vacation and retiree health benefits. She concluded that nothing in the record supported a deviation from the health benefits pattern for corrections officers "notwithstanding their stressful working conditions, high level of professionalism and service." She reasoned that the costs of the health benefits changes were lower for unit members than for most other employees, presumably because the dollar amount contributions proposed by the County represented a lower percentage of corrections officers' salaries than the percentage paid by most other County employees.

With respect to the parties' non-salary proposals, the arbitrator applied the traditional arbitration principle that the party proposing a change bears the burden of justifying it. Teaneck, 25 NJPER at 455. We detail her discussion of each of the PBA's proposals later.

The gravamen of the PBA's appeal is that the arbitrator considered only the alleged settlement pattern among County

negotiations units - to the exclusion of the statutory factors -- and did not issue a true conventional award. We disagree. As the foregoing summary indicates, the arbitrator's consideration of the County's pattern argument was intertwined with her analysis of the statutory factors and she reasonably found that those factors supported an award consistent with the County's wage and health benefits proposals.

The arbitrator's analysis with regard to health benefits was thus grounded in the internal comparability component of N.J.S.A. 34:13A-16g(2); the public interest, N.J.S.A. 34:13A-16g(1); the financial impact of the award, N.J.S.A. 34:13A-16g(6); and the continuity and stability of employment and such other factors ordinarily or traditionally considered in determining wages, hours and employment conditions. N.J.S.A. 34:13A-16g(8). Similarly, the award of the wage proposals was based on considerations of the public interest; internal comparability; comparability with other corrections officers; and the continuity and stability of employment. N.J.S.A. 34:13A-16g(1), (2) and (8).

We recognize that the arbitrator's statutory analysis was framed by her statement that the substantial similarities among the settlements and awards created a presumption that a compatible result was warranted in this case. While the PBA objects to what it views as an overemphasis on pattern, the arbitrator's overall approach was consistent with the principles

set out in Union Cty. I and Union Cty. II: i.e., pattern is an important labor relations concept; deviation from a pattern can affect the continuity and stability of employment; and an employer-wide pattern on a particular issue must be carefully considered in assessing whether a party has met its burden of justifying a proposal consistent with the pattern.

Union Cty. II also stated that evaluation of whether a pattern should be followed with respect to a particular unit should take into account any unique considerations pertaining to that unit. The arbitrator made such an assessment when she discussed the post-layoff conditions that the PBA had highlighted and found that circumstances had stabilized by the time of the hearing and did not warrant departure from what she had found was a pattern with respect to wages and health benefits. In sum, the arbitrator's overall approach to analyzing the statutory factors and the parties' arguments concerning the alleged settlement pattern was consistent with the Reform Act. Although the PBA challenges some of the arbitrator's findings and conclusions, it has shown no basis to disturb her exercise of discretion in awarding the County's wage and health benefits proposals.

For example, the PBA disputes the arbitrator's statement that the police superiors and prosecutor's detectives awards supported her own award, citing the stipends and salary increases those units received. In addition, it cites a portion of the

police superiors opinion to the effect that "the County's proposals would stimulate the very problems it has indicated it wishes to avoid: poor morale, chaos and internal jealousies."

This arbitrator recognized that the other arbitrators had awarded senior officer stipends but, in response to the PBA's contention that this circumstance undercut the County's pattern argument, she noted that the stipends were the same as those that the corrections officers had obtained in their prior agreement.<sup>5/</sup> She thus concluded that the stipend awards did not provide a basis to depart from the County's wage and health benefits proposals. While the PBA maintains that the prosecutor's detectives were awarded higher stipends than members of this unit, the record indicates that the arbitrator directed 15 and 20-year stipends for detectives in the same amounts that corrections officers now receive. He concluded that the detectives already received consideration similar to the corrections officers' 10-year stipend and therefore did not award that part of the union's proposal. In this posture, the PBA has offered no basis to disturb the arbitrator's analysis.

Similarly, the above-quoted section from the police superiors award does not, when placed in context, militate against award of the County's proposals. The arbitrator's

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<sup>5/</sup> The 15 and 20-year stipends were increased to current levels in 2000, the last year of the prior contract. The ten-year stipend was instituted at that time.

comments were directed to the fact that the County had opposed a stipend for that unit modeled on the corrections officers' stipend and, further, as part of a six-year contract from 1999 to 2004, had proposed split increases of 1.5%/1.5% for 2002 instead of for 2001. Moreover, while the PBA suggests that the police superiors received significantly different salary increases than what this arbitrator awarded, the two awards directed essentially the same increases for the 2001-2004 period in which the County alleged a pattern. Although the police superiors arbitrator did not award 3.5% increases for unit members "in-guide", the County now maintains that there are no guide steps for superior officers. In any case, because most corrections officers are at the maximum step, they received the same 4% increases for 2002 through 2004 that the police superiors were awarded.

Finally, the PBA contends that, in contrast to the police superiors and prosecutor's detectives proceedings, this record did not suffice to award the County's health benefits proposals. However, it does not challenge the arbitrator's findings concerning the County's health benefits costs; the savings that would be realized from implementation of the changes for this unit; or her observation that corrections officers would pay a lower percentage of their salaries than many other County employees. We thus will not disturb the arbitrator's exercise of discretion. In this posture, the arbitrator reasonably

determined to give significant weight to the internal settlements and awards on wages and health benefits issues. Compare Teaneck, 25 NJPER at 458 (decision to place significant weight on increases received by other public safety employees consistent with the Reform Act).

We are also satisfied that the arbitrator followed the conventional arbitration process when she awarded the County's wage and health benefits proposals. As the PBA notes, we have repeatedly stated that fashioning a conventional award is not a precise mathematical process, and that setting wage figures involves judgment, discretion, and labor relations expertise. Lodi; City of Newark, P.E.R.C. No. 99-97, 25 NJPER 242 (¶30103 1999). While conventional arbitrators usually issue awards in between the parties' proposals, there is no requirement that they do so and no prohibition against a conventional arbitrator awarding one or the other party's proposal on one or more issues.

Thus, while the PBA urges that the arbitrator should have awarded provisions "in between" the parties' proposals, including health contributions less than those sought by the County, she was not obligated to do so. The contributions awarded were consistent with those in other units and they comprised a lower percentage of corrections officers' salaries than the percentage paid by many other County employees. The arbitrator found that the County had experienced a significant increase in health care

costs and that the contributions proposed by the County would partially offset them. In this context, the arbitrator was not required to discuss why lower amounts were not awarded.

Similarly, the arbitrator had no obligation to issue an award in between the parties' wage proposals when she explained the basis for her award and the PBA has not shown that the record or the statutory factors required the arbitrator to award higher salary increases.

In sum, the essential requirements of conventional arbitration are that the arbitrator give due weight to the statutory factors; reach a reasonable determination of the issues; render an award supported by substantial credible evidence; and provide a reasoned explanation for his or her conclusions. For the reasons outlined above, we are satisfied that the arbitrator fulfilled these obligations.

We turn next to the PBA's challenge to the arbitrator's analysis of its proposals for a SOU stipend, an increase in the senior officer differential, a personal injury liability fund, a compensatory time-off bank, and a "food pick-up" provision. With respect to all of these proposals, the PBA argues that the arbitrator did not discuss the evidence; apply the statutory factors; or provide a reasoned explanation for her award.

In considering the senior officer differential, the arbitrator commented that the proposal would cost \$144,000 over



the life of the contract and would entail a 10% increase in the first-level differential. She found that the PBA had not shown that the existing differentials were unreasonable and added that the PBA's contention that the taxpayer impact would be "inconsequential" did not meet its burden of showing a need for an increase.

Similarly, the arbitrator found that the PBA had not met its burden with respect to the SOU stipend, reasoning that all unit members were exposed to a very stressful environment; extreme emergencies did not happen very often; and there was thus no basis to add a stipend for the 10% of the unit that volunteers to be in SOU. Turning to the personal injury liability fund, she stated that there was no evidence concerning its costs, history or usage and, therefore, the PBA had not shown the need to increase employer contributions. Similarly, the arbitrator stated that the limited evidence on the "food pick-up" proposal indicated that it would require more than the twenty minutes leave time the PBA estimated. She found no reason to bind the employer to provide paid time off for one officer to obtain meals for others, when food was available at the jail and officers receive a \$350 meal allowance. Finally, she concluded that the County had argued persuasively that the compensatory time bank would be costly and exacerbate staffing problems.

The arbitrator appropriately applied the traditional arbitration principle that a party proposing a change must justify it. Teaneck. The arbitrator also stated her reasons for denying all of the above proposals and the PBA does not challenge her findings; provide any particularized challenge to her analysis; or point to any evidence that the arbitrator did not consider or to which she could have applied the statutory factors. In that vein, we note that parties rarely argue, and arbitrators rarely find, that the full panoply of statutory factors is relevant to proposals such as those for food-pickup or a personal injury liability fund. See North Hudson Reg., P.E.R.C. No. 2004-17, 29 NJPER 428 (¶146 2003).

Moreover, the arbitrator's denial of the foregoing proposals does not indicate a failure to apply conventional arbitration. The arbitrator fulfilled her obligation to consider the evidence presented and explain her award. She was not required to award any particular number of proposals, although we note that she did award the eye care and orthodontic coverage that the PBA had sought, as well as its grievance procedure proposal.

For all these reasons, we will not disturb the arbitrator's decision to deny the foregoing proposals.

We address two final points: the PBA's argument that the arbitrator did not calculate the total net annual economic

changes for each year of the agreement, as required by N.J.S.A. 34:13A-16d(2), and its request that we modify the award.

An arbitrator satisfies N.J.S.A. 34:13A-16d(2) if he or she identifies what new costs will be generated in each year of the agreement; figures the change in costs from the prior year; and determines that the costs are reasonable. Rutgers, The State Univ., P.E.R.C. No. 99-11, 24 NJPER 421, 424 (¶29195 1998). We have declined to remand an award where the arbitrator has substantially complied with this requirement but has not referenced N.J.S.A. 34:13A-16d(2). See Teaneck. We reach that conclusion here.

The rationale underlying N.J.S.A. 34:13A-16d(2) is to require the arbitrator to identify the various economic changes flowing from the agreement and to make a determination that the overall package is reasonable. The arbitrator identified the total net economic changes when she calculated the annual costs of the County wage and clothing allowance proposals that she awarded, together with the projected savings from the County's proposed health benefits changes (Arbitrator's opinion at 26). She effectively found that those changes were reasonable when she concluded, first, that there would be no adverse financial impact on the County and, second, that the award would result in an overall compensation package that was consistent with that received by other County employees and other corrections

officers. No purpose would be served by remanding the award to require the arbitrator to expressly state that the total net annual economic changes were reasonable.

We turn to the PBA's request to modify the award. The PBA has submitted exhibits showing that, prior to the issuance of the first award, the County withdrew its proposals concerning the number of officers per day permitted to be on leave.<sup>6/</sup> The County acknowledges the withdrawals and the first arbitrator noted them in his initial opinion. Thus, the proposals were not before the arbitrator, although it is not clear that the exhibits the PBA has submitted to us were presented to her. In this posture, we will modify the award to excise the award sections that change Articles 14 and 16 by reducing the number of officers permitted to be on vacation, personal, or religious leave. See N.J.S.A. 34:13A-16f(5)(a) (Commission may correct or modify an award). This modification does not affect other portions of the award. Cf. N.J.S.A. 2A:24-9 (Court shall correct or modify an award where the arbitrator ruled on a matter not submitted, unless such action would affect the merits of the decision on the issues submitted). The award is otherwise affirmed.

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<sup>6/</sup> The exhibits include an April 17, 2002 letter from the County's attorney advising the PBA's attorney that the proposals were withdrawn, as well as a grievance settlement pertaining to the number of officers permitted to be on leave, which also so states.

ORDER

The arbitrator's award is affirmed with the modification that the changes to Articles 14 and 16 pertaining to the number of officers permitted to be on leave are excised.

BY ORDER OF THE COMMISSION

A handwritten signature in black ink, appearing to read 'L. Henderson', is written over a horizontal line.

Lawrence Henderson  
Chairman

Chairman Henderson, Commissioners Buchanan, DiNardo, Katz and Sandman voted in favor of this decision. None opposed. Commissioner Mastriani was not present.

DATED: March 25, 2004  
Trenton, New Jersey  
ISSUED: March 26, 2004

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NORTH HUDSON REGIONAL  
FIRE & RESCUE DISTRICT,

Appellant-Respondent,

-and-

Docket No. IA-2000-36

NORTH HUDSON FIRE OFFICERS  
ASSOCIATION,

Appellant-Respondent.

SYNOPSIS

The Public Employment Relations Commission affirms an interest arbitration award, as clarified in an October 20, 2003 decision, to establish a first contract between the North Hudson Regional Fire and Rescue and the North Hudson Fire Officers Association. In negotiations and interest arbitration, the parties presented proposals on salary, longevity and other compensation items, along with proposals on an entire range of topics typically included in a negotiated agreement. The arbitrator resolved the issues by conventional arbitration. Both the Regional and the Association filed appeals each challenging the award on one or more aspects of several contractual provisions. The Commission had ordered a limited remand to the arbitrator for the purpose of clarifying the arbitrator's intention concerning accumulated sick leave for fire officers from Union City and Weehawken. The Commission concludes that the parties' objections do not warrant disturbing the award. The Commission further concludes that the arbitrator painstakingly considered the parties' presentations; reached a reasonable determination of the issues; and fashioned an overall award that is supported by substantial credible evidence. The Commission finds that the arbitrator's overall approach and guiding principles are sound, and his award establishes a framework within which the parties may work.

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 & RESCUE DISTRICT,

Appellant-Respondent,

-and-

Docket No. IA-2000-36

NORTH HUDSON FIRE OFFICERS  
ASSOCIATION,

Appellant-Respondent.

Appearances:

For the Appellant, The Murray Law Firm, LLC, attorneys  
(Robert E. Murray, of counsel; Patricia Reddy-  
Parkinson, on the briefs)

For the Respondent, Loccke & Correia, P.C., attorneys  
(Leon B. Savetsky, of counsel)

DECISION

The North Hudson Fire Officers Association and the North Hudson Regional Fire and Rescue both appeal from an unusual interest arbitration award, one which established the first collective negotiations agreement between the Regional and its supervisory fire officers. An award involving the Regional's firefighters was issued by the same arbitrator on the same date and has also been appealed by both parties.<sup>1/</sup>

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<sup>1/</sup> The parties' Notices of Appeal were filed on October 17, 2002. The Association was given the opportunity to perfect its appeal, see Town of Newton, P.E.R.C. No. 98-47, 23 NJPER 599 (¶28294 1997), which it did on November 6. On November  
(continued...)

On September 25, 2003, we ordered a remand to the arbitrator "for the limited purpose of clarifying whether or not he intended fire officers from Union City and Weehawken to have any accumulated sick leave that carries over into the new agreement for sick leave use and, if appropriate, modifying any aspects of the award accordingly." North Hudson Reg. Fire and Rescue, P.E.R.C. No. 2004-11, 29 NJPER \_\_\_\_ (¶ \_\_\_\_ 2003). We retained jurisdiction; directed the arbitrator to issue a written statement; and provided that the parties had five days from receipt of the statement to submit comments. The arbitrator issued a Decision on Clarification on October 10, 2003.

The Regional was created in 1998, pursuant to the Consolidated Municipal Services Act (CMSA), N.J.S.A. 40:48B-1 et seq., in order to replace the paid fire departments in Weehawken, Union City, North Bergen, West New York and Guttenberg. It began operations on January 1, 1999, and employs approximately 93 fire

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1/ (...continued)

1, the Commission approved a briefing schedule agreed to by both parties, which called for initial briefs to be filed by January 15, 2003 and reply briefs by March 3. Between January 7 and March 18, the parties jointly requested four extensions of time to file their initial briefs, citing the complexity of the case and the amount of material they had to review. Initial briefs were received on March 24. On May 5, the Association was granted an extension of time until May 19 to file its answering brief, and the due date for the Regional's answering brief was also extended. The Commission requested additional documents on May 28, which were received on June 6.



officers, most if not all of whom had been previously employed by one of the municipalities.

The parties agreed that the term of their first contract would be from July 1, 1999 through June 30, 2004. In negotiations and interest arbitration, they presented proposals on salary, longevity and other compensation items, along with proposals on the entire range of topics typically included in a negotiated agreement - including grievance procedure, terminal leave, health insurance, work hours, military leave, drug and alcohol testing procedures, and leaves of absence. They stipulated to several items, including the recognition clause, jury duty, personnel files and non-discrimination.

In broad outline, the parties advanced these proposals and arguments.

The Association proposed that, at the commencement of the agreement, the salaries of lieutenant and captain be unified at the highest captain's salary found in the municipal agreements. This proposal derived from a Department of Personnel (DOP) ruling that all first-line supervisors of a truck or engine company should be classified as "Fire Officer 1," even though some had previously been classified as Fire Lieutenants and others as Fire Captains. DOP classified Battalion Chiefs and Deputy Chiefs as Fire Officers 2 and 3, respectively, and the Association proposed that the salaries for these ranks also be unified at the highest

level found in any of the prior agreements. In addition, the Association proposed 6% increases for each year of the agreement on these unified salaries and proposed that benefits such as terminal leave, sick leave and longevity be unified, at the outset of the contract, at the highest level found in any of the agreements.

The Association also sought to include in the agreement the 24/72 work schedule followed in each of the municipal departments.<sup>2/</sup> It did not present a specific health insurance proposal, but argued that unit members' existing medical benefits, which derived from differing predecessor agreements, should be maintained. Finally, with respect to contractual provisions on such issues as injury leave, outside employment, and promotions, transfers and assignments, the Association often proposed clauses similar to those in some of the predecessor agreements and in some instances sought benefits or protections not included in any of the prior agreements.

The Regional contended that the most weight should be given to its status as a new employer and maintained that it should not

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<sup>2/</sup> Prior to regionalization, Guttenberg negotiated a transition agreement that adopted the terms of the West New York contract, which included the 24/72 schedule. Before that, Guttenberg had followed a 24/48 schedule. Given the transition agreement, when we refer to contract or award provisions pertaining to West New York fire officers, we intend those references to pertain to former Guttenberg fire officers as well.

be encumbered by the terms of prior agreements. With respect to salary, it proposed separate four-step salary schedules for lieutenant, captain, battalion chief and deputy chief, with maximum base salaries for the first year of the agreement of \$57,500, \$66,000, \$74,000 and \$85,000 for the respective positions. It proposed that salaries for the remaining contract years be negotiated; proposed that the schedule apply to fire officers hired and promoted by the Regional; and sought to red-circle current employees whose salaries exceeded those on the new schedule until the schedule surpassed a unit member's base salary. It noted that the Union City fire officers' prior contract had extended through December 31, 1999, whereas the other agreements were effective only through mid-1999. It urged the arbitrator not to award a salary adjustment that would result in "double raises" for Union City officers.

The Regional also sought a single health benefits plan for all unit members; proposed to continue to pay the full premium cost for employees and retirees; and sought premium contributions for dependent coverage. The Regional also proposed a 24/48 work schedule and, with respect to various contract provisions, contended that they should be developed anew with a focus on the Regional's needs as an employer.

The arbitrator resolved the issues by conventional arbitration, N.J.S.A. 34:13A-16d(2), and issued a 390-page

opinion and award that included a 60-page contract containing 46 contract articles. He set out several principles, detailed later, that guided his resolution of the dispute. Among these was the principle that, to the extent feasible, the agreement should merge or unify the terms and conditions of employment for those employees previously employed by one of the municipalities.

The arbitrator unified the salaries for all Fire Officer 2s and all Fire Officer 3s effective April 1, 2004, based on the highest salary schedule for each rank in the prior agreements. He accomplished this by awarding, effective July 1 of 1999 through 2003, 3% across-the-board increases, calculated using the officers' June 30, 1999 base salaries, for all Fire Officer 2s and 3s, except those formerly employed by Union City, who received their first 3% adjustment effective January 1, 2000. In April 2004, he advanced the salaries for Fire Officer 2s from North Bergen, West New York and Weehawken to the level of Fire Officer 2s from Union City, resulting in three-month costs per officer of \$1,633, \$1,342, and \$1,074, respectively. Also in April 2004, he advanced the salaries for Fire Officer 3s from Union City and Weehawken to the level of Fire Officer 3s from West York, resulting in three-month costs per officer of \$870 and \$1,834, respectively. There were no Fire Officer 3s from North Bergen.

With respect to individuals in the Fire Officer 1 title who were formerly captains, the arbitrator applied the same methodology. That is, officers received 3% across the board increases, effective July 1 in 1999 through 2003, calculated using their June 30, 1999 base salaries, except that former Union City captains received their first adjustment effective January 1, 2000. On April 1, 2004, the arbitrator advanced the salaries for North Bergen, West New York and Weehawken former captains to the level of former Union City captains, resulting in three-month costs per officer of \$1,898, \$1,342, and \$1,785, respectively.

For Fire Officer 1s who had previously served as lieutenants, the award unifies the salaries of North Bergen, West New York, and Weehawken lieutenants at the Union City level, effective January 1, 2004. Union City lieutenants receive 3% annual increases and lieutenants from the other municipalities receive, for July 1, 1999 through January 1, 2004, biannual raises of varying amounts, depending on the municipality by which they had been employed. Effective April 1, 2004, the award merges all lieutenants onto a Fire Officer 1 guide, and places the lieutenants on step one of that guide, which is \$3669 greater than the Union City lieutenant salary to which they had been raised as of January 1. That merger results in a three month cost of \$917 per officer. The award directs that the former lieutenants will move up one step after one full year of service

on the schedule. Therefore, they will reach the top step in April 2006. Step 3 of the Fire Officer I guide as of April 2004 corresponds to the July 1, 2003 salary for former Union City captains, which all former captains will receive as of April 1, 2004.

The arbitrator also created three-step salary guides for the Fire Officer 2 and 3 positions, the top steps of which correspond to the unified salary that will be received by current unit members as of April 1, 2004. The award directs that individuals hired or promoted into Fire Officer 2 or Fire Officer 3 positions after April 1, 2004 be placed at step one of the appropriate guide. The award also directs that they progress to the next step after one year of service at each step.

With respect to issues such as vacation and holiday pay, the award directed unified benefits for all unit members and, with respect to longevity, unified benefits for officers previously employed by a municipality. On other issues, such as terminal leave and educational incentives, the arbitrator concluded that unification was not feasible. With respect to sick leave, he awarded a unified program for all fire officers, effective January 1, 2003. Pursuant to our September 25, 2003 limited remand order, he issued a Decision on Clarification with respect to fire officers formerly employed by Union City and Weehawken

and changed the effective date of the new sick leave provision to January 1, 2004.

The arbitrator awarded the Association's proposal for a 24/72 work schedule and, as sought by the Regional, directed that a single health insurance contract provide benefits for all unit members. Finally, the arbitrator awarded contract provisions on the remainder of the 40-plus items proposed by the parties.

Both parties appealed the award. N.J.S.A. 34:13A-16f(5)(a). The Association and the Regional challenge one or more aspects of these award provisions:

- Salaries
- Sick Leave
- Terminal Leave
- Association Rights
- Grievance Procedure
- Outside Employment
- Health Insurance
- Vacation
- Holidays
- Out-of-Title Work

In addition, the Association also objects to these award sections:

- Court Time
- Leave of Absence/Emergency Leave
- Assignments and Transfers
- Promotions and Vacancies
- Overtime
- Education Incentive
- Valic Deferred Income Plan
- Longevity and Service Differential
- Drug and Alcohol Testing

The Regional also challenges these provisions:

Work Hours  
Injury Leave  
Clothing Allowance  
Off-Duty Action

The Regional argues generally that the overall economic package awarded is well beyond its financial means and not supported by substantial credible evidence. It contends that the arbitrator did not properly analyze and apply the statutory criteria, N.J.S.A. 34:13A-16g, and asks us to vacate or modify the provisions it challenges, including the overall economic package.<sup>3/</sup>

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<sup>3/</sup> The Regional also raises two threshold procedural arguments: that issues included in the Association's Notice of Appeal but not briefed should be deemed waived and that the Association's brief should be dismissed because it does not conform to the requirements for interest arbitration appeals. With respect to the latter point, the Association's comprehensive brief conforms to applicable standards. The Regional's objections go to the merits of the Association's arguments, which we address throughout this appeal.

As to the first issue, the Association's brief references all items listed in its Notice of Appeal except two - Injury Leave and Fully Bargained Provisions - although some contract articles are discussed more extensively in the Notice of Appeal than in the brief. We confine our analysis to the arguments and issues as framed in the brief. See Whitfield v. Blackwood, 101 N.J. 500, 504 (1986) (Clifford, J., concurring) and Kerney v. Kerney, 81 N.J. Super. 278, 282 (App. Div. 1963). However, we have reviewed the Notice of Appeal and are satisfied that the points discussed there but omitted from the brief would not require vacation of the award.



The Association also maintains that several award sections should be vacated and remanded because the arbitrator did not provide a reasoned explanation for his award and did not properly analyze and apply the statutory factors. In addition, it requests that several award sections be modified or clarified. With respect to the salary portion of the award, it contends that, contrary to the arbitrator's statements, the award does not gradually unify all Fire Officer 2 salaries and all Fire Officer 3 salaries and does not merge the former lieutenants and captains into a single Fire Officer 1 rank.

The standard for reviewing interest arbitration awards is now established, and was recently affirmed by the Supreme Court. 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., P.E.R.C. No. 2000-33, 25 NJPER 450 (¶30199 1999), aff'd in part, rev'd and remanded in part on other grounds, 353 N.J. Super. 289 (App. Div. 2002), aff'd o.b. \_\_\_\_ N.J. \_\_\_\_ (2003); 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 a salary award is not a precise mathematical process. Given that the statute sets forth general criteria rather than a formula, the setting of wage figures necessarily involves judgment and discretion and an arbitrator will rarely be able demonstrate that an award is the only "correct" one.

Borough of Lodi, P.E.R.C. No. 99-28, 24 NJPER 466 (¶29214 1998); Borough of Allendale, P.E.R.C. No. 98-123, 24 NJPER 216 (¶29103 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, P.E.R.C. No. 99-97, 25 NJPER 242 (¶30103 1999). However, an arbitrator must provide a reasoned explanation for an award and state what statutory factors he or she considered most important, explain why they were given significant weight, and explain how other evidence or factors were weighed and considered in arriving at the final award. N.J.S.A. 34:13A-16g; N.J.A.C. 19:16-5.9; Lodi. Once an arbitrator has provided a reasoned explanation for an award, an appellant must offer a particularized challenge to the arbitrator's analysis and conclusions. Cherry Hill; Lodi; Newark.

An overview of the Regional; its financial foundation; and the CMSA's provisions on collective negotiations is an essential backdrop to these appeals, just as it is to the appeals of the award involving the firefighters' unit. We incorporate our discussion of these items in P.E.R.C. No. 2004-17.

In considering the appeals in this case and the companion firefighters' case, we have kept firmly in view the uniqueness and complexity of the interest arbitrations. The arbitrator commended the parties for their professionalism, competence and cooperation in tackling the dozens of major and minor issues involved in the proceeding. We do so as well. As for the arbitrator, he was faced with the challenging task of evaluating the parties' multi-faceted proposals on 46 contract articles; considering those proposals in the context of the predecessor agreements to which the parties frequently referred; and arriving at a single agreement that recognized, in his words, both the Regional's interest in managing and administering efficient and cost effective fire services and the employees' interests in receiving or maintaining economic benefits while working in a safe, productive environment. This was an enormous and precedent-setting responsibility, and we commend the arbitrator's thoughtful and comprehensive analysis.

The deference that we normally accord to arbitrators is especially appropriate here, where the arbitrator had to make so

many difficult judgments. We stress that this is a case about establishing the major constructs and basic terms and conditions of employment in this new relationship. As the arbitrator stated, the parties may propose modifications in future negotiations given that there are reasonable limits to what can be accomplished in a first agreement that requires modifications of contracts developed over many decades and encompassing a variety of circumstances; once the first agreement is established, the parties may propose modifications in future negotiations. We accept the arbitrator's analysis in this extraordinary case, and the guiding principles and objectives he set out shape our consideration of the appeals.

The arbitrator's approach to this award parallels that in the firefighters' award. The arbitrator described how he would explain much of his award in a preface to his discussion of what he identified as the major economic issues - salaries, sick leave, vacation, holidays, overtime, compensatory time, terminal leave, education incentive, longevity, service differential, and health insurance. He stated that he had reviewed each party's evidence and arguments on each of the statutory criteria and that all were relevant to the resolution of the dispute, although he did not give each factor identical weight. He wrote that he had also "strongly considered" that the public interest required that:

[T]he policy interests supporting the regionalization of fire services should be furthered, with due consideration to the work, welfare and terms and conditions of fire personnel who perform life-saving and life-threatening duties. [Arbitrator's award at 145]

The arbitrator stated that each party bore a burden of proof in support of each of its proposals. He then explained how he would apply the statutory criteria:

In reaching my conclusions I will summarize the position taken by each party along with the rationale each has submitted. Because of the sheer volume and complexity of the issues and the evidence, I will set forth an Award on each issue with a concise statement of reasons in support of each determination without an extensive analysis of the statutory criterion on each major economic issue. Some of the criteria are implicitly reflected in many of the issues which require decision. For example, an issue proposed by the Union which may contain excessive costs would, if granted, cause adverse financial impact on the Regional. Another example would be an issue the Regional might propose which would have such harsh economic consequences on individual firefighters which could undermine the need for continuity and stability of employment. [Arbitrator's award at 145-146]

With respect to proposals dealing with non-compensation items, the arbitrator stated that he would not discuss the statutory criteria in the same detail as he might in a typical impasse, but that he would discuss and analyze each party's evidence and arguments in reaching his determination on that item.

After setting out this approach, the arbitrator then found that the Regional's and employees' interests were best served and balanced by following these broad guidelines and objectives:

1. To the extent feasible, the goal of merging or unifying major terms and conditions of employment should be attained for those employees previously employed in the five municipalities prior to regionalization. For example, certain major compensation issues should be [at uniform levels] even if accomplished over a period of time to ease the cost burden on the Regional.
2. To the extent that such merger or unification is not feasible, certain benefits of certain employees employed by individual municipalities should be retained even if retention of that specific benefit level cannot be enjoyed by the remainder of the workforce. One factor traditionally employed in collective bargaining is to "red circle" an individual or class of employees due, in part, to the need to avoid unfair individual impacts. For example, certain benefits have accrued over the course of one's career with a reasonable expectation of continuation until retirement. A unity of result on issues such as these may not be achievable without producing harsh inequities either in terms of benefit elimination or excessive cost.
3. Employees hired by the Regional after regionalization who were not employed by any individual municipality which helped form the Regional should have terms and conditions of employment which give some consideration, but less weight, to the prior terms and conditions of the individual municipalities and some consideration, but more weight, to the establishment of the Regional as a new

employer. The Regional, as a new employer, must be given some latitude to offer employment on terms reflective of its own character and needs. For example, a firefighter hired after regionalization has never had any employment tie to any individual municipality. Prior terms set by an individual employer should not automatically be controlling on the Regional. This consideration, however, must be balanced by the establishment of terms not so disparate in relation to the more experienced firefighters that morale and unity among all firefighters are compromised or the continuity and stability of employment among the newly hired firefighters [impaired].

4. Consideration must also be given to internal comparability between firefighters and fire officers. Each bargaining unit faces many of the same considerations and challenges. Although each has separate bargaining units, all employees, regardless of rank, must be integrated into one department charged with the same mission serving the public's health, welfare and safety. [Arbitrator's award at 148-149]

These guidelines distill and synthesize the arbitrator's analysis of the public interest and other statutory criteria; frame the arbitrator's discussion of all the major economic issues; and supplement the more specific discussion of the public interest, cost of living, comparability, financial impact, and continuity and stability of employment factors woven into the arbitrator's analysis of many of the proposals, particularly the parties' salary proposals.

We reject the argument, made by both the Regional and the Association that the arbitrator did not properly analyze the statutory factors because he did not specifically refer to them in discussing every award section. We incorporate our discussion in P.E.R.C. No. 2004-17 to this effect.

As in the firefighters' case, we have reviewed the parties' post-hearing submissions to the arbitrator, and we stress that they engaged in very little discussion of the criteria per se. They argued for or against a proposal based on their respective theories of how the dispute should be decided - i.e., the Regional focused on its alleged financial limitations and its status as a new employer and the Association espoused unification of benefits at the highest level, arguing that the Regional had substantial financial resources. For the most part, neither the Regional nor the Association points to any evidence or arguments that the arbitrator did not consider.

For these reasons, and those articulated in P.E.R.C. No. 2004-17, we reject the parties' generalized objections that the arbitrator did not apply the statutory criteria. Since the Association's brief contends only that the arbitrator did not discuss and analyze the statutory factors with respect to its proposals concerning personal days, management rights, seniority, work hours, exchange of tours, legal services plan, departmental investigations, and preservation of rights, we do not further



address the Association's objections to these contract articles. We will specifically address contentions that the arbitrator did not address or properly weigh particular arguments or evidence concerning the statutory factors.

We also reject the Association's contention that the arbitrator improperly relied on matters outside the record when he stated that he was awarding provisions similar to or consistent with those in the firefighters' award. The Association does not identify any instances where the arbitrator relied on testimony or exhibits not presented in the fire officers' proceeding and we have found none. The arbitrator's consideration of internal comparability between fire officers and firefighters is statutorily required. N.J.S.A. 34:13A-16g(2).

In addition to affirming the arbitrator's method of analysis, we also affirm the substance of the arbitrator's guiding principles and objectives. In considering the parties' objections, we will evaluate whether the arbitrator's award is consistent with the principles and objectives that he derived from the statutory factors.

Further, we accept the arbitrator's statement that each party bore the burden of proof with respect to its proposals. While the CSMA requires the Regional to preserve the various municipal status quos pending a new agreement, analytically, there is no traditional status quo for this new employer.

However, the arbitrator appropriately gave weight to the terms and conditions in the prior agreements, particularly in setting employment terms and conditions with respect to officers previously employed by one of the municipalities. Negotiations history is an element traditionally considered in determining wages and benefits, N.J.S.A. 34:13A-16g(8), and the CMSA does not require an arbitrator to disregard that evidence when negotiations units are merged.

Against this backdrop, we consider the parties' specific objections. We will organize our decision as follows. First, we address the Regional's contention that the award is inconsistent with the financial evidence. Second, we address each party's challenges to the arbitrator's award on the major economic issues, as well as their objections to award sections involving more minor economic items. Third, we consider the parties' challenges to award sections - such as outside employment, Association rights, drug and alcohol testing procedures - where the focus is on administrative, operational, or language issues, as opposed to the amount or nature of an awarded benefit. We include in this section the non-compensation aspects of some of the major economic benefits - e.g., vacation scheduling.

In addition, in several instances, the Regional or the Association contends that an award provision conflicts with a governing statute or regulation. These challenges could and

should have been made prior to the arbitration, because the challenged award sections were proposed by one or the other party. See N.J.A.C. 19:16-5.5(c) (where no pre-arbitration scope petition is filed, parties are deemed to agree to submit all unresolved issues to arbitration). However, in the fourth section of our opinion, we will consider contentions that certain award sections cannot be implemented because they violate a statute or regulation. Compare Teaneck, 353 N.J. Super. at 301-302 (despite regulation requiring that scope petitions be filed before interest arbitration, Commission is not barred from considering, when it chooses to do so, post-arbitration scope challenge in an interest arbitration appeal); Old Bridge Tp. Bd. of Ed. v. Old Bridge Ed. Ass'n, 98 N.J. 523, 525 (1985) (public sector arbitration awards must conform to statutes and regulations); Borough of Roseland, P.E.R.C. No. 2000-46, 26 NJPER 56 (¶31019 1999) (in considering whether to dismiss late-filed scope petition, we will consider whether a challenged proposal, if awarded, would require us to vacate an award). However, we do not decide the Regional's claims that certain award provisions significantly interfere with its managerial prerogatives. The Regional does not explain why it did not raise these objections earlier and we are satisfied that the challenged provisions do not affect the overall validity of the award. Roseland.

Finally, we include a separate section addressing those parts of the award that one or both parties allege are unclear.

### **I. Financial Impact**

The Regional contends that the overall economic package awarded is not supported by the record and that the arbitrator did not give due weight to the Regional's evidence with respect to available funds, operating costs, and accumulated debt. It maintains that the award requires \$5 million in retroactive salary payments, of which it has only \$2.5 million.

We begin with a review of the parties' financial arguments before the arbitrator.

The Regional argued that the Association's proposal, with 6% across-the-board increases and unification of all benefits at the highest level in any of the agreements, was well beyond its financial means and would result in fire officer salaries above those received by other fire officers in the State and nation. It urged the arbitrator to follow an alleged pattern of settlements between the participating municipalities and their police units whereby three of the participating municipalities - North Bergen, Weehawken and Guttenberg - reached voluntary settlements with their police units averaging 3.5% per year for contracts during the 1998-2001, 2001-2003, and 1996-2002 time periods. A fourth municipality, West New York, negotiated two agreements: one with the PBA, with 3% increases for 1999 through

2002, and one with the Police Supervisors, with 3% increases for 2001 and 2002, and 3.5% and 3.74% increases for 2003 and 2004, respectively. The Regional stressed that the CMSA did not provide a basis for departing from the longstanding labor relations concept of "pattern."

While the Regional acknowledged that it had received State assistance, it stressed that, in 2001, State aid ceased and it was required to begin making substantial principal and interest payments on its lease revenue bonds. It also stressed the low per capita income of the residents in the participating municipalities and the obligation to make continuing payments in connection with the early retirement program. The Regional did not attach a total dollar cost to the Association's economic package, but sought to illustrate its impact by example, noting the allegedly excessive salaries that would result for certain ranks and levels of experience if the Association's proposal were awarded.

By contrast, the Association emphasized that the Regional had extremely high credit ratings; the formation of the entity had resulted in substantial savings for taxpayers; and the participating municipalities had a substantial combined tax base, with a tax collection rate of close to 96%. It maintained that the Regional's 1999 financial audit showed restricted total cash

and cash equivalents of approximately \$8.7 million and approximately \$2.2 million in unrestricted investments.

In arriving at the award and assessing its financial impact, the arbitrator found that unification of salaries was compatible with regionalization, but that excessive costs would occur if unification took place at the beginning of the five-year agreement, as the Association proposed. The arbitrator noted the State assistance received by the Regional and municipalities and found it relevant to assessing the award's financial impact. However, he also found that savings were inherent in the concept of regionalization.

The arbitrator concluded that the cost of living weighed strongly against an award consistent with or close to the Association's offer and he found that the CAP law was pertinent because of its application to the municipalities. He stated that he had accepted the Regional's financial impact arguments to the extent that the award was less than the Association's offer.

On the other hand, the arbitrator rejected the Regional's salary proposal, finding that it would seriously disrupt the longstanding comparison of the Regional's fire officers vis-a-vis those in neighboring communities and would unduly burden the Regional's officers, who would receive little or no salary increases during the five-year agreement. Further, he concluded that the Regional's proposal did not properly address either the

unification of salaries for each Fire Officer rank, or the merger of lieutenants and captains into the Fire Officer I title - a merger which the arbitrator found to be required by the DOP ruling.

The arbitrator observed that the precise costs of the award were difficult to calculate, given the unique circumstances of merging four prior agreements and unifying major terms and conditions of employment. He observed that different methods produced various conclusions and that the parties' cost analyses had served as useful guides.

The arbitrator calculated that 3% increases on the total base salary for the unit, for each contract year, amounted to total new annual costs of \$1,059,914. In addition, the fifth-year April 2004 costs for equalizing the salaries of all Fire Officer 2s and all Fire Officers 3s, merging lieutenants onto the Fire Officer 1 guide, and equalizing the salaries of former captains, amounted to \$409,420, representing a 5.3% annual rate increase or 1.35% (\$102,355) during the contract term, given that the unification took place in the last three months of the contract. When calculated on an annualized basis over five years, the percentage increase averages .27% per year.

The arbitrator also noted that it cost an additional \$104,556 or 1.36% to equalize lieutenants' salaries or .27% per

year when annualized over five years. Thus, the total new annual costs calculated by the arbitrator are \$1,573,890.

In setting out the rationale for the award, the arbitrator stated that the costs of the award during the first four years were "clearly beneath" the costs of comparable settlements, which he found to be in the range of from 3.5% to 4% per year. Further, he observed that the cumulative costs of the settlements far exceeded the award's cost for the first four years. He reasoned that these factors balanced the equalization costs that will occur towards the end of the agreement.

The arbitrator concluded that the award, including its retroactive costs, could be funded without adverse impact, noting that, the "savings from a reduction in personnel will result in less funding from the municipalities compared to the obligations necessary to fund the pre-existing table of organization" (Arbitrator's award at 292). The arbitrator also presumed that the participating municipalities who contribute to the Regional were aware of their and the Regional's obligation to fund an interest arbitration award for the fire officers - including costs retroactive to the time of regionalization - just as they would have been obligated to fund the retroactive terms of new labor agreements had the municipalities continued to employ the officers. Further, he observed that long-term savings would result from the award of modified terms for employees hired by



the Regional on or after regionalization. He added that under the award, the per officer cost of newly hired officers would be less than the per officer cost for the officers each municipality had previously employed.

The arbitrator recognized that the municipalities would have to contribute to the cost of the award, but stated that they had benefitted significantly from the REAP program and the sale of fire department assets. Finally, he found no indication in the record that the costs of the award would compel any of the municipalities to exceed their CAPs.

The Regional has offered no basis to disturb this analysis. The record supports the arbitrator's finding that the reduction in staffing resulted in substantial savings. And the Regional agrees with the arbitrator's conclusion that the municipalities should have been aware of their obligation to fund the award, including retroactive costs. These findings support the arbitrator's determination that the Regional, which had lower salary costs after the retirements than it had before, had the financial capability to fund an award that, over the five-year term, increases costs less than 3.5% per year and is thus within the range of the settlements between the participating municipalities and their PBAs that the Regional had urged the arbitrator to follow. In this vein, the Regional's focus on the final year rate increases for various ranks is misplaced, given

that the payout for those years is one-fourth the rate increase and the arbitrator recognized that the impact of the award in subsequent years would have to be considered by the parties, or an interest arbitrator, in future negotiations or proceedings.

The Regional objects that the arbitrator placed too much weight on the State aid received, the disbursements to the municipalities, and the alleged savings from the early retirements. It stresses that the State aid was for start-up costs and argues that the retirement savings and municipal disbursements are offset by the Regional's obligation to repay lease revenue bonds and make payments toward the cost of the early retirement package.

Preliminarily, the arbitrator noted these factors, particularly the Regional's bond obligations and the cessation of State aid in 2001, in arriving at an award significantly less than the Association's offer. However, the fact that the Regional and the municipalities have some continuing, long-term obligations associated with regionalization does not mean that the significant lump-sum disbursements to municipalities, as well as the Regional's reduction in staff, are not also relevant in evaluating the Regional's financial status during the period in which those reductions and disbursements occurred. In this vein, the arbitrator did not award the increases he did based on the Regional's alleged ability to pay them. Compare Hillsdale.

Instead, he found that the Regional could fund the salary increases that he found to be appropriate based on the record, the statutory criteria, and the DOP classification ruling. While an employer's financial limitations may militate against an award that would otherwise be warranted, the Regional has not shown that to be the case here.

For example, while the Regional suggests that the award will cause municipal property taxes to increase, it has not pointed to any evidence indicating that any additional municipal contributions necessary to finance the award would require tax increases or strain municipal CAP limits in any of the municipalities. The salary increases awarded are within the range of the municipal settlements the Regional had cited, which are themselves probative of the economic package the municipalities believe they can fund without an adverse financial impact. See Teaneck, 25 NJPER at 458.

Moreover, the Regional's assertion that it lacks sufficient reserves to pay the award is not determinative where its budget is based on municipal allocations that may be adjusted, and the Regional has not shown that any required adjustments would adversely affect the municipalities' financial standing. Compare Middlesex Cty., P.E.R.C. No. 98-46, 23 NJPER 595 (¶28293 1997) (while N.J.S.A. 34:13A-14b states that the interest arbitration process should give due weight to the interests of the taxpaying

public, the Reform Act does not require that the arbitrator award the amount the employer has budgeted for wage increases or automatically equate the employer's offer with the public interest).

Nor are we persuaded by the Regional's contention that the arbitrator was required to include a more detailed calculation of award costs. In this vein, the Regional highlights the longevity, holiday pay, educational stipend, terminal leave, and service differential portions of the award.

N.J.S.A. 34:13A-16d(2) requires an arbitrator to determine the new costs for each year of the agreement. Rutgers, the State Univ., P.E.R.C. No. 99-11, 24 NJPER 421 (¶29195 1998). The items the Regional cites are not new benefits. They were included in one or more of the prior agreements.

For example, the arbitrator continued the education stipend and service differential provisions in the prior agreements only for individuals who were already receiving them, so that the only new costs this red-circling generated are those attributable to an increase in base salary. With respect to the costs of newly awarded education benefits, they cannot be calculated unless and until unit members obtain degrees that entitle them to payments.

Similarly, with respect to longevity, the arbitrator unified benefits effective January 1, 2003, so that costs prior to that date were a continuation of what the Regional was already paying,

plus any increases attributable to an increase in base salary. And after unification, the longevity schedule is the same as that in West New York and less generous than that enjoyed by former Union City fire officers. The award includes a more generous schedule for Weehawken fire officers and North Bergen fire officers.<sup>4/</sup>

With respect to holiday pay, the 112 hours awarded is the same as had been received by West New York officers; 8 hours more than provided for in the Weehawken agreement; and 8 hours less than received by former Union City officers. The award increases the benefit for North Bergen officers, who had received five compensatory twelve-hour tours. In this posture, the Regional has not shown either that the award results in any significant net increases in longevity, holiday, education or service differential costs or that any cost increases undermine the arbitrator's financial impact assessment.

Further, while the Regional maintains that the arbitrator should have calculated the award's impact on overtime payments, that impact cannot be quantified without information on the overtime hours worked by each officer during the contract term.

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<sup>4/</sup> The arbitrator awarded a separate longevity schedule for future fire officers who do not have any prior service with any of the municipalities. It does not appear that there are any current employees in this category but even if there were, the provision will not generate costs during the term of the agreement because benefits do not begin until the 7<sup>th</sup> year of employment.

Such information was not submitted to the arbitrator or to us. Similarly, the award's effect on terminal leave payments cannot be calculated without knowing both the number of individuals who will retire during the contract term and the sick leave balances that will in most cases determine their terminal leave payments.

Finally, we comment on the Regional's contention that the award imposes \$5 million in retroactive costs. It does not explain how it arrives at that figure. But even if we were to assume its accuracy, along with the Regional's contention that it has only \$2.5 million available, it has not shown that the five municipalities together lack the financial ability to contribute \$2.5 million for four years of retroactive increases that the arbitrator found to be warranted by the statutory factors.

For all these reasons, the Regional has not shown any deficits in the arbitrator's analysis of the financial evidence that warrants disturbing the award.

## **II. Major Economic Issues**

The arbitrator thoroughly analyzed the parties' proposals on the major economic issues, including salaries, holiday pay, clothing allowance, sick leave, terminal leave, vacation, longevity, health insurance, service differential and education incentives. The predecessor agreements each had clauses on most of these items and, for the most part, each party presented proposals to continue the benefits in some form, with the

Association generally espousing unification of benefits at the highest level and the Regional generally urging that its proposals for lesser benefits be evaluated in the context of its status as a new employer. The arbitrator did not accept either party's theory in its entirety but gave some weight to each party's position in fashioning his own approach. Thus, the main underpinnings of his analysis were that, first, benefits should be unified to the extent feasible to promote unity and morale among unit members and reflect the Regional's status as a single employer; second, the nature and history of some benefits made them difficult to unify; and, third, the Regional had an interest in having a compensation package for newly hired fire officers that reflected its own character and needs, such that the terms of the prior agreements might in some instances be given less weight than in arriving at terms for unit members who had served as officers in one of the municipalities. As we noted at the outset, we accept these principles, which neither party challenges conceptually.

Within this framework, the arbitrator had broad discretion to determine the degree to which benefits should be unified and the method of doing so, and we will not second-guess his decisions with respect to the numerous individual components of the package. Our focus is on the overall award, specifically, whether it was supported by substantial credible evidence and

whether the arbitrator explained his reasoning. See Borough of Allendale, P.E.R.C. No. 2003-75, 29 NJPER 187 (¶56 2003).

Our recognition that fashioning a salary package is not a precise mathematical process is an understatement in this case, given the numerous terms and conditions that had to be considered. In that vein, it is not grounds for vacating or remanding the award that the arbitrator could have chosen a different method for unifying some benefits or reached another conclusion about which benefits should be merged and which should not.

Against this backdrop, we address the parties' objections to award provisions where the arbitrator unified benefits either for all unit members or for all previously employed fire officers - i.e., salary, vacation, sick leave, holiday pay, clothing allowance, health insurance and longevity. We next discuss the challenges to the terminal leave article, where the arbitrator decided not to merge benefits. Finally, we address objections to a few other economic items.

### **Salaries**

The parties raise three broad objections to the salary portion of the award. First, both parties object to the arbitrator's decision to unify all Fire Officer 2 and all Fire Officer 3 salaries in April 2004, as well as to the manner in which the award unifies former captains' salaries and merges



lieutenants onto the Fire Officer 1 salary schedule. Second, the Regional maintains that the increases awarded for all officers are inconsistent with the evidence on various of the statutory factors. Third, each party contends that the award is imperfect because it does not address salaries for fire officers promoted after regionalization but before April 1, 2004. We address each of these issues in turn.

### **Timing of Salary Unification**

Both parties object to the timing of the salary unification, with the Regional contending that the record supports an award where unit members are eased into a unified structure at some point after the parties' first contract expires, and the Association protesting that immediate unification is required under the arbitrator's own reasoning and, with respect to former lieutenants and captains, the DOP classification ruling. The record amply supports the decision to unify salaries during the last three months of the contract. That decision achieves what both parties recognize is a desirable goal and does so within the term of the first agreement, without jeopardizing the Regional's financial security.

As we have stated, the Regional has not shown a basis for disturbing the arbitrator's conclusion that salaries can be unified in April 2004 without adverse financial impact. With respect to the Association's contention that the salaries of all

ranks should have been unified immediately, this objection goes to the essence of the arbitrator's broad discretion to arrive at salary increases, see Lodi and Newark, and the record does not point ineluctably to a date when unification should occur. We defer to the arbitrator's judgment that the transition to a unified salary schedule was best accomplished at the end of the contract term rather than at its outset, given that the latter method would have resulted in higher cumulative costs throughout the term of the agreement.

In this vein, the record supports the arbitrator's judgment to moderate the costs of the award and the unification. The residents of the constituent municipalities have comparatively low per capita incomes; the financial assistance received was for start-up costs; and much of that assistance was allocated to items other than salary. The municipalities' REAP payments were required to be passed through to taxpayers as property tax credits and the REDI assistance they received was to help fund the early retirement package. Moreover, the Regional received no State aid in 2001, and was required to begin making substantial principal and interest payments to the Authority beginning in 2001 and continuing through 2024. Finally, as we explain in other sections of the opinion, the Association has not shown that the record or the statutory factors required the arbitrator to award a more substantial economic package.

**Method of Unification**

With respect to Fire Officers 2 and 3, the Association objects that the award does not achieve the gradual integration of salaries described by the arbitrator. Instead, the Association contends that the award initially increases the disparity among officers from different municipalities due to the compounding effects of the annual percentage increases, but then unifies all salaries as of April 2004.

There is no basis to disturb the arbitrator's discretionary judgment concerning the process for unifying salaries. The arbitrator considered both the desirability of unifying salaries during this contract and the cost of doing so immediately. He fully explained the financial reasons for choosing to unify salaries at the end of the term. The Association has not articulated any basis why the record or the statutory factors require a consistent, step-by-step progression toward unified salaries.

Both parties question the rationale and method for merging lieutenants and captains into a Fire Officer I title. The Association protests that the award is inconsistent with the DOP ruling unifying the lieutenant and captain job titles because, even after April 1, 2004, former lieutenants will still be paid \$8,000 less than former captains. By contrast, the Regional contends that the DOP ruling did not mandate a salary adjustment

for former lieutenants; the record provides no basis for eliminating the pre-existing differential between captains and lieutenants; and the award may undermine harmony within the command structure because newly-promoted lieutenants will receive the same salary as captains who may have been officers for a substantial period of time.

The arbitrator reasoned as follows with respect to the Fire Officer I schedule:

Given the ruling for Fire Officer I by the DOP, the obligation to unify the salaries of Lieutenant with Captain is one which I view as necessitated by that ruling. I have done so on a phase-in approach despite the order which arguably justifies more immediate unification which would be far more costly. I have also placed the Lieutenants on the first step of the new three step salary schedule which also eases the cost of unification. [Arbitrator's award at 290]

Neither party has explained why we should not accept this thoughtful analysis. While the DOP ruling did not address salaries, the arbitrator reasonably concluded that, in developing an overall compensation and benefit system for the unit, it was logical to establish a single salary structure for employees performing the same duties. It is possible that, as the Regional argues, longtime former captains may be displeased with newly promoted officers being placed on the same salary schedule as they. However, if that were not done, newly promoted officers would likely be dissatisfied that the salary structure did not

recognize that they performed work equivalent to that of the former captains. The arbitrator reasonably chose to award a lieutenant's salary structure that is consistent with the DOP ruling.

With respect to the Association's objections, the record supports the arbitrator's phase-in approach because, in unifying Fire Officer I salaries, the arbitrator had to overcome both the salary disparities among lieutenants from various municipalities and the gap between lieutenants' and captains' compensation. While the arbitrator found that the DOP ruling could have justified awarding all Fire Officer 1s the same salary, he reasonably exercised his discretion in determining that such an award would be too costly. Further, the award will result in lieutenants advancing to step three on the Fire Officer 1 salary guide two years after the contract term. In that sense, the award is consistent with two of the prior agreements, which had salary guides for some superior officer ranks. Stated another way, the arbitrator reasonably interpreted unification to mean placement on a single salary guide, as opposed to payment of an identical salary.

#### **Newly Hired or Promoted Fire Officers**

Both parties contend that the award is imperfect because it does not address salaries for individuals hired or promoted into

a fire officer position on or after regionalization but before April 1, 2004. This is the background to this issue.

In January 2000, 19 firefighters from the participating municipalities were promoted to lieutenant. The salary schedule awarded by the arbitrator is preceded by the following statement:

Fire Officers shall receive salary increases pursuant to the following salary schedule with increases retroactive to the effective dates reflected on the following salary schedule. The new salary schedule for all of the aforementioned Fire Officers shall be entitled "all Fire Officers employed by the NHRD who were previously employed by the municipalities of Union City, Weehawken, West New York, North Bergen and Guttenberg at the time of regionalization. [Arbitrator's award at 381]

Since all of the individuals promoted in 2000 had been previously employed by one of the municipalities, it appears from the terms of the award that the awarded salary schedule pertains to them.

The award also states that individuals hired or promoted into a fire officer position after April 1, 2004 shall be placed on step one of the schedule for the appropriate rank. The award does not address individuals hired by the Regional as a Fire Officer between 1999 and April 2004 who were not employed by one of the municipalities. However, the record does not show, and the parties do not allege, that there are any unit members in this category. Further, neither party presented a proposal addressing the salaries of Fire Officers who were directly hired

by the Regional. For these reasons, we find no basis for a remand on this ground.

**Regional's Objection to Other Aspects of the Salary Award**

Finally, we address the Regional's contentions that the awarded salary increases are excessive and unsupported by the record and the statutory factors. We conclude that the salary award is well supported and grounded in the arbitrator's explicit and implicit consideration of comparability, the continuity and stability of employment, financial impact and the other statutory factors.

The Regional protests that there was no more basis to unify salaries by using the highest salary guide for each rank than there was to use the lowest, and that the arbitrator did not explain his choice of guides. However, the arbitrator stated that he linked the across-the-board salary increases awarded during the first four years of the agreement with his method of unifying salaries later. The arbitrator stated that he chose to award 3% increases - which he found to be lower than average - to balance the costs of unification on the Union City and West New York schedules, which resulted in higher than average increases in the final contract year.

Thus, the guide used to unify salaries is only one aspect of the unification process, which the arbitrator fully explained.

There is no basis to disturb his overall approach, which included use of the highest salary schedule for each rank.

The arbitrator's comparability discussion underpinned his unification analysis and, contrary to the Regional's objections, we find that discussion to be well grounded. Before the arbitrator, the Regional and the Association both primarily cited the annual percentage increases included in the settlements between the participating municipalities and their police units. As discussed earlier in this opinion, three of those settlements averaged 3.5% over the full contract terms; one averaged 3%; and another 3.4%. The Association showed that the average percentage increases during 1998 through 2002 ranged from 3.75% through 4.25%. Thus, this data supports the arbitrator's finding that the 3% increases awarded were below these averages.

The Regional emphasizes seven contracts that include average annual increases ranging from 2.25% to 3%. They include four firefighter contracts (two each, for different periods of time, for two jurisdictions), two police contracts, and one fire officer contract which, taken together, reflect average increases of 3%. This selective comparability evidence does not undermine the arbitrator's findings.

While firefighter contracts are useful comparables, the Regional does not explain why it focuses on only four contracts, as opposed to, for example, the broader range of firefighter



comparables from urban communities submitted in the companion firefighters' case - which this employer had the opportunity to examine and rebut.

Moreover, while the Regional challenges the salary increases awarded in the final contract year, unit members receive the higher salaries for only three months, so that the final year rate increases are not an accurate measure of the costs that the employer will bear during this contract term. Moreover, those higher increases must be viewed in the context of the arbitrator's unification goal; the DOP ruling; and the arbitrator's decision to award a backloaded contract with lower cumulative costs than, and average annual contract increases in the range of, the settlements the Regional had cited.

Similarly, the arbitrator's analysis is not undermined because he did not place more weight on an exhibit showing salaries for a range of public and private sector occupations in New Jersey. The arbitrator described the exhibit in summarizing the Regional's arguments. However, he was not required to discuss it in more detail where the document reflects 1996 salaries and may no longer be probative, especially since many of the listed salaries appear to be entry level. In any case, the Reform Act does not mandate that a particular salary relationship be maintained between fire officers and other public or private employees. See Allendale, 24 NJPER at 219.

The Regional also points to a recent NJDOL document that it submitted to the arbitrator, which shows a statewide 1.2% increase in average private sector wages in 2001, and .3% decrease for Hudson County. We have reviewed the report but it does not require different salary increases where the preceding report showed a 6.9% statewide increase in average private sector wages for 2000, and an 11.7% increase for Hudson County.

In addition, we find that the arbitrator appropriately considered the continuity and stability of employment in awarding the salaries that he did. We accept his labor relations judgment that the "red-circling" proposed by the Regional, which would have resulted in freezing many fire officer salaries, would have undermined the morale of employees who already had to deal with the significant changes resulting from regionalization. He was not required to accept the Regional's theory that this statutory factor favored the Regional's offer because unit members do not face the same possibility of layoffs as some non-public safety employees.

Finally, the Regional maintains that the arbitrator did not adequately consider the cost of living or the overall compensation criteria. The arbitrator found that the cost of living militated against award of the Association's offer; that increases in the consumer price index were below the terms of the award; but that, given the overall record, the cost of living

criterion, N.J.S.A. 34:13A-16g(5), was not entitled to the most weight.

The Regional has not shown why the cost of living should be the single most important factor in a proceeding where, following a merger of negotiations units in a regionalization, the dominant concern was how to begin structuring a unified compensation and benefit structure. Moreover, while the Regional cites the cost of living as rising .1% in 1999, 1.6% in 1998, and 1.7% in 1997, the Regional-submitted data included in the appellate record shows that the Consumer Price Index for all Urban Consumers (CPI-U) for New York-Northeastern New Jersey had risen by 3.1% between December 1999 and December 2000 and that the CPI for all Urban Wage Earners & Clerical Workers (CPI-W) had risen 3.3% during the same time period.

The Regional also emphasizes the benefits received by unit members and the allegedly excessive salaries that will result from the award. It contends that the arbitrator did not adequately consider the "overall compensation" criterion, when he unified salaries at the highest levels in the predecessor agreements.

The arbitrator thoroughly and comprehensively described the pre-award compensation and benefit packages received by fire officers from the various municipalities, and thus fully satisfied his obligation to consider "[t]he overall compensation

presently received by the employees" involved in the proceeding. N.J.S.A. 34:13A-16g(3). Moreover, he explicitly rejected the Association's position that all benefits should be unified at the highest level and unified some benefits - e.g., longevity, sick leave, and holiday pay - at less than the highest level in the prior agreements. Thus, the arbitrator considered all benefit and compensation components in arriving at an overall award.

For all these reasons, we find that the arbitrator's salary analysis is well supported by the evidence on the several statutory factors.

#### **Longevity - Association Objections**

In effecting his conclusion that benefits for previously employed firefighters should be unified to the extent feasible, the arbitrator awarded a unified longevity schedule for previously employed fire officers effective January 1, 2003. He reasoned that maintaining the different municipal programs would result in substantial disparities in compensation inconsistent with having a single new employer.

As noted earlier, the award's longevity article is the same as that in West New York and less generous than that enjoyed by former Union City fire officers. The award includes a more generous schedule for former Weehawken officers and for North Bergen fire officers hired. The award "red-circles" some Union City firefighters already receiving longevity percentages higher

than the maximum unified benefit (14%), but provides that the percentage will not increase pursuant to the former schedule. The percentages under the award's longevity schedule will be applied to higher base salaries.

The Association protests that the arbitrator substantially reduced economic benefits without any analysis of the statutory factors and without a reasoned explanation as to how he arrived at his award. However, as we discussed in P.E.R.C. No. 2004-17, the reduction in some fire officers' longevity benefit (or expectation) must be viewed in the context of the overall award for the unit, which equalizes salaries at the highest level for each rank and grants more extensive longevity benefits to some fire officers. The arbitrator was not required to specifically explain the rationale for reducing longevity benefits for one group of fire officers where the reduction results from his award of a unified compensation system and benefit structure and he set forth the principles that underpin that structure.

As we also discussed in P.E.R.C. No. 2004-17, benefit adjustments such as this flow from the arbitrator's reasoned decision to unify some benefits at less than the highest level provided for under the predecessor agreements. We decline to disturb that determination: awarding the highest-level benefits in all of the prior agreements would have culled the provisions

most favorable to employees, without incorporating the offsetting concessions that might also have been part of those agreements.

We also decline to disturb the arbitrator's decision to award a separate longevity schedule for those fire officers employed by the Regional on or after regionalization and whose overall seniority does not include prior service with the member municipal departments. While the Association maintains that the arbitrator reduced benefits for these individuals without explanation, the affected employees would not enter employment with a longevity entitlement. His award of the separate longevity schedule derives from one of his guiding principles: that the provisions governing new hires should be less tied to the terms in the predecessor agreement than those of previously employed firefighters, provided that those terms are not so disparate in relation to the more experienced firefighters that they undermine morale, unity, and the continuity and stability of employment. We find no flaw in the arbitrator's reflecting this principle in the longevity portion of the award. We note that one of the prior agreements had less favorable longevity schedules for more recent hires.

#### **Vacation - Association Objections**

The arbitrator awarded a unified vacation schedule effective January 1, 2003 and, as with longevity, the Association objects to the level of benefit awarded. We address that issue now and

later consider the Regional's challenges to award sections concerning vacation scheduling.

We find that the arbitrator reasonably exercised his discretion in unifying vacation benefits when he awarded Fire Officer 2s and 3s 12 24-hour tours of duty and Fire Officer 1s 11 24-hour tours. The arbitrator approached his analysis of vacation leave as follows:

Turning first to the amount of vacation to be provided to Fire Officers, as stated earlier, the parties' proposals must be examined in light of the benefits provided in the municipalities that comprise the Regional with an eye towards unifying those benefits to the extent feasible. [Arbitrator's award at 185]

The arbitrator explained that the Regional proposed that fire officers receive four to nine 24-hour vacation days, keyed to years of service, while the Association sought 33 12-hour vacation blocks for Fire Officer 3s; 31 12-hour blocks for Fire Officer 2s; and 29 12-hour blocks for Fire Officer 1s. The arbitrator noted that under the predecessor agreements, fire officers generally received more generous vacation benefits than those proposed by the Regional but fewer days than proposed by the Association. The award results in greater vacation benefits for former Weehawken and Union City fire officers, who received eight to nine and nine to eleven tours, respectively, depending on rank, as well as for North Bergen fire officers hired after 1986, who received 12 to 20 12-hour tours based on years of

service. The award results in lesser benefits for West New York officers, who received 12 or 13 24-hour days depending on rank, along with three compensatory days, as well as lesser benefits for North Bergen officers hired before November 1986, who received 24 to 28 12-hour tours depending on rank.

The arbitrator's award is in between the parties' proposals and the Association does not point to any evidence that he did not consider. While it protests that some North Bergen officers will lose 3.5 vacation days per year, we reiterate that this type of benefit reduction must be considered in the context of the overall award, which grants greater vacation benefits to some North Bergen officers, and officers from two other municipalities, and also unifies salaries at the highest levels in the predecessor agreements. We reiterate our earlier discussion about the consequences of establishing a single compensation and benefits structure from four separate agreements.

The Association also maintains that the award improperly results in a forfeiture of earned vacation time for some officers. The background to this issue is as follows.

The arbitrator awarded, with minor language changes, an Association proposal concerning banked compensatory time credited to former West New York fire officers. The clause reads:

Employees covered by this Agreement who were previously employed by [the] Town of West New



York Fire Department shall be entitled to maintain all previously banked compensatory and accumulated time which existed as of the time of the regionalization. [Arbitrator's award at 192]

The Association had sought this clause because the West New York agreement had provided that if a fire officer could not use all vacation time by the end of the calendar year, due to either disability or departmental procedure, he would either be paid for the unused vacation time or given compensatory time, which could be banked. The Association now contends that the award should have also preserved banked vacation time for officers from other municipalities.

Since the Association proposal pertained only to West New York officers, the arbitrator cannot be faulted for not deciding an issue not presented to him. In any case, the Association does not challenge the arbitrator's findings that Union City permitted vacation to be banked for the succeeding year only and that North Bergen allowed the practice only for terminal leave purposes. The award includes such provisions for all unit members, so that officers from North Bergen and Union City do not lose any rights with respect to unused vacation time and have an additional option concerning such time (Arbitrator's award at 192). While Weehawken allowed vacation time to be banked for two years, that type of provision contravenes N.J.S.A. 11A:6-3, which allows vacation time to be accumulated only in the year following the

year in which it was earned and only if the employee was prevented from taking the time due to departmental needs. See State of New Jersey (Dept. of Higher Ed.), P.E.R.C. No. 96-47, 22 NJPER 37 (¶27018 1995).

For these reasons, we decline to modify the award or require reconsideration of this point with respect to Weehawken fire officers who may have accumulated vacation time in excess of that permitted by statute.

#### **Service Differential - Association Objections**

The Association objects that the arbitrator's award with respect to service differential substantially reduces benefits without a reasoned analysis. However, the arbitrator did not reduce the benefit when he decided to maintain the service differential for those former North Bergen and Weehawken fire officers who already received it or who would earn it as of December 31, 2002.

#### **Longevity, Vacation, Service Differential - Association Objections to Effective Date**

The Association argues that if we affirm the longevity, vacation, and service differential articles, their effective dates should be changed to January 1, 2004, consistent with the adjustment the arbitrator made to the sick leave article in his Decision on Clarification. The Association argues that when the award was issued, these provisions, like the sick leave article, were intended to apply prospectively. It urges that employees

who receive reduced benefits under the award should not have to pay back amounts received, or vacation days used, in 2003.

The arbitrator adjusted the effective date of the sick leave article in conjunction with the changes that he made to the sick leave program pursuant to the limited remand order. That order did not direct him to re-examine the longevity, vacation, or service differential portions of the award and he did not do so. Initial briefs in this matter were filed in March 2003, after the scheduled effective date of the longevity, vacation, and service differential articles, but this issue was not raised. In this posture, we decline to entertain the Association's argument.<sup>5/</sup> In the event that any dispute arises over implementation of the longevity, vacation, and service differential articles, such dispute may be resolved through the parties' grievance procedure.

#### **Sick Leave - Association Objections**

The arbitrator awarded a uniform sick leave program that pertains both to newly hired fire officers and those previously employed by one of the participating municipalities. Effective January 1, 2004, the program grants unit members a set number of

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<sup>5/</sup> After submitting a letter indicating that it would not submit comments on the Decision on Clarification, the Regional sought leave to respond to those portions of the Association's comment letter that addressed longevity, vacation, and service differential. Both parties then filed additional submissions. Given that we have declined to entertain the Association's argument on this issue, we deny the parties' requests to file further submissions.

sick days per year based on years of service, and includes provisions on sick leave verification and an incentive program for non-use of sick leave.<sup>6/</sup> In his Decision on Clarification, the arbitrator addressed whether, after the effective date of the awarded program, fire officers from Union City and Weehawken would have an accumulated sick leave bank available to use for non-work connected illnesses or injuries.

The Association objects to the amount of sick leave awarded and the award provisions concerning Regional-directed medical examinations. It also asks that we modify the Decision on Clarification. We address those issues now. We consider the Regional's challenges to the award's sick leave verification provision in another section of this opinion.

We reject the contention that the award does not conform to N.J.A.C. 4A:6-1.3(a)2 and incorporate our discussion in P.E.R.C. No. 2004-17, where we found that the regulation by its terms does not pertain to police officers and firefighters. Further, and as we also stated in P.E.R.C. No. 2004-17, the regulations apply to employees who, by regulation, work seven or eight hour days. When the number of 24-hour sick days awarded is translated into hours, the award equals or exceeds the regulatory requirements.

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<sup>6/</sup> As noted earlier, the Decision on Clarification changed the effective date from January 1, 2003 to January 1, 2004.

The Association also protests that there are no limits on the Regional's ability to require fire officers to undergo, at the Regional's expense, physical, neurological, or psychiatric examinations, and no indication as to where medical treatment is to be rendered or by whom. However, it does not appear that the Association raised these objections to the Regional's proposal before the arbitrator. Therefore, we decline to disturb this section of the award.

We next consider the Association's objections to the clarification decision. The arbitrator wrote as follows:

Although not expressly stated, PERC's inquiry concerning the conversion of some employees from "unlimited" sick leave to a specific allotment of paid sick leave is whether those employees would have access to an accumulated sick leave bank, the type of which other firefighters might have accrued by virtue of having had a specific allotment, a portion of which may have been unused and therefore accumulated. If not, that employee might not have access to accumulated sick leave to apply to a non-work connected injury or illness which would force that employee to exceed his newly awarded annual allotment and therefore be put in an unpaid status. It was not my intention to allow such situation to exist as a result of the conversion.  
[Decision on Clarification at 9-10]

The arbitrator made these clarifications. First, he concluded that Union City and Weehawken fire officers with twenty or more years of service as of January 1, 2004, should continue to receive the sick leave benefits to which they were entitled under the prior agreements. Second, for Weehawken fire officers with

less than 20 years of service as of January 1, 2004, he created an annual sick leave bank for sick leave use consisting of 72 hours for each full year of service earned prior to January 1, 2004. The bank was created without regard to prior sick leave usage. Third, for Union City fire officers, he found that the prior agreement provided for an annual sick leave bank and accumulation of sick leave. He clarified that for fire officers with less than 20 years of service as of January 1, 2004, any accumulated sick leave time earned as of January 1, 2004 shall be carried forward into each employee's sick leave bank, to which allotments earned under the newly awarded sick leave program could be added.

The Association requests that we modify the Decision on Clarification by adopting the Association's proposed method for providing for accumulated sick leave for Union City and Weehawken fire officers. We decline to do so.

The arbitrator's Decision on Clarification addresses the issue framed in our remand order and substantially ameliorates the concern that fire officers from Weehawken and Union City would not have a sick leave bank available for an extended illness once the awarded sick leave program goes into effect. For example, under the clarification, a former Weehawken fire officer with 10 years of service would, as of January 1, 2004, have a sick leave bank of 30 24-hour days, and would earn 7.5 24-

hour days that year. That sick leave bank must be viewed in the context of the unit's work schedule, where firefighters are scheduled to work approximately 91 days per year, less vacation and other leave time.

With respect to Union City fire officers, the arbitrator found that, under the prior agreement, they had an annual allotment of sick leave days that were placed in a terminal leave bank; the ability to accumulate the days; and an ability to use them for a non-work related illness or injury. The Decision on Clarification specifies that, for former Union City fire officers with less than 20 years of service as of January 1, 2004, the bank will be carried forward once the new sick leave program goes into effect and that sick days earned under the new program will be added to it. Of course, fire officers from Weehawken and Union City with more than 20 years of service will continue to have up to one year of sick leave.

The Association does not explain why its proposed program is necessary to provide for sick leave for extended illness or assert that the arbitrator's decision does not do so. We therefore decline to disturb the arbitrator's Decision on Clarification.

**Holiday Pay, Clothing Allowance, and Base Pay -  
Regional and Association Objections**

The Regional contends that the arbitrator exceeded his authority and issued an imperfect award, N.J.S.A. 2A:24-8d,

because the award results in some fire officers receiving an unjustified "double payment" for clothing allowance and holiday pay. This is the background.

The arbitrator awarded a unified clothing allowance of \$650 per year, effective July 1, 2002. Effective January 1, 2003, he unified holiday pay benefits at 112 hours per year for all previously employed and newly hired fire officers. The Regional maintains that officers from Union City, North Bergen and Weehawken will receive an unwarranted "double payment" because clothing allowance was included in the base salary for Union City fire officers and holiday pay was included in the base salary of North Bergen and Weehawken officers. The Union City contract stated that "clothing allowance was negotiated out of this agreement and the \$650 formerly attributed to clothing maintenance allowance became part of the employee's base salary." Similarly, the North Bergen agreement provided that the Township "will include payment for holidays or holiday pay in the base rate of each member of the unit as per past practice." The Weehawken agreement stated that holiday pay was included in base salary after 19 years of service.

As we stated in P.E.R.C. No. 2004-17, the arbitrator could reasonably conclude that it was not relevant whether the base salaries under the predecessor agreements were achieved through successive salary increases or salary increases plus clothing or



holiday pay fold-ins. That is particularly so since a fold-in may be agreed to in exchange for lower across-the-board increases. Compare City of East Orange, P.E.R.C. No. 2003-39, 28 NJPER 581 (133181 2002) (arbitrator awarded fold-in of holiday pay in lieu of an across-the-board salary increase).

We recognize that while a benefit can "disappear" into base salary, as was the case with the Union City clothing allowance, it can also be maintained in an agreement, together with a proviso that it be paid as part of base salary. Even if that were the case with respect to North Bergen or Weehawken, there is no double payment because any separate holiday pay or clothing allowance provisions in those contracts are superceded by those in the award.

The Association also raises a question about holiday pay and base pay, arguing that the award is unclear when it directs that holiday pay "shall be considered as added to an employee's base salary." The arbitrator observed in his opinion that "holiday pay should be received as compensation and included in base pay" (Arbitrator's award at 201-202). The intent that it be included in an employee's regular paycheck as opposed to a lump sum is apparent. The Association does not suggest what other construction could be placed on the language or why the phraseology used is problematic.

**Holiday Pay - Association Objections**

The Association notes that the arbitrator unified holiday benefits mid-contract, on January 1, 2003, but did not account for the "holiday credits" that some unit members may have earned during the first half of the contract year. The Association also contends that the arbitrator did not explain why he denied its proposal to allow line supervisors two hours of leave on New Year's Day, Easter Sunday, Thanksgiving and Christmas to enable officers to enjoy holiday meals with their families.

With respect to the holiday meal proposal, the arbitrator was persuaded by the Regional's arguments that the proposal could entail costs and result in less than adequate coverage (Arbitrator's award at 201). The Association does not point to any flaws in that analysis and we decline to disturb it.

Turning to the issue of holiday benefits that were allegedly unaccounted for, we note that the arbitrator awarded 112 hours of holiday pay - a benefit equal or greater than that received by all officers except those from Union City, who had received 120 hours of pay. Before the arbitrator, the Association explained that Union city officers received holiday pay as part of their regular paychecks (Arbitrator's award at 193; 197). Therefore, it would appear that unit members received their entitlement under the Union City agreement for the first half of the year through paychecks received during that period. Absent any more

particularized description of what credits Union City officers are owed, we decline to order a remand on this point.

### **Health Insurance - Association and Regional Objections**

The arbitrator was required to resolve a number of complex and significant issues with respect to health insurance including: whether all firefighters would be covered by the same plan; the type of plan or plans; benefit levels; co-payments for dependent coverage (proposed by the Regional); nature of prescription drug, dental, and eye care coverage; and the type of retiree health care coverage and the eligibility requirements for such. Each party challenges one aspect of the detailed health insurance provision that the arbitrator awarded, which directed the Regional, no earlier than January 1, 2003, to provide health benefits under either the State Health Benefits Program (SHBP) or an "equal or better" program.

The Regional objects to the award of retiree dental and eyeglass coverage, arguing that the benefit will impose additional costs and is unsupported by the evidence. It also maintains that the arbitrator lacked authority to award the coverage because neither party had proposed it. The Association protests that the award does not provide for continuation of health benefits for surviving dependents of deceased fire officers, even though some of the agreements had such provisions.

The arbitrator explained his decision to unify health benefit coverage as follows:

Health insurance is a major term and condition of employment with significant implications for each party. Administration, costs and benefit levels are paramount considerations. This benefit is one which should be merged or unified for all employees of the Regional. The testimony of Director Welz must be credited in this regard. The interests of the Regional and all of its employees will be served by a single contract providing comprehensive health insurance benefits [to] all of its firefighting personnel regardless of unit placement. The Union's plea for a continuation of health insurance programs based upon individual prior contracts and arrangements with each municipality is simply not feasible.  
[Arbitrator's award at 317-318]

We turn first to the Regional's objections and incorporate our discussion in P.E.R.C. No. 2004-17. As we held there, extension of eyeglass and dental coverage to all current unit members upon their retirement was encompassed within the parties' proposals. The arbitrator's decision to award this benefit derives from his goal of unifying benefits.

With respect to the Association's objection, the Association did not submit a proposal requiring continuation of coverage for surviving dependents. Therefore, the arbitrator cannot be faulted for not addressing the issue. Moreover, the arbitrator made a reasoned decision to unify health benefits and to do so at the level of the State Health Benefits Program (SHBP). As a consequence, there may be some benefits included in some

agreements or health plans that will not be continued. We note that if the Regional enters the SHBP, the program allows survivors of retirees to continue SHBP coverage at their own cost. N.J.A.C. 17:9-6.6.

**Court Time**

The Association challenges the arbitrator's award of a "court time" clause stating that employees will not be paid for legal appearances at arbitration and PERC proceedings unless the employer requires their attendance. It argues that witnesses should receive equal treatment whether they testify for or against the employer.

We will not disturb the arbitrator's exercise of discretion on this issue. The thrust of each party's court time proposal was that employees should be compensated, at overtime rates, for off-duty legal appearances required in connection with departmental matters. The arbitrator could reasonably conclude that the rationale for the employer's payment obligation was the employer mandate to attend the proceeding.

**Terminal Leave - Association and Regional Objections**

One theme that runs throughout the arbitrator's discussion of the major economic issues is the desirability of merging the four salary guides and benefits structures into a single compensation system. However, as noted, the arbitrator also found that it was not feasible to merge some benefits that accrue

over the course of a career, and which an individual reasonably expects will continue until retirement. The arbitrator's conclusion that terminal leave was one such benefit is amply supported by the record, as is the terminal leave article he awarded for fire officers employed by the Regional after regionalization.

The arbitrator analyzed the widely divergent terminal leave provisions in the prior agreements, as well as the parties' proposals. For example, he noted that Union City provided for a sick leave bank of 120 hours for each year of service and provided for payment of unused sick leave at a rate of one hour of compensation for every two hours accumulated. Weehawken officers had no fixed number of annual sick days but received a terminal leave payment of 90 days pay. In West New York, officers were paid a rate of \$136 to \$174, depending on rank, for each unused sick day, subject to a cap that was also tied to officer rank. In North Bergen, officers were compensated for accumulated sick leave at one-half the daily rate of pay received by the employee during the last year of employment, subject to a maximum of 57% to 70% of the top salary for the applicable rank.

The Association proposed to establish a sick leave bank - for terminal leave purposes and non-work related illness - of 120 hours for each year of service. It proposed to compensate employees at retirement for all unused sick days at the rate of

one-half the employee's final rate of pay. It also sought a clause requiring that all leave accumulated by fire officers in their employment with the municipalities be maintained for retirement use on a special list. The Regional proposed to compensate employees for one-half of accumulated sick days, at a rate of \$120 per 24-hour tour.

Against this backdrop, the arbitrator found merit in the Regional's arguments for limiting terminal leave benefits, as well as in the Association's position that some terminal leave benefits should be maintained, since all the prior agreements had included such benefits. He then reasoned:

Balancing the firefighter's desire to consolidate all firefighters in a single terminal leave program, while maintaining terminal leave benefits previously accrued while they were employed by the municipal fire departments with the Regional's need to control future costs warrants different terms for those employees originally employed by one of the municipalities that comprise the Regional and for those employees hired directly into the Regional department.

Terminal leave is a benefit where the merger of accrued benefits under the prior agreements is simply not feasible. The benefits for those employees employed by individual municipalities should be retained even though those specific benefit levels cannot be enjoyed by the entire workforce on a uniform basis. Each of the previous agreements included different methods of accumulating time towards terminal leave and different formulas for its calculation. It is generally accepted that leave time accrued by employees towards terminal leave is vested

and should not be diminished. [Arbitrator's award at 166-167]

Therefore, for previously employed fire officers, the arbitrator awarded a maintenance of the terminal leave benefits received under their prior agreements. For employees directly hired by the Regional, he reasoned that they had no vested interest in a particular terminal leave program, and he awarded a benefit that was more than that proposed by the Regional and less than that proposed by the Association: compensation for all unused sick leave and some vacation days, at a rate of \$120 per 24-hour day, and subject to a \$15,000 cap. The arbitrator found that the \$120 per tour payment was reasonable and that the cap limited the Regional's future terminal leave costs and enabled it to plan for them.

Neither party objects to the arbitrator's overall analysis, but the Regional protests that the municipal programs should not have been continued with respect to time accumulated with the Regional. The Association challenges three aspects of the terminal leave article: its impact on former Weehawken officers; the inclusion of vacation days in the terminal leave payment; and the rate of payment for unused sick or vacation days.

The Regional has not provided a basis to disturb the arbitrator's analysis. Preliminarily, there is ample support for the arbitrator's conclusion that leave time accumulated toward terminal leave should not be reduced absent a knowing and



intentional waiver by those adversely affected. See Morris Cty. Schl. Dist., 310 N.J. Super. 332 (App. Div.), certif. denied, 156 N.J. 407 (1998). Thus, the entitlements that previously employed fire officers had earned under the municipal agreements were reasonably preserved. Further, the arbitrator's decision to apply these terminal leave provisions to officers' time with the Regional derives from one of his guiding principles: that there are certain benefits that accrue over the course of a career that employees reasonably expect will continue until retirement. Terminal leave is one such benefit because it is tied to retirement. We defer to the arbitrator's judgment that, given the range of terminal leave programs under the prior agreements, unification could not be accomplished without harsh inequities either in terms of benefit elimination or excessive cost.

While the arbitrator could have awarded different terminal leave provisions for time served with the Regional, as the Regional maintains he should have, that type of award is not compelled and would have resulted in more of the complications that the Regional attributes to administering separate terminal leave benefit programs under the prior agreements. That is, the terminal leave entitlements for previously employed fire officers would have had to be allocated between their pre- and post-regionalization service.

In addition, while the Regional objects to the cost of continuing the prior terminal leave provisions, those costs must be considered together with the terminal leave benefit for newly-hired officers, which caps terminal leave payments at \$15,000. Only two of the prior agreements had a terminal leave cap and each was higher than \$15,000. Finally, the arbitrator could not have precisely costed out the terminal leave provisions, when the benefits for both previously employed firefighters and those directly hired by the Regional largely depend on the amount of sick leave accumulated by an employee's retirement date.

Similarly, we are not persuaded by the Association's objections to the terminal leave article. First, it maintains that the award does not provide uniformity for former Weehawken officers, who had no sick leave banks to carry into their Regional employment and who therefore will not receive the same type of terminal leave payments as other officers.

As discussed above, the arbitrator did not attempt to achieve uniformity on this issue but continued the entitlement of former Weehawken officers to 90 days terminal pay upon retirement, at the employee's final salary. That amount may exceed the payments received by other officers, depending on the number of sick days accumulated and the payment method included in the applicable municipal agreement.

With respect to the terminal leave provisions for new employees, the Association objects to the provision providing \$120 per day for accumulated sick and vacation days. It reasons that a sick day is a contingent benefit but that vacation days are earned and vested and should not have been grouped with sick days for terminal leave purposes. It also maintains that the \$120 figure is arbitrary.

The reference to vacation days in the terminal leave article dovetails with the vacation article, which allows vacation leave to be accumulated, for vacation purposes, in the year following that in which it is earned, but allows it to be banked indefinitely for terminal leave purposes. In this posture, the \$120 figure compensates an employee for a vacation day that would otherwise have been forfeited. We will not second-guess the arbitrator's discretionary compensation decision to award \$120 per day for unused sick days and some unused vacation days. That figure was included in the Regional's proposal, which the arbitrator awarded in modified form.

### **III. Award Provisions on Administrative, Operational & Contract Language Proposals**

We next turn to the parties' objections to a variety of award sections on administrative, operational and contract language proposals. We evaluate those objections by assessing whether the arbitrator considered the evidence and arguments presented and offered a reasoned explanation for his award. If

the arbitrator's analysis satisfies these criteria, we will not disturb his judgment because one or the other party argues that its proposal was preferable to the arbitrator's award.

The Regional's arguments are essentially the same as in P.E.R.C. No. 2004-17, and we incorporate our analysis of the issues in that case and summarize our holding on each point.

#### **Work Hours - Regional Objections**

The Regional maintains that the arbitrator erred in not awarding its proposal for a 24/48 hour work schedule, which would have increased the number of days and hours worked annually. On appeal and before the arbitrator, it urged that the substantial salary and benefit package enjoyed by Regional firefighters warranted this workload increase, given that the legislative intent in adopting the regionalization statute was to achieve cost savings.

We incorporate our analysis in P.E.R.C. No. 2004-17. The record supports the arbitrator's conclusion that the evidence on the interest arbitration criteria did not warrant the change in the work hours/compensation equation that the Regional proposed. Further, the circumstance of regionalization does not in and of itself require a change in the work hours/compensation equation beyond what would otherwise be required by application of the section 16g factors.

**Outside Employment - Regional and Association Objections**

The arbitrator awarded an outside employment clause, proposed by the Regional, stating that employees shall consider their Regional positions as their primary employment and may not engage in any outside employment or activity that would interfere with that position or constitute a conflict of interest. Also as proposed by the Regional, the award states that an employee may not engage in outside employment while on sick or compensable work-related injury leave. Despite the arbitrator having awarded its proposed clauses, the Regional objects that they will have no effect because the arbitrator did not also award its proposal requiring employees to report and request approval for all outside employment. Without these provisions, it maintains that it will not be able to ascertain whether outside employment is contributing to costly and allegedly excessive sick leave use.

For its part, the Association argues that the prohibition against engaging in outside employment is too broad and should be vacated, because inability to perform firefighting need not mean that an individual cannot engage in less strenuous employment. This is essentially the same argument made by the Firefighters' Association in P.E.R.C. No. 2004-17.

As we held in P.E.R.C. No. 2004-17, the outside employment sections of the award do not provide grounds for a remand. As the arbitrator recognized, this is a first contract and there is

a limit on what can be accomplished in a first agreement. Only one of the prior contracts had an outside employment reporting requirement and the arbitrator could reasonably decide to incorporate general principles governing outside employment without also awarding the procedures the Regional proposed. After experience under the award, the Regional may again choose to propose a reporting requirement.

Similarly, the arbitrator had the discretion to give weight to the Regional Director's testimony that a fire officer on sick or injury leave should devote that time to recovering from an injury or illness, because outside work could impair that recovery.

#### **Drug and Alcohol Testing Procedures - Association Objections**

The Regional proposed and the arbitrator awarded a clause stating that the Regional may administer a drug and alcohol testing program pursuant to the Attorney General's Law Enforcement Drug Testing Policy, which the arbitrator incorporated by reference. The Association does not object to the portion of the clause authorizing the Regional to conduct drug testing, but states that it never had the opportunity to review the Attorney General policy and thus was deprived of its opportunity to negotiate drug testing procedures.

The Attorney General's policy was submitted as an employer exhibit before the arbitrator but the Association did not oppose

the testing procedures it contained or offer a rationale to support its own proposal, which would have limited drug tests to those administered based on probable cause or as part of an annual physical examination. Therefore, we decline to vacate and remand this aspect of the award.

### **Assignments and Transfers**

The Association objects to the arbitrator's award of the following Regional-proposed clause:

The assignment and transfer of Fire Officers shall be solely the responsibility of the Executive Director. It shall be understood nothing shall prohibit any employee from submitting, through proper channels, a written request for transfer to a new or vacant position for which that employee is qualified. [Arbitrator's award at 136]

The arbitrator observed that this was the "lone proposal on which both parties are silent" and therefore awarded it.

The Association now claims that the proposal conflicts with the fire chief's authority to make assignments at a fire scene and that, by awarding it because of the parties' silence, the arbitrator contravened his earlier statement that he would assume opposition where a party did not respond to an adversary's proposal.

Regardless of the arbitrator's presumptions for analyzing proposals, we will not disturb this portion of the award based on arguments that the Association could have but did not make to the arbitrator. In any case, the clause does not appear to refer to

fire scene assignments but to longer-term job or title classifications, as evidenced by the reference to written requests for transfers.

#### **Vacation Scheduling - Regional Objections**

The Regional objects to the award provisions governing use of vacation time, maintaining that the arbitrator should have awarded its seasonal scheduling policy so that it could limit vacation use on weekends; control overtime costs; and maintain staffing levels.

Before the arbitrator, it proposed that the year be divided into three periods, with no more than one third of the officers permitted to take vacation during each period. By contrast, the Association proposed a clause whereby up to nine officers would be allowed off at any one time, pursuant to a vacation schedule established by the Regional after consultation with the Association president. Its proposal that officers receive between 29 and 33 12-hour vacation blocks by its terms would permit vacation time to be taken in 12-hour segments, and it also sought 72 hours of "reserve time" that could be used in units of six hours or more.

The arbitrator thoroughly reviewed the parties' evidence and arguments, including the Regional's exhibits showing vacation patterns, and arrived at an award that recognizes and accommodates both the firefighters' desire for some flexibility



and input into vacation scheduling and the Regional's cost and staffing concerns. For example, while the Regional objects that the arbitrator did not consider its need to maintain minimum staffing, the arbitrator did not award the Association's proposal to allow nine officers to be on vacation at one time. Instead, the award allows the department to set the vacation schedule, taking seasonal considerations into account if it chooses, after consultation with the Association president. While the Regional objects to the consultation requirement, it does not negate or significantly interfere with the Regional's right to set staffing levels to the extent such are implicated by the vacation schedule. As we explained in North Hudson Reg. Fire & Rescue, P.E.R.C. No. 2000-78, 26 NJPER 184 (¶31075 2000), we have found to be mandatorily negotiable clauses requiring an employer to consult or discuss actions which it has the managerial prerogative to effect, but which have an impact on employee working conditions or performance.

With respect to the Regional's contention that the arbitrator did not resolve the unsettled issues because he did not award a specific vacation distribution schedule, we reiterate our analysis in P.E.R.C. No. 2004-17. The arbitrator commented that he had awarded a regional-wide vacation program and encouraged the parties to negotiate a more specific vacation use and distribution schedule during the next round of negotiations.

That language does not establish a lack of finality where the award provides that the vacation schedule shall be set by the Regional in consultation with the Association. Nor does it indicate a belief that interest arbitration is not the proper forum for resolving vacation scheduling issues. Compare Cherry Hill. Rather, it is consistent with the arbitrator's earlier observation that there is a limit to what can be accomplished in a single and initial contract.

The Regional also maintains that we should vacate the award provision allowing vacation time to be taken in 12-hour blocks. The clause allows some flexibility in vacation scheduling and, absent any particularized discussion of why it is problematic, we decline to disturb it. However, as the Regional notes, the arbitrator's opinion, like the award and opinion in the firefighters' case, states that the taking of a 12-hour block of vacation time is contingent upon the remaining 12 hours of the tour being covered on a non-overtime basis (Arbitrator's award at 189). We correct the award to include this language in the contract. See East Orange (Commission has authority to correct minor errors that are apparent on the face of the award).

#### **Association Rights - Regional Objections**

Before the arbitrator, both parties proposed a union leave provision for the purposes of contract administration. As it does in the firefighters' case, the Regional objects that the

awarded clause does not adequately define "association business" or what constitutes the "reasonable notice" Association representatives must give in order to take union leave. It also objects to the award clause requiring it to permit up to two Association representatives time off to attend Association business.

We reiterate our discussion in P.E.R.C. No. 2004-17.

"Association business" is a term of art and the award references some of the items included within it - e.g., investigation and settlement of grievances and negotiations meetings. "Reasonable notice" is a common term that may derive its content from the circumstances presented. Both may be defined more precisely through the parties' experience and contractual grievance procedures. We also decline to disturb the arbitrator's decision to allow two unit members leave time to attend to Association business. This portion of the award strikes a balance between the parties' proposals.

#### **IV. Scope of Negotiations and Statutorily-Based Arguments**

The Regional contends that certain sections of the award conflict with governing statutes and that others impermissibly impinge on its managerial prerogatives. It asks us to vacate or modify the sections identified. Similarly, the Association maintains that two award sections are inconsistent with pertinent statutes. As noted at the outset of our opinion, we will

evaluate allegations that an award provision violates a statute or regulation but will not resolve late-raised claims that an award section significantly interferes with a managerial prerogative.

**Injury Leave, Sick Leave Verification, Off-Duty  
Action - Regional Objections**

The arbitrator awarded injury leave and off-duty action provisions identical to those in the firefighters' case and the Regional advances the same objections to the clauses as in P.E.R.C. No. 2004-17. We incorporate our analysis in that decision and restate our holdings. We will not modify the award because of an asserted conflict with N.J.S.A. 40A:14-16, providing that injury leaves may not exceed one year. While the award allows the Regional to extend a leave beyond one year at its sole discretion, the Regional has the ability to deny an extension and thus prevent the problem it fears from arising.

Further, the award does not prevent the Regional from adhering to the requirement in N.J.S.A. 40A:14-16 that the employer's own physician certify disability for purposes of injury leave. That obligation can be accomplished while honoring the award's provisions allowing an employee to be treated by his or her own physician.

Finally, we will not disturb the off-duty action section of the award, which provides that officers responding to an emergency while off-duty are entitled to the same "rights and

benefits" as if they had been scheduled to work. While the Regional contends that the award improperly confers worker's compensation benefits, the clause does not refer to such benefits and an arbitrator is without authority to award them.

The award's sick leave verification provisions are also the same as in the firefighters' award. As in that appeal, the Regional contends that the award interferes with its prerogative to verify sick leave by stating that a doctor's note shall be required when an employee has been on sick leave for more than one tour of duty and may be sought when there is reason to believe that sick leave is being abused. It maintains that, under our scope of negotiations decisions, an employer has the prerogative to determine the number of absences that trigger a doctor's note requirement.

The Regional filed a pre-arbitration scope petition with respect to the Association's proposal to require employees to submit a doctor's note after three one-day absences or one absence of two or more days. North Hudson. We held the proposal not mandatorily negotiable, reasoning that the clause suggested that the employer was prohibited from verifying sick leave in other circumstances.

The award's sick leave verification provision does not conflict with North Hudson or interfere with the Regional's prerogative to verify sick leave. While it confers a contractual

right or obligation on the Regional to verify sick leave after an absence for one tour of duty, it does not prohibit the Regional from requiring a note for a single absence.

### **Association Rights - Association Objections**

This award includes a convention attendance provision, similar to that in the firefighters' award. The clause allows three elected Association officers, delegates, trustees and/or alternates, or employees elected to State or international office, to attend IAFF and FMBA State and district conventions. The Association contends that the award section contravenes N.J.S.A. 11:6-20 and N.J.S.A. 40A:14-177, which entitle duly authorized union representatives, up to a maximum of 10% of the membership or 10 employees, to attend such conventions.

The Association sought a provision authorizing four representatives to attend conventions, as opposed to the 10 members it claims it is now authorized to send. As we held in P.E.R.C. No. 2004-17, to the extent that the Association is entitled by statute to send more than that number, the right is incorporated in the contract, State v. State Supervisory Ass'n, 78 N.J. 54, 80 (1978), and thus there is no need for the arbitrator to reconsider the award provision.

The Association also objects that by limiting leave for convention attendance to one 24-hour tour, the award could in some circumstances contravene the statute, which allows up to

seven days leave for convention attendance and travel time. This concern is not a basis to remand the award for reconsideration or clarification. If a situation arises where the Association believes that the award would not allow the leave time required by statute, the Association or affected employees could advise the Regional when requesting time off and grieve the matter should the Regional disagree with the Association's position.

#### **V. Clarification Issues**

In the final section of this opinion, we discuss contentions by both parties that particular award sections are ambiguous and need to be clarified. For the most part, we do not find the provisions unclear and, more to the point, the alleged ambiguities do not implicate the arbitrator's obligation to consider the statutory factors and the parties' evidence and arguments. Nor do they present grounds for delaying implementation of the parties' first agreement. Our discussion explains why we have reached these conclusions, but we stress that we are not definitively interpreting the cited award sections. The parties may jointly request clarification from the arbitrator; amend the award by stipulation, N.J.S.A. 34:13A-19; or allow grievance arbitration to resolve an issue once a dispute arises under a particular award section. Absent mutual agreement, a joint clarification request shall not stay implementation of the award or any portion thereof.

We except one of the highlighted award sections - the grievance procedure article - from this analysis. As detailed later, we correct the grievance procedure article to conform to the arbitrator's opinion.

**Association Requests for Clarification - Leave of Absence/Emergency Leave, Overtime, Educational Incentive, Deferred Income Plan**

**Leave of Absence/Emergency Leave**

The Association first seeks clarification or modification with respect to the award's "Emergency Leave" clause, arguing that the award is ambiguous as to whether the leave is paid or unpaid. The clause provides:

Employees may be granted emergency leave, with or without pay, for the serious illness requiring hospitalization in the immediate family including childbirth, necessitating the employee's presence at the discretion of the Executive Director, which discretion shall not be unreasonably or arbitrarily exercised. Paid leave shall be limited to one tour annually.

The text and the arbitrator's opinion indicate that paid leave is to be limited to one tour, but that unpaid emergency leave could be granted as well.

**Overtime**

The arbitrator awarded an overtime section that reads in part:

Overtime shall be paid for all hours worked in addition to the employee's normal scheduled hours as well as entitlements under the Fair Labor Standards Act (FLSA). The



overtime rate shall be calculated by dividing the employer's annual salary by 2080 hours times one and one-half (1 1/2). [Arbitrator's award at 216]

The Association urges that clarification of this provision is required because it contains incompatible standards for when overtime will be awarded. The award requires overtime for hours worked in excess of an employee's normal day or weekly schedule, regardless of whether overtime is required by the FLSA. It thus tracks the Association's proposal that an employee receive overtime for all extra hours worked and contrasts with the Regional's proposal that employees receive overtime only as required by the FLSA. Absent any more particularized objection by the Association, there is no basis for a remand for clarification or reconsideration.

The Association also requests clarification of the Recall Compensation provision, which reads:

The compensation required to be paid to employees who have been recalled to duty shall be a minimum four (4) hour's overtime pay, at the rate of time and one-half (1 1/2). Time actually required after a recall shall be left at the discretion of the Fire Officer's immediate superior. The four (4) hour minimum shall not apply to employees held over following the termination of their regular shift. [Arbitrator's award at 21]

The Association maintains that clarification is required because the award does not specify whether a recalled officer may be held for four hours even if the reason for the recall has passed.

While the Association's proposal did not address this point, the award directs that the recalled officer's superior determine how long the officer shall be required to remain on duty. This section does not require clarification.

**Education Incentive**

The Association maintains that a clarification or correction, or a vacation and remand, is required because the educational incentive section of the award is unclear as to the rights of officers who are in the process of attending school.

The award states that officers previously employed by a municipality who had, as of the date of the award "commenced matriculation in higher education for credit, shall retain all aspects of education incentives, if any, previously provided in the labor agreements in those departments." Previously employed fire officers who begin a program of study after the award's issuance receive the same benefits as fire officers hired by the Regional on or after regionalization. Again, this section does not need to be clarified.

**Deferred Income Plan**

The Association argues that a remand is required to address its proposal for a deferred compensation plan, which was included in its wage proposal. It suggests that the arbitrator may have overlooked this issue.

The award includes a comprehensive 68-page discussion of the parties' salary positions, and the arbitrator issued a detailed salary award that did not adopt either of the parties' proposals. The arbitrator stated that all proposals not awarded "shall be dismissed and denied" (Arbitrator's award at 330) and we will not infer that the arbitrator overlooked the deferred compensation aspect of the Association's wage proposal. While the arbitrator did not specifically refer to the deferred compensation aspect of the Association's proposal, we will not second-guess his weighing and balancing of the evidence in arriving at the salary portion of the award. As we have stated throughout this opinion, there is a limit to what may be accomplished in a first agreement and the Association may propose to include deferred compensation in the contract through the next round of negotiations.

**Promotions and Vacancies/Out-of-Title Work - Association  
Request for Clarification; Regional Objection**

The Association maintains that the Out-of-Title work and Acting Pay clauses conflict, and require clarification, because the former provides that an officer working at a higher rank for two consecutive tours receives one-half the differential between the two ranks, whereas the Acting Pay clause states that the individual serving in a higher rank due to a vacancy receives the full salary for the higher rank after 30 consecutive days of satisfactory service, retroactive to the first day. The Regional

raises the same objection but contends the award sections should be vacated.

The award sections are similar to two Association proposals. The arbitrator's discussion, and the Association's post-hearing brief, indicate that the out-of-title clause was intended to compensate an employee covering for another on a short-term basis, while the acting pay clause applied to longer-term vacancies. The award sections do not appear to us to conflict. The award provides for some compensation for short-term coverage but directs that an individual receive the full salary for the higher rank once he has assumed long-term responsibility for the position.

The Association also maintains that the out-of-title work clause needs to be clarified or corrected because it is triggered by assignment to a higher title by a "competent authority" - a term which the Association argues should be more specific. Absent any discussion of how or why this clause would present problems, we find no need for clarification. The award provision must be read together with the Regional's general operating orders.

Finally, the Association contends that the arbitrator should have included its proposed language that "the employer shall not defeat the intent of the clause by shifting two (2) or more employees to cover the higher rank in question." However, as the

arbitrator noted, North Hudson held that clause to be at most permissively negotiable because it would prohibit the employer from rearranging the schedules of officers of equal rank, thus eliminating the need to fill the vacancy with lower-ranked officers and triggering the out-of-title pay requirement.

Compare City of Kearny, P.E.R.C. No. 98-22, 23 NJPER 501 (¶28243 1997), aff'd 25 NJPER 400 (¶30173 App. Div. 1999) (superior officers had a mandatorily negotiable interest in receiving overtime compensation for work performed in their own job titles, for which they were presumptively the most qualified). Because the Regional did not agree to submit the proposal to interest arbitration, the arbitrator could not consider it.

**Grievance Procedure - Association and Regional Requests for Clarification**

Both parties maintain that the grievance procedure article is unclear with respect to minor discipline. This is the background.

Before the arbitrator, the Regional proposed that "[g]rievances concerning the imposition of discipline of less than forty-eight (48) hours pay affecting one employee shall not be arbitrable." The Association proposed that "[m]inor disciplinary matters (less than six (6) days of fine or suspension or equivalent thereof) shall be included in this Grievance Procedure."

The arbitrator found that permitting binding arbitration of all minor discipline would be more economical than requiring some minor discipline to be challenged through judicial procedures (Arbitrator's award at 54). He then awarded a grievance procedure that does not refer to minor discipline and defines a grievance as:

[A]ny disagreement between the Fire Officer and the Employer, or between the Association and the Employer, involving the interpretation, application or violation of the terms of this agreement, matters of safety affecting or impacting upon employees and administrative decisions affecting employees. Grievances concerning administrative decisions affecting employees may be filed through step 2 (two) of the grievance procedure. [Arbitrator's award at 55]

In the firefighters' case, the grievance procedure must be read together with the section on "disciplinary action", which specifies that minor discipline may be submitted to binding arbitration. However, in this case, the award does not include a separate disciplinary action article because neither party proposed one.

Both parties agree that the arbitrator intended the grievance procedure article to provide for binding arbitration of

all minor discipline.<sup>7/</sup> Therefore, we will correct the grievance arbitration article to so provide. East Orange.

The Regional also contends that the grievance procedure article is "imperfect as to form" because it includes two different versions of the Step One procedure, with one version allowing 10 days to present a grievance and the other 8 days. It contends that a 10-day limit would be inconsistent with the arbitrator's stated intent to provide time limits that will ensure that grievances be resolved as soon as possible.

In the section of his opinion discussing the parties' grievance proposals, the arbitrator set out the grievance article he awarded and, after commenting on the desirability of having consistent procedures for both fire department units, included a step one procedure providing 10 days to present a grievance (Arbitrator's award at 56). The discrepancy that the Regional cites is in the "Award" section, where the arbitrator reproduces all the contract articles awarded. The award section includes two step one paragraphs, one with an 8-day period for presenting grievances and the other with a 10-day period.

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7/ For this reason, we do not consider the Regional's claim that because the grievance procedure article was not listed in the Association's Notice of Appeal, the Association should be deemed to have waived any objection to it.

The Regional has not explained how the 8-day vs. 10-day window for presenting grievances would affect their resolution in any measurable way, so the only issue is the arbitrator's intent. It appears clear to us that the arbitrator intended to include a 10-day time period, given that is the time frame set forth in the opinion and the period included in the firefighters' award. The firefighters' award is pertinent given the arbitrator's conclusion that there should be consistent procedures for both fire department units. Accordingly, we correct the award by deleting the paragraph, at page 344 of the award, that includes an eight-day period for instituting action under the grievance procedure article.

**Accrual of Vacation Time - Regional Request for Clarification**

The Regional maintains that, in order for it to implement the award's vacation provisions, the award needs to be modified or clarified with respect to accrual of vacation time. We see no need for modification or clarification.

Before the arbitrator, the Regional proposed that, during their first year of service, unit members would accrue vacation days at the rate of one every four months. After completing one year to five years of service, they would be entitled to four



days, and would receive an extra day for each five years of service.

The arbitrator did not award a provision concerning accrual of vacation days for officers in their first year of employment and did not tie vacation entitlement to years of service. Instead, he awarded a set number of vacation days for each rank. Therefore, we do not believe that the article is ambiguous without an accrual clause. Absent a clause providing otherwise, it would appear that officers are entitled to the number of days corresponding to their rank, upon promotion to that rank.

### **Conclusion**

In our issue-by-issue review, we have concluded that the parties' objections do not warrant our disturbing the award. The arbitrator's overall approach and guiding principles are sound, and his award establishes a framework within which the parties may work. The arbitrator painstakingly considered the parties' presentations; reached a reasonable determination of the issues; and fashioned an overall award that is supported by substantial credible evidence. It is perhaps inevitable that each party would disagree with some award provisions, given the length and complexity of this conventional award and the extraordinary number of issues it addressed. However, neither party has pointed to evidence or arguments that the arbitrator did not

consider or shown that any element of the award is unsupported by the evidence.

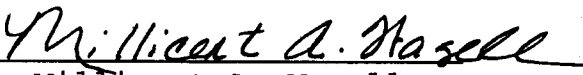
We stress that an interest arbitration appeal is not a means to seek adjustments to award provisions with which one disagrees, particularly since, in general, an appeal decision will not vacate or remand one piece of an award without requiring a re-examination of the award as a whole. See Union Cty., P.E.R.C. No. 2003-87, 29 NJPER 250 (¶75 2003) (award vacated and remanded at employer's request to reconsider its proposals; arbitrator directed to also reconsider union's proposals); contrast East Orange (limited remand ordered for arbitrator to explain how she calculated one item). If the parties still wish to change aspects of the award, N.J.S.A. 34:13A-19 expressly authorizes them to amend or modify the award by stipulation. Absent the parties' agreement, such efforts shall not stay implementation of the award or any portion thereof.

#### ORDER

The arbitrator's award is corrected to: (1) provide for binding arbitration of minor discipline; (2) delete, from page 344 of the award, the paragraph providing for an eight-day period for instituting action under the grievance procedure article; and (3) state that vacation time may be taken in 12-hour blocks only if the remaining twelve hours of the tour are covered on a

non-overtime basis. The award as corrected, and as clarified in the arbitrator's October 10, 2003 decision, is affirmed.

BY ORDER OF THE COMMISSION

  
Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Buchanan, DiNardo, Katz, Ricci and Sandman voted in favor of this decision. None opposed. Commissioner Mastriani recused himself and was not present.

DATED: October 30, 2003  
Trenton, New Jersey  
ISSUED: October 30, 2003

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-2000-53

NORTH HUDSON FIREFIGHTERS ASSOCIATION,

Appellant-Respondent.

SYNOPSIS

The Public Employment Relations Commission affirms an interest arbitration award, as clarified in an October 20, 2003 decision, to establish a first contract between the North Hudson Regional Fire and Rescue and the North Hudson Firefighters Association. In negotiations and interest arbitration, the parties presented proposals on salary, longevity and other compensation items, along with proposals on an entire range of topics typically included in a negotiated agreement. The arbitrator resolved the issues by conventional arbitration. Both the Regional and the Association filed appeals each challenging the award on one or more aspects of several contractual provisions. The Commission had ordered a limited remand to the arbitrator for the purpose of clarifying the arbitrator's intention concerning accumulated sick leave for firefighters from Union City and Weehawken. The Commission concludes that the parties' objections do not warrant disturbing the award. The Commission further concludes that the arbitrator painstakingly considered the parties' presentations; reached a reasonable determination of the issues; and fashioned an overall award that is supported by substantial credible evidence. The Commission finds that the arbitrator's overall approach and guiding principles are sound, and his award establishes a framework within which the parties may work.

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-2000-53

NORTH HUDSON FIREFIGHTERS ASSOCIATION,

Appellant-Respondent.

Appearances:

For the North Hudson Regional Fire & Rescue, The Murray Law Firm, LLC, attorneys (Robert E. Murray, of counsel; Timothy Averell, on the briefs)

For the North Hudson Firefighters Association, Cohen, Leder, Montalbano & Grossman, LLC, attorneys (Bruce D. Leder, of counsel)

DECISION

The North Hudson Firefighters Association and the North Hudson Regional Fire and Rescue both appeal from an unusual interest arbitration award, one which established their first collective negotiations agreement. An award involving the Regional's fire officers was issued by the same arbitrator on the same date and has also been appealed by both parties. <sup>1/</sup>

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<sup>1/</sup> The parties' Notices of Appeal were filed on October 17, 2002. The Association was given the opportunity to perfect its appeal, see Town of Newton, P.E.R.C. No. 98-47, 23 NJPER 599 (¶28294 1997), which it did on November 11. On November 1, the Commission approved a briefing schedule agreed to by both parties, which called for initial briefs to be filed by January 15, 2003 and reply briefs by March 3. Between January 7 and March 18, the parties jointly requested four

September 25, 2003, we ordered a limited remand to the arbitrator for the "purpose of clarifying whether or not he intended firefighters from Union City and Weehawken to have any accumulated sick leave that carries over into the new agreement for sick leave use and, if appropriate, modifying any aspects of the award accordingly. North Hudson Reg. Fire and Rescue, P.E.R.C. No. 2004-10, 29 NJPER \_\_\_\_ (¶ \_\_\_\_ 2003). We retained jurisdiction; directed the arbitrator to issue a written statement; and provided that the parties had five days from receipt of the statement to submit comments. The arbitrator issued a Decision on Clarification on October 10, 2003.

The Regional was created in 1998, pursuant to the Consolidated Municipal Services Act (CMSA), N.J.S.A. 40:48B-1 et seq., in order to replace the paid fire departments in Weehawken, Union City, North Bergen, West New York and Guttenberg. It began operations on January 1, 1999 and employed, as of May 2000, approximately 191 firefighters, some of whom were newly hired by the Regional but most of whom were previously employed by one of the municipalities.

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extensions of time to file their initial briefs, citing the complexity of the case and the amount of material they had to review. Initial briefs were received on March 24. On May 5, the Association was granted an extension of time until May 19 to file its answering brief, and the due date for the Regional's answering brief was also extended. The Commission requested additional documents on May 28, which were received on June 6.

The parties agreed that the term of their first contract would be from July 1, 1999 through June 30, 2004. In negotiations and interest arbitration, they presented proposals on salary, longevity and other compensation items, along with proposals on the entire range of topics typically included in a negotiated agreement - including the preamble, definitions, terminal leave, insurance, work hours, military leave, drug and alcohol testing procedures, and emergency leave. They stipulated to clauses governing management rights, the definition of seniority, non-discrimination, severability and savings, salary deductions, and other items. In broad outline, the parties advanced these proposals and arguments.

The Association argued that all unit members should be governed by the same salary and benefit provisions from the outset of the agreement. It urged that the new terms on such issues as salary, longevity, terminal leave, sick leave and vacation should be set at the highest level found in any of the prior agreements. For example, Union City firefighters were the highest paid prior to the regionalization, so the Association proposed that all firefighters be paid in accordance with the Union City salary guide, which it sought to increase by 5% for each year of the new agreement. For former Union City firefighters, the Association proposed a one-time bonus, based on their years of service, in recognition of the fact that they

would not be receiving as large a salary increase as other unit members.

With respect to health insurance, the Association proposed that the Regional maintain each of the four health plans that the municipalities had contracted for prior to the regionalization, with any unit member being able to choose any one of the four plans. The Association also sought to retain the 24/72 hour work schedule used by each of the participating municipalities.<sup>2/</sup> Finally, with respect to contractual provisions on such issues as injury leave, outside employment, promotions, transfers, and assignments, the Association often proposed clauses similar to those in some of the predecessor agreements and in some instances sought benefits or protections not included in any of those agreements.

The Regional contended that the most weight should be given to its status as a new employer and maintained that it should not be encumbered by the terms of prior agreements. With respect to salary, it proposed a maximum base salary of \$49,023 effective July 1, 1999; proposed that the salaries for the remaining contract years be negotiated; and proposed that firefighters whose salaries exceeded those on the new schedule be "red-

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<sup>2/</sup> Prior to regionalization, Guttenberg negotiated a transition agreement that adopted the terms of the West New York contract, which included the 24/72 schedule. Before that, Guttenberg had followed a 24/48 work schedule.



circled" until the new schedule exceeded the firefighter's base compensation. It sought a single health benefits plan for all unit members; proposed to continue to pay the full premium cost for employees and retirees; and sought premium contributions for dependent coverage. The Regional also proposed a 24/48 work schedule and, with respect to various contract provisions, contended that they should be developed anew with a focus on the Regional's needs as an employer.

The arbitrator resolved the issues by conventional arbitration, N.J.S.A. 34:13A-16d(2), and issued a 467-page opinion and award that included a 68-page contract containing 56 contract articles. He set out several principles, detailed later, that guided his resolution of the dispute. Among these was the principle that, to the extent feasible, the agreement should merge or unify the terms and conditions of employment for those employees previously employed by one of the municipalities. Effective July 1 of 1999 through 2003, he awarded all such firefighters 3% annual increases, calculated using their June 30, 1999 base salaries under the prior agreements. In addition, effective January 1, 2004, the arbitrator ordered salary unification by advancing the salary maximums for former North Bergen, Weehawken, West New York and Guttenberg employees to the level of Union City. That adjustment resulted in firefighters at the maximum step on their former guides receiving additional

increases of \$1,353.50 to \$1,496.00 depending on the municipality by which they had been employed. Those few firefighters not at the maximum step on their former guides were to advance on the Union City salary guide. Also on January 1, 2004, former Union City firefighters were awarded a one-time \$1,000 cash payment not included in base salary.

For firefighters first hired by the Regional, the arbitrator awarded the Regional's proposed salary schedule for July 1, 1999 through June 30, 2000 and increased each step on the schedule by 3% for the remaining four contract years. In addition, the arbitrator added two salary guide steps to the schedule, with the result that the schedules for previously employed and newly hired firefighters have the same maximum salaries, albeit the latter group progresses through an eight-step rather than six-step schedule.

With respect to issues such as longevity, holiday pay, and vacation, the award directed unified benefits either for all firefighters or for all firefighters previously employed by a municipality. On other issues, such as terminal leave and educational incentives, the arbitrator concluded that unification was not feasible. With respect to sick leave, he awarded a unified program for all firefighters, effective January 1, 2003. Pursuant to our September 25, 2003 limited remand order, he issued a Decision on Clarification with respect to accumulated

sick leave for firefighters formerly employed by Union City and Weehawken and changed the effective date for the new sick leave provision to January 1, 2004.

The arbitrator awarded the Association's proposal for a 24/72 work schedule and, as sought by the Regional, directed that a single health insurance contract provide benefits for all unit members. Finally, the arbitrator awarded contract provisions on all of the 56 items proposed by the parties, with the exception of the approximately 12 items on which they had agreed.

Both parties appealed the award. N.J.S.A. 34:13A-16f(5)(a). The Association and the Regional each challenge one or more aspects of these award provisions:

- Salaries
- Holidays
- Insurance
- Sick Leave
- Terminal Leave
- Vacation
- Outside Employment
- Promotions, Assignments and Transfers
- Association Rights & Office Space

In addition, the Association also objects to these award sections:

- Education Incentive
- Compensatory Time
- Service Differential
- Pension and Retirement Benefits
- Longevity
- Emergency Leave
- Funeral Leave
- Grievance Procedure
- Exchange of Tours
- Safety and Facilities

Drug & Alcohol Testing  
Parking Fees  
Jury Duty  
Miscellaneous

The Regional also challenges these award provisions:

Work Hours  
Injury Leave  
Clothing Allowance  
Off-Duty Action

The Regional argues generally that the overall economic package awarded is well beyond its financial means and not supported by substantial credible evidence. It contends that the arbitrator did not properly analyze and apply the statutory criteria, N.J.S.A. 34:13A-16g, and asks us to vacate or modify the provisions it challenges, including the overall economic package.<sup>3/</sup>

The Association maintains that the award unjustifiably eliminated or reduced benefits that had been achieved over the course of prior negotiations, despite the fact that regionalization resulted in significant savings for the Regional

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<sup>3/</sup> It also raises two threshold procedural arguments: that issues included in the Association's Notice of Appeal but not briefed should be deemed waived and that the Association's brief should be dismissed because it does not conform to the requirements for interest arbitration appeals. With respect to the latter point, the Association's comprehensive brief conforms to applicable standards. The Regional's objections go to the merits of the Association's arguments, which we address throughout this appeal. Further, it appears that the Association briefed all items included in its Notice.

and the municipalities as a result of State aid; a retirement incentive program; reduced pension costs; and revenue from the sale of municipal fire department assets. Like the Regional, it maintains that the arbitrator did not engage in the required analysis of the statutory factors. It asks us to vacate the award.<sup>4/</sup>

The standard for reviewing interest arbitration awards is now established, and was recently affirmed by the Supreme Court. 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., P.E.R.C. No. 2000-33, 25 NJPER 450 (¶30199 1999), aff'd in part, rev'd and remanded in part on other grounds, 353 N.J. Super. 289 (App. Div. 2002), aff'd o.b. \_\_\_ N.J. \_\_\_ (2003); 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

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<sup>4/</sup> We deny the Association's request for oral argument. The case has been thoroughly briefed.

did not adhere to these standards. Teaneck, 353 N.J. Super. at 308-309; Cherry Hill.

Arriving at a salary award is not a precise mathematical process. Given that the statute sets forth general criteria rather than a formula, the setting of wage figures necessarily involves judgment and discretion and an arbitrator will rarely be able demonstrate that an award is the only "correct" one. Borough of Lodi, P.E.R.C. No. 99-28, 24 NJPER 466 (¶29214 1998); Borough of Allendale, P.E.R.C. No. 98-123, 24 NJPER 216 (¶29103 1998). Some of the evidence may be conflicting and an arbitrator's award is not necessarily flawed because some pieces of evidence, standing alone, might point to a different result. Lodi. Therefore, within the parameters of our review standard, we will defer to the arbitrator's judgment, discretion, and labor relations expertise. City of Newark, P.E.R.C. No. 99-97, 25 NJPER 242 (¶30103 1999). However, an arbitrator must provide a reasoned explanation for an award and state what statutory factors he or she considered most important, explain why they were given significant weight, and explain how other evidence or factors were weighed and considered in arriving at the final award. N.J.S.A. 34:13A-16g; N.J.A.C. 19:16-5.9; Lodi. Once an arbitrator has provided a reasoned explanation for an award, an appellant must offer a particularized challenge to the

arbitrator's analysis and conclusions. Cherry Hill; Lodi; Newark.

## **I. Overview of Regionalization**

We begin with an overview of the Regional; its financial foundation; and the CMSA's provisions on labor relations.

The Regional was formed as a Joint Meeting pursuant to the CMSA, which authorizes two or more municipalities to enter into a joint contract for the provision of, among other services, police and fire protection. N.J.S.A. 40:48B-2a and b. A Joint Meeting is a public body corporate and politic constituting a political subdivision of the State, N.J.S.A. 40:48B-2.1a, but does not have the authority to directly tax residents. Instead, the Regional's annual operating costs and expenses are allocated among the five participating municipalities in accordance with their joint contract. The Regional is not subject to the CAP law, N.J.S.A. 40A:4-45.1 et seq., but the participating municipalities are.

The Regional is the most densely populated, and third most populous, political subdivision in New Jersey to be served by a single fire department. It was created in order to consolidate the delivery of fire and rescue services for the participating municipalities, save costs, and improve response time. By pooling resources, the Regional provides a faster response, and sends more fire personnel to a scene, than did the participating municipalities. At the time of the hearing, it provided

firefighting services with 35 fewer firefighting personnel (firefighters and officers) than had been employed by the municipalities. Fifty-nine fire personnel (firefighters and fire officers) retired shortly after the regionalization under an early retirement incentive package, thereby reducing payroll costs by over \$4 million. See N.J.S.A. 43:8C-1 et seq. (local unit entering into a joint services contract pursuant to the CMSA may offer an early retirement incentive program, after approval by the New Jersey Department of Community Affairs). By the time of the award, 25 new firefighters had been hired.<sup>5/</sup>

State statutes encourage consolidation or sharing of services by municipalities, counties and school districts, and the Regional and its municipalities benefitted from aid programs designed to encourage such efforts. Thus, the Regional received \$4 million from the State's Regional Efficiency Development Incentive (REDI) program, N.J.S.A. 40:8B-14 et seq., which provides grants for one-time start-up costs. Most of those funds were disbursed in 1999, with \$1.9 million devoted to the

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<sup>5/</sup> In the companion fire officers' case, the Regional's Chief Financial Officer testified that the Regional was responsible for paying \$14 million in pension costs attributable to the early retirement. He explained that they "had just gotten the numbers" from the State, which gave the Regional the option of paying the amount over five, ten or fifteen years, with annual costs, respectively, of \$4 million, \$2.5 million, or approximately \$1.9 million (9T3-9T4).



Regional's start-up costs and \$1.7 million distributed to the municipalities to assist them in paying for the early retirement package. In 2000, the Regional received the remaining disbursement of \$396,625. In 2001, it received no State aid.

The municipalities themselves together received an additional \$2 million in State aid under the Regional Efficiency Aid Program Act (REAP), N.J.S.A. 54:4-8.76, which requires municipalities to use the aid to reduce property taxes. In addition, the five municipalities received a total of \$15 million from the Hudson County Improvement Authority (Authority) from the sale of their fire department assets to that entity, which issued bonds to finance the purchases. The Authority then leased the equipment and buildings to the Regional, which is obligated to make interest and principal payments on lease revenue bonds from September 2001 through September 2024. Finally, as a result of legislation applicable to all local public employers, the municipalities were relieved of their obligation to make \$6 million in pension contributions to the Police and Fire Retirement System (PFRS) for 2001. N.J.S.A. 43:16A-15. The savings were required to be used to reduce the local property tax levy. Ibid.

The CMSA addresses some negotiations issues. It provides that, until the Regional's first collective negotiations agreement is in place, the terms and conditions of employment of

firefighters previously employed by a participating municipality are governed by the contracts negotiated between their former employer and majority representative. N.J.S.A. 40:48B-4.2.

Employees hired after the regionalization have worked under terms set by the Regional. As a result, Regional firefighters have had varied terms and conditions of employment on such items as salary, vacation, insurance, and longevity.

## **II. Overview of Arbitration Award**

In considering the appeals in this case and the companion fire officers' case, we have kept firmly in view the uniqueness and complexity of these interest arbitrations. The arbitrator commended the parties for their professionalism, competence and cooperation in tackling dozens of major and minor issues. We do so as well. As for the arbitrator, he was faced with the challenging task of evaluating the parties' multi-faceted proposals on 56 contract articles; considering those proposals in the context of the four predecessor agreements to which the parties frequently referred; and arriving at a single agreement that recognized, in his words, both the Regional's interest in managing and administering efficient and cost effective fire services and the employees' interests in receiving or maintaining economic benefits while working in a safe, productive environment. This was an enormous and precedent-setting

responsibility, and we commend the arbitrator's thoughtful and comprehensive analysis.

The deference that we normally accord to arbitrators is especially appropriate here, where the arbitrator had to make so many difficult judgments. We stress that this is a case about establishing the major constructs and basic terms and conditions of employment in this new relationship. As the arbitrator stated, there are reasonable limits to what can be accomplished in a first agreement that requires modifications of multiple contracts developed over many decades and encompassing a variety of circumstances; once the first agreement is established, the parties may propose modifications in future negotiations. We accept the arbitrator's analysis in this extraordinary case. The guiding principles and objectives he set out shape our consideration of the appeals.

The arbitrator described how he would explain much of his award in a preface to his discussion of what he identified as the major economic issues - salaries, sick leave, vacation, holidays, overtime, compensatory time, terminal leave, education incentive, longevity, service differential, insurance, and pre-retirement benefits. He stated that he had reviewed each party's evidence and arguments on each of the statutory criteria and that all were relevant to the resolution of the dispute, although he did not

give each factor identical weight. He wrote that he had also "strongly considered" that the public interest required that:

[T]he policy interests supporting the regionalization of fire services should be furthered, with due consideration to the work, welfare and terms and conditions of fire personnel who perform life-saving and life-threatening duties. [Arbitrator's award at 198]

The arbitrator stated that each party bore a burden of proof in support of each of its proposals. He then explained how he would apply the statutory criteria:

In reaching my conclusions I will summarize the position taken by each party along with the rationale each has submitted. Because of the sheer volume and complexity of the issues and the evidence, I will set forth an Award on each issue with a concise statement of reasons in support of each determination without an extensive analysis of the statutory criteria on each major economic issue. Some of the criteria are implicitly reflected in many of the issues which require decision. For example, an issue proposed by the Union which may contain excessive costs would, if granted, cause adverse financial impact on the Regional. Another example would be an issue the Regional might propose which would have such harsh economic consequences on individual firefighters which could undermine the need for continuity and stability of employment. [Arbitrator's award at 198-199]

With respect to proposals dealing with non-compensation items, the arbitrator stated that he would not discuss the statutory criteria in the same detail as he might in a typical impasse, but

that he would discuss and analyze each party's evidence and arguments in reaching his determination on that item.

After setting out this approach, the arbitrator then found that the interests of the public, the Regional and the employees were best served and balanced by following these broad guidelines and objectives:

1. To the extent feasible, the goal of merging or unifying major terms and conditions of employment should be attained for those employees previously employed in the five municipalities prior to regionalization. For example, certain major compensation issues should be [at uniform levels] even if accomplished over a period of time to ease the cost burden on the Regional.
2. To the extent that such merger or unification is not feasible, certain benefits of certain employees employed by individual municipalities should be retained even if retention of that specific benefit level cannot be enjoyed by the remainder of the workforce. One factor traditionally employed in collective bargaining is to "red circle" an individual or class of employees due, in part, to the need to avoid unfair individual impacts. For example, certain benefits have accrued over the course of one's career with a reasonable expectation of continuation until retirement. A unity of result on issues such as these may not be achievable without producing harsh inequities either in terms of benefit elimination or excessive cost.
3. Employees hired by the Regional after regionalization who were not employed by any individual municipality which helped form the Regional should have terms and

conditions of employment which give some consideration, but less weight, to the prior terms and conditions of the individual municipalities and some consideration, but more weight, to the establishment of the Regional as a new employer. The Regional, as a new employer, must be given some latitude to offer employment on terms reflective of its own character and needs. For example, a firefighter hired after regionalization has never had any employment tie to any individual municipality. Prior terms set by an individual employer should not automatically be controlling on the Regional. This consideration, however, must be balanced by the establishment of terms not so disparate in relation to the more experienced firefighters that morale and unity among all firefighters are compromised or the continuity and stability of employment among the newly hired firefighters [are impaired].

4. Consideration must also be given to internal comparability between firefighters and fire officers. Each bargaining unit faces many of the same considerations and challenges. Although each has separate bargaining units, all employees, regardless of rank, must be integrated into one department charged with the same mission serving the public's health, welfare and safety.  
[Arbitrator's award at 201-202]

These guidelines distill and synthesize the arbitrator's comprehensive analysis of the public interest and other statutory criteria; frame his discussion of all the major economic issues; and supplement the more specific discussion of the cost of living, comparability, financial impact, and continuity and

stability of employment woven into the arbitrator's analysis of many of the proposals, particularly the parties' salary proposals.

We reject the argument, made by each party with respect to different aspects of the award, that the arbitrator did not properly analyze the statutory factors because he did not specifically refer to them in discussing every award section. The essence of the Supreme Court's decision in Hillsdale PBA Local 70 v. Borough of Hillsdale, 137 N.J. 74 (1994), and our own interest arbitration appeal decisions, is that an arbitrator must provide a reasoned explanation for an award, after considering the relevant statutory factors and all the evidence and arguments. There is no mandatory method for accomplishing that task. See Cherry Hill (an arbitrator is not required to apply every statutory criterion to every facet of every proposal).

This award is replete with discussion of the financial underpinnings and obligations of the Regional; the relationship between that entity and the participating municipalities; and the parties' comparability evidence. The arbitrator discusses the CAP law and the cost of living. He also addresses the final criterion - the continuity and stability of employment, including the factors traditionally considered in determining terms and conditions of employment. He does so by his repeated balancing of the Regional's interest in a contract that reflects its own

mission, needs and character; the concern that the terms and conditions of unit employees' not be too disparate; and the previously employed firefighters' interest in having some weight accorded to their negotiations history, as expressed in the four municipal agreements.

For the most part, neither party points to arguments or evidence that the arbitrator did not consider. Moreover, before the arbitrator, the parties themselves said very little about the criteria per se. They argued for or against a proposal based on their respective theories of how the dispute should be decided - i.e., the Regional focused on its alleged financial limitations and its status as a new employer and the Association espoused unification of benefits at the highest level, arguing that the Regional had substantial financial resources. And in opposing its adversary's arguments to the effect that the arbitrator did not analyze the statutory factors, each party stresses that we should not disturb the arbitrator's reasoned exercise of discretion.

In this posture, there was no requirement for the arbitrator to have engaged in any more extensive discussion of the statutory factors. Hillsdale and Washington Tp. v. Washington Tp. PBA Local 206, 137 N.J. 88 (1994), which both parties emphasize, do not counsel otherwise. Those decisions involved final offer proceedings in which virtually the only issue was salary



increases; the arbitrators rejected the employers' economic offers in their entirety; and did so in brief opinions that referred only to police salaries in comparable communities. The Court underscored the obligation to consider all the statutory factors and provide a reasoned explanation for the award. We do not extrapolate from Hillsdale and Washington Tp. that this arbitrator was required to mention every criterion with respect to each of the 56 contract proposals where he issued a comprehensive 467-page opinion that discussed all the evidence and fully explained the rationale for his carefully crafted conventional award.

Further, parties rarely argue, and arbitrators rarely find, that the full panoply of statutory factors is relevant to administrative or operational proposals concerning, for example, grievance procedures or sick leave verification. This case is no different except that, because it involves a first agreement, there are dozens of such contract articles in question rather than a few.

For all these reasons, we reject the parties' generalized objections that the arbitrator did not apply the statutory criteria. However, we will specifically address contentions that the arbitrator did not address or properly weigh particular arguments or evidence concerning the statutory factors.

In addition to affirming the arbitrator's method of analysis, we also affirm the substance of the arbitrator's guidelines. In considering the parties' objections, we will evaluate whether the arbitrator's award is consistent with the principles and objectives that he derived from the statutory factors.

Further, we affirm the arbitrator's statement that each party bore the burden of proof with respect to its proposals. While the CSMA requires the Regional to preserve the various status quos of each municipal employer pending a new agreement, analytically, there is no traditional status quo for this new employer. However, the arbitrator appropriately gave weight to the terms and conditions in the prior agreements, particularly in setting employment terms and conditions with respect to firefighters previously employed by one of the municipalities. Negotiations history is one of the factors traditionally considered in determining wages and benefits, N.J.S.A. 34:13A-16g(8), and the CMSA does not require an arbitrator to disregard that evidence when negotiations units are merged.

Against this backdrop, we consider the parties' specific objections. We will organize our decision as follows. First, we address each party's contention that the award is inconsistent with the financial evidence. Second, we address each party's challenges to the arbitrator's award on the major economic

issues, as well as their objections to award sections involving more minor economic items. Third, we consider the parties' challenges to award sections - such as outside employment, Association rights, and drug and alcohol testing procedures - where the focus is on administrative, operational, or language issues, as opposed to the amount or nature of an awarded benefit. We include in this section the non-compensation aspects of some of the major economic benefits - e.g., vacation scheduling.

In addition, in several instances, the Regional or the Association contends that an award provision conflicts with a governing statute or regulation. These challenges could and should have been made prior to the arbitration, because the challenged award sections were proposed by one or the other party. See N.J.A.C. 19:16-5.5(c) (where no pre-arbitration scope petition is filed, parties are deemed to agree to submit all unresolved issues to arbitration). However, in the fourth section of our opinion, we will consider contentions that certain award sections cannot be implemented because they violate a statute or regulation. Compare Teaneck, 353 N.J. Super. at 301-302 (despite regulation requiring that scope petitions be filed before interest arbitration, Commission is not barred from considering, when it chooses to do so, post-arbitration scope challenge in an interest arbitration appeal); Old Bridge Tp. Bd. of Ed. v. Old Bridge Ed. Ass'n, 98 N.J. 523, 525 (1985) (public

sector arbitration awards must conform to statutes and regulations); Borough of Roseland, P.E.R.C. No. 2000-46, 26 NJPER 56 (Q31019 1999) (in considering whether to dismiss late-filed scope petition, we will consider whether a challenged proposal, if awarded, would require us to vacate an award). However, we do not decide the Regional's claims that certain award provisions significantly interfere with its managerial prerogatives. It does not explain why it did not raise these objections earlier and we are satisfied that the challenged provisions do not affect the overall validity of the award. Roseland.

Finally, we include a separate section addressing those parts of the award that one or both parties allege are unclear.

### **III. Financial Impact of Award**

Both parties allege that the overall economic package awarded is inconsistent with the evidence concerning the Regional's finances. We begin with a review of the parties' financial arguments before the arbitrator.

The Regional argued that the Association's proposal, with 5% across-the-board increases and unification of salaries and benefits at the highest level in any of the agreements, was beyond its financial means. It stated that it had a general fund operating fund surplus of only \$215,000 for 2000 and maintained that the participating municipalities could not afford to pay more than their 2001 contributions; were constrained by CAP law

limitations that restricted them from raising their budgets by more than 3.5% per year; and had residents with low per capita income who could not pay higher taxes. It urged the arbitrator to follow an alleged pattern of settlements between the participating municipalities and their police units, whereby three of the participating municipalities, North Bergen, Weehawken and Guttenberg, reached voluntary settlements with their police units averaging 3.5% per year for contracts during the 1998-2001, 2001-2003, and 1996-2002 time periods, and a fourth participating municipality, West New York negotiated an agreement with 3% increases for 1999 through 2002.<sup>6/</sup> It stressed that the CMSA did not provide a basis for departing from the longstanding labor relations concept of "pattern", which fit within such section 16g criteria as the public interest, comparability, and principles generally applied in determining wages and benefits. N.J.S.A. 34:13A-16g(1), (2) and (8).

The Regional did not attach a total dollar cost to the Association's package, but stated that the proposed increases in 1999 base salaries would amount to \$700,000 for that year alone. It argued strenuously that an award of the Association's offer,

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<sup>6/</sup> The record shows the maximum patrol officer salary for two of the units. One of those salaries (\$58,698), is higher than the top step 1999 firefighter salary in any of the participating municipalities. The second salary is higher than the maximum 1999 firefighter salary in three of the four municipalities.

or anything close to it, would defeat the State-sanctioned policy of regionalization. Because it proposed a salary increase for the first year of the agreement only, and sought to negotiate increases for the remainder of the term, it is not possible to gauge precisely what the Regional believed was a reasonable salary award for the full term of the agreement.

The Association stressed that, given the financial assistance that the Regional and municipalities had received from the regionalization, award of its offer would not have an adverse fiscal impact and, further, there was no basis for the Regional's proposals to reduce wages and benefits below the levels in the predecessor agreements.

In arriving at the award and assessing its financial impact, the arbitrator rejected the Association's theory that all firefighters should immediately be raised to the top level of any benefit previously received, citing the excessive cost of such an award. For example, the arbitrator noted that the Association proposed higher than average salary increases (5% per year on the Union City schedule) and did not take into account the costs of unification. Further, he reasoned that while the State assistance received by the Regional and municipalities was relevant to an assessment of the award's financial impact, these grants did not automatically weigh against the Regional's offer because cost savings were inherent in regionalization.

The arbitrator concluded that the cost of living weighed strongly against an award consistent with or close to the Association's offer and he found that the CAP law was pertinent because of its application to the municipalities. He stated that he had accepted the Regional's financial impact arguments to the extent that the award was less than the Association's offer.

On the other hand, the arbitrator rejected the Regional's proposal to red-circle firefighters whose compensation exceeded the Regional's proposed salary, explaining that such a freeze would create a "dramatic gap" between firefighters in neighboring communities and those in the Regional. He also presumed that the participating municipalities who contribute to the Regional were aware of their and the Regional's obligation to fund an interest arbitration award for the firefighters - including costs retroactive to the time of regionalization - just as they would have been obligated to fund the retroactive terms of new labor agreements had the municipalities continued to employ the firefighters.

The arbitrator observed that the precise costs of the award were difficult to calculate, given the unique circumstances of merging four prior agreements and a new hire package. He added that the parties' cost analyses had served as useful guides. He calculated that the 3% increases awarded in each of the five contract years, plus the fifth-year unification costs of

\$271,872, resulted in a five-year increase in salary costs of \$1,626,310. He noted that the \$650 per year clothing allowance awarded represented 1% of the final maximum salary.

In terms of annual percentages, he calculated that the annual cost of the unification adjustment, for those who received it, averaged 4.58%, or 2.29% during the contract term, given that the unification took effect in the last six months of the contract.<sup>1/</sup> The arbitrator reasoned that this end-of-contract adjustment, which averaged .45% per year over five years, was more reasonable and less costly than having an adjustment transition throughout the five-year period, given that the latter method would result in cumulative costs well in excess of that for implementing the adjustment on January 1, 2004. Thus, the salary increases plus the unification adjustment result in lower cumulative costs than if the arbitrator had awarded annual increases in the range of 3.5% per year.

The arbitrator concluded that this award, including its retroactive costs, could be funded without adverse impact, noting that, given the reduction in payroll costs attributable to the early retirements, "there was less cost to the municipalities compared to their obligations necessary to fund the pre-existing table of organization" (Arbitrator's award at 349). Further, he

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<sup>1/</sup> There is a 2.29% flow-through into the July 1, 2004-June 30, 2005 contract year.



observed that long-term savings would result from the award of modified benefits for new firefighters, adding that, under the award, the per capita firefighter cost for newly hired firefighters was lower than the per capita cost for the firefighters each municipality had previously employed. He concluded that while the municipalities would have to contribute to the cost of the award, they had benefitted significantly from the REAP program and the sale of fire department assets. Finally, he found no indication in the record that the costs of the award would compel any of the municipalities to exceed their CAPs.

Neither party has offered a basis to disturb this analysis. The Regional contends that it does not have the funds required to pay the award -- including approximately four years in retroactive costs - but offers no particularized analysis to support that assertion. The award is significantly less than the Association's offer. Moreover, the record supports the arbitrator's finding that the reduction in staffing resulted in substantial savings, and the Regional agrees with the arbitrator's conclusion that the municipalities should have been aware of their obligation to fund the award, including retroactive costs. These findings support the arbitrator's determination that the Regional, which had lower salary costs after the retirements than it had before, had the financial

capability to fund an award that, over the five-year term, increases costs less than 3.5% per year and is thus within the range of the settlements between the participating municipalities and their PBAs that the Regional had urged the arbitrator to follow.

The Regional objects that the arbitrator placed too much weight on the State aid received, the disbursements to the municipalities, and the alleged savings received from the early retirements. It stresses that the State aid was for start-up costs and argues that the other savings are offset by the Regional's obligation to repay lease revenue bonds and make payments toward the cost of the early retirement package.

Preliminarily, the arbitrator noted these factors, particularly the Regional's bond obligations and the cessation of State aid in 2001, in arriving at an award significantly less than the Association's offer. However, the fact that the Regional and the municipalities have some continuing, long-term obligations associated with regionalization does not mean that the significant lump-sum disbursements they received, as well as the Regional's reduction in staff, are not also relevant in evaluating the Regional's financial status during the period in which those reductions and disbursements occurred. In this vein, the arbitrator did not award the increases he did based on the Regional's alleged ability to pay them. Compare Hillsdale.

Instead, he found that the Regional could fund the salary increases that he found to be appropriate based on the record and the statutory criteria. While an employer's financial limitations may militate against an award that would otherwise be warranted, the Regional has not shown that to be the case here.

For example, although the Regional suggests that the award will cause skyrocketing property taxes, it has not pointed to any evidence indicating that any additional municipal contributions necessary to finance the award would require tax increases or strain municipal cap limits in any of the municipalities. Indeed, the salary increases awarded, including unification costs, are within the range of the settlements the Regional had cited. Those settlements are probative of the economic package the municipalities believe they can fund without an adverse financial impact. See Teaneck, 25 NJPER at 458.

Moreover, the Regional's assertion that it lacks sufficient reserves to pay the award is not determinative where its budget is based on municipal allocations that may be adjusted, and the Regional has not shown that any required adjustments would adversely affect the municipalities' financial standing. Compare Middlesex Cty., P.E.R.C. No. 98-46, 23 NJPER 595 (¶28293 1997) (while N.J.S.A. 34:13A-14b states that the interest arbitration process should give due weight to the interests of the taxpaying public, the Reform Act does not require that the arbitrator award

the amount the employer has budgeted for wage increases or automatically equate the employer's offer with the public interest).

Nor are we persuaded by the Regional's contention that the arbitrator was required to include a more detailed calculation of award costs. In this vein, the Regional highlights the longevity, holiday pay, educational stipend, and service differential portions of the award.

N.J.S.A. 34:13A-16d(2) requires an arbitrator to identify the new costs generated in each year of the agreement. Rutgers, the State Univ., P.E.R.C. No. 99-11, 24 NJPER 421 (¶29195 1998). The items the Regional cites are not new benefits. They were included in one or more of the prior agreements. For example, the arbitrator continued the education stipend and service differential provisions in the prior agreements only for individuals who were already receiving them, so that the only new costs this red-circling generated are those attributable to an increase in base salary. With respect to the costs of newly awarded education benefits, they cannot be calculated unless and until unit members obtain degrees that entitle them to payments.

Similarly, with respect to longevity, the arbitrator unified benefits effective January 1, 2003, so that costs prior to that date are a continuation of what the Regional was already paying, plus any increases attributable to an increase in base salary.

And after unification, the longevity schedule is the same as that in West New York and less generous than that enjoyed by former Union City firefighters. The award includes a more generous schedule only for Weehawken firefighters and North Bergen firefighters.

With respect to holiday pay, the 112 hours awarded is the same as received by West New York; 8 hours more than in Weehawken; 8 hours less than in Union City; and more generous than the provisions in North Bergen, where firefighters received 5 compensatory 12-hour tours.<sup>8/</sup> The Regional has not shown either that these items resulted in any material net increase in costs or that any such costs undermine the arbitrator's financial impact assessment.

Finally, we comment on the Regional's contention that the award imposes \$5 million in retroactive costs. It does not explain how it arrives at that figure. But even if we were to assume its accuracy, along with the Regional's contention that it has only \$2.5 million available, it has not shown that the five municipalities together lack the financial ability to contribute a combined total of \$2.5 million for four years of retroactive

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<sup>8/</sup> It is not clear whether firefighters hired directly by the Regional received holiday pay. They did not receive longevity and, while the arbitrator awarded a separate longevity schedule for them, that provision will not generate costs during the term of the agreement because benefits do not begin until the 7<sup>th</sup> year of employment.

increases that the arbitrator found to be warranted by the statutory factors.

Similarly, the Association's objections to the arbitrator's financial analysis provide no basis to disturb the award. The gravamen of the Association's position is that there was no justification not to unify all benefits at the highest level from the outset of the agreement. It maintains that the municipalities and the Regional saved a total of \$32 million due to retirements, State aid, saved pension costs and the sale of assets.

Preliminarily, even if we accepted the Association's characterization of the Regional's financial status, an employer's alleged ability to pay the other party's offer is not a sufficient basis to award it. Compare Hillsdale, 137 N.J. at 86; Town of Newton (financial impact criterion, N.J.S.A. 34:13A-16g(6), does not require a municipality to prove its inability to pay the other party's offer).

In any case, the record supports the arbitrator's decision to moderate the costs of the award and unification. The residents of the constituent municipalities have comparatively low per capita incomes; the State aid the Regional received was for start-up costs; and much of that assistance was allocated to items other than salary. The municipalities' REAP payments were statutorily required to be passed through to taxpayers as

property tax credits and the REDI assistance they received was to help fund the early retirement package. Moreover, the Regional received no State aid in 2001, and was required to begin making substantial semi-annual principal and interest payments to the Authority beginning in 2001 and continuing through 2024.

Finally, as we explain in other sections of the opinion, the Association has not shown that the record or the statutory factors required the arbitrator to award a more substantial economic package.

For all these reasons, neither party has shown any deficits in the arbitrator's analysis of the financial evidence that warrant disturbing the award.

#### **IV. Major Economic Issues**

The arbitrator thoroughly analyzed the parties' proposals on the major economic issues, including salaries, vacation, holiday pay, clothing allowance, sick leave, terminal leave, longevity, health insurance, service differential, educational incentives and pre-retirement payments. The predecessor agreements each had clauses on most of these items and, for the most part, each party presented proposals to continue the benefits in some form, with the Association generally espousing unification of benefits at the highest level and the Regional urging that its proposals, generally for lesser benefits, be evaluated in the context of its status as a new employer. The arbitrator did not accept either

party's theory in its entirety but gave some weight to each party's position in fashioning his own approach. Thus, the main underpinnings of his analysis were that, first, benefits should be unified to the extent feasible to promote unity and morale among unit members and reflect the Regional's status as a single employer. Second, he found that the nature and history of some benefits made them difficult to unify. Neither party challenges these principles conceptually, and we affirm them.

The third principle that figured significantly in the arbitrator's analysis was that the Regional had an interest in having a compensation package for the newly hired firefighters that reflected its own character and needs, such that the terms of the prior agreements might in some instances be given less weight than in arriving at terms governing the more experienced firefighters. The Association protests that different terms are never warranted. However, the arbitrator could reasonably decide to in some instances accord less weight to the terms of the prior municipal agreements when setting the employment terms of individuals whom the participating municipalities had never employed. Those agreements were negotiated over many years and in a variety of circumstances by multiple municipal employers and we will not disturb the arbitrator's judgment that their terms should not "automatically be controlling" on the Regional.



Within this framework, the arbitrator had broad discretion to determine the degree to which benefits should be unified and the method of doing so, and we will not second-guess his decisions with respect to the numerous individual components of the package. Our focus is on the overall award, specifically, whether it was supported by substantial credible evidence and whether the arbitrator explained his reasoning in the context of the statutory factors. See Borough of Allendale, P.E.R.C. No. 2003-75, 29 NJPER 187 (¶56 2003).

Our recognition that fashioning a compensation package is not a precise mathematical process is an understatement in this case, given the number of proposals that had to be considered. In that vein, it is not grounds for vacation or remand that the arbitrator could have chosen a different method for unifying some benefits or reached another conclusion about which benefits should be merged and which should not.

Against this backdrop, we address the parties' objections to award provisions where the arbitrator for the most part unified benefits either for all unit members or for all previously employed firefighters - i.e., salary, vacation, sick leave, holiday pay, clothing allowance, health insurance and longevity. We next discuss the parties' challenges to the terminal leave and education incentive provisions, where the arbitrator decided not to merge benefits. We then consider the Association's objections

to the arbitrator's rulings on its proposals for service differential, pre-retirement payments, compensatory days off, and a legal services plan - benefits that had been included in only one or two agreements and which the arbitrator decided not to extend to all unit members. Finally, we address objections to a few other economic items.

### **Salaries**

Both parties object to the timing of the salary unification, with the Regional contending that the record supports an award where unit members are eased into a unified structure at some point after the parties' first contract expires, and the Association protesting that the Regional's financial resources justify immediate unification. The record amply supports the decision to unify salaries during the last six months of the contract. That decision achieves what both parties recognize is a desirable goal and does so within the term of the first agreement, without jeopardizing the Regional's financial security.

As we have stated, the Regional has not shown a basis for disturbing the arbitrator's conclusion that salaries can be unified in January 2004 without adverse financial impact. With respect to the Association's contention that salaries should have been unified immediately, this objection goes to the essence of the arbitrator's broad discretion to arrive at salary increases,

see Lodi and Newark, and the record does not point ineluctably to a date when unification should occur. We defer to the arbitrator's judgment that the transition to a unified salary schedule was best accomplished at the end of the contract term rather than at its outset, given that the latter method would have resulted in higher cumulative costs throughout the term of the agreement. As we have explained in analyzing the parties' financial arguments, the arbitrator reasonably decided to moderate the costs of the award.

The specifics of the salary award are also well supported and grounded in the arbitrator's explicit and implicit consideration of comparability, the continuity and stability of employment, financial impact and the other statutory factors. We turn first to the Regional's objections.

The Regional argues that the arbitrator did not explain why he unified salaries on the Union City salary guide and also protests that there was no more basis to unify salaries by using the highest (Union City) salary guide than there was to use the lowest. However, the arbitrator stated that he linked the across-the-board salary increases awarded during the first four years of the agreement with his method of unifying salaries later. The arbitrator stated that he chose to award 3% increases - which he found to be lower than average - to balance the costs

of unification on the Union City schedule, which resulted in higher than average increases in the final contract year.

Thus, the guide used to unify salaries is only one aspect of the unification process, which the arbitrator fully explained. There is no basis to disturb his overall approach, which included use of the Union City schedule.<sup>2/</sup> Moreover, we note that while Union City firefighters did have the highest maximum base salary, the salaries of the other four municipalities clustered within \$3,000 of each other and Union City.

The arbitrator's comparability discussion underpinned his unification analysis and, contrary to the Regional's objections, we find that discussion to be well grounded. The record supports the arbitrator's finding that the evidence showed annual firefighter increases in Hudson County and New Jersey of between 3% and 4% during 1999 through 2003, with some sporadic figures above this number, and averages for the various contract terms of between 3.5% and 4%. The Regional objects that the arbitrator focused only on salary increases for 1999 through 2003 whereas he

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<sup>2/</sup> The Regional objects that the award did not specify whether the Union City base salary figure used by the arbitrator included the clothing allowance that had been folded into base salary. The 1995-1999 Union City agreement provided that the obligation to pay the clothing allowance "shall end in 1997" and further stated that the clothing allowance "shall be incorporated into the annual base salary of each employee as set forth in Article IX hereof." The salary listed in Article IX is the salary used by the arbitrator. Association Exhibit A-49-2-B shows that the salary figure used by the arbitrator did not include clothing allowance.

was required to consider contractual increases before or after these dates - i.e., 1998 increases included in a 1998-2003 settlement. We are not convinced that the arbitrator was required to so analyze the data but in any case, the Regional has not shown that its mode of analysis would yield materially different firefighter comparability figures. In sum, the record supports the arbitrator's conclusion that the 3% increases were below average and resulted in lower-than-average cumulative costs for the first four contract years.

Moreover, a salient point in conducting a comparability analysis is the actual salaries resulting from the percentage increases. See Fox v. Morris Cty. PBA, 266 N.J. Super. 501, 519 (App. Div. 1993), certif. denied, 137 N.J. 311 (1994); City of East Orange, P.E.R.C. No. 2003-39, 28 NJPER 581, 583 (¶33181 2002). The record shows that the maximum base salary at the end of the agreement is well within the range of those in several urban departments in the State and in three other fire departments in Hudson County.<sup>10/</sup>

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<sup>10/</sup> The top base salary at the end of this contract, in 2004, is \$64,870. The record indicates that the average 2003 top base salary for Elizabeth, Union and Englewood is \$72,362; the average 2002 top base salary for those jurisdictions plus Newark and Rahway is \$67,244; and the average 2001 top base salary for the same group is \$64,688. The average 1999 salary for nine urban departments is \$58,525. In Hudson County, the 2003 top base salary for Bayonne is \$59,782; the 2002 top base salary for Hoboken is \$62,332; and the 1998 top base salary for Jersey City is \$58,000.

The Regional also argues that the arbitrator gave insufficient weight to its "pattern of settlement" argument with respect to agreements reached by PBA locals with North Bergen, Weehawken and West New York. However, two of the cited settlements averaged 3.5% for 2000-2003 and 1998-2001. The settlement in West New York was lower (3% for 1999 through 2002), but a fourth settlement, Guttenberg, included an average 3.5% per year increase over a seven-year, 1996-2002 contract, with 5% increases in the last five years. Thus, the percentage increases awarded by this arbitrator are well within the range of the agreements relied on by the Regional.<sup>11/</sup>

Similarly, there was no error in the arbitrator's decision not to discuss an exhibit showing salaries for a range of public

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<sup>11/</sup> The Regional focuses on seven agreements including four firefighter contracts (two each from two jurisdictions, for different time periods); one fire officer contract; and two police agreements. Taken together, these agreements reflect average annual increases of 3% over the contract terms. This selective comparability data does not undermine the arbitrator's findings, especially where the Regional does not explain why the two police contracts are more relevant than other police comparables and where two of the three firefighter contracts include average annual increases over the contract term of 3.5% and 3.4%.

The Association's reply brief cited two Union City awards, one involving the PBA, with average annual increases of 3.65% for July 1999 through July 2003; and the other involving the SOA, with average annual increases of 3.71% for July 1999 through July 2004. We do not consider these awards since they are not in the record and we have not been asked to take administrative notice of them.

and private sector occupations in New Jersey. That data reflects 1996 salaries and may no longer be probative, especially since many of the listed salaries appear to be entry level. In any case, the Reform Act does not mandate that a particular salary relationship be maintained between firefighters and other public or private employees. See Allendale, 24 NJPER at 219.

Nor is the arbitrator's comparability analysis undermined by private sector wage data prepared by the New Jersey Department of Labor (NJDOl) and published by the Commission. N.J.S.A. 34:13A-16.6. The Regional asks us to take administrative notice of the 2002 NJDOl document, which shows a statewide 1.2% increase in average private sector wages in 2001, and .3% decrease for Hudson County.<sup>12/</sup> We do take notice of the report but it does not require different salary increases where the preceding report showed a 6.9% statewide increase in average private sector wages for 2000, and an 11.7% increase for Hudson County.

In addition, we find that the arbitrator appropriately considered the continuity and stability of employment in awarding the salaries that he did. We accept his labor relations judgment that the "red-circling" proposed by the Regional, which would have resulted in freezing many firefighters salaries, would have undermined the morale of employees who already had to deal with

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<sup>12/</sup> Each NJDOl report reflects the change in average private sector wages for the preceding year.

the significant changes resulting from regionalization. He was not required to accept the Regional's theory that this statutory factor favored the Regional's offer because unit members do not face the same possibility of layoffs as some non-public safety employees.

Finally, the Regional maintains that the arbitrator did not adequately consider the cost of living criterion. The arbitrator found that the cost of living was relevant and weighed strongly against award of the Association's offer; but stated that he could not conclude that the most weight should be given to that factor (Arbitrator's award at 353). We accept that analysis. The Regional has not shown why the cost of living should be the single most important criterion in a proceeding where, following a merger of negotiations units in a regionalization, the dominant concern was how to begin structuring a unified compensation and benefit program. Moreover, while the Regional cites the cost of living as rising .1% in 1999, 1.6% in 1998, and 1.7% in 1997, the Regional-submitted data included in the appellate record shows that the Consumer Price Index for all Urban Consumers (CPI-U) had risen by 3.1% between December 1999 and December 2000 and that the CPI for all Urban Wage Earners & Clerical Workers (CPI-W) had risen 3.3% in the same time period.

With respect to the Association's objections, we find that the arbitrator reached a reasonable determination not to award



its proposal for three hours extra pay per week, in addition to base salary, to compensate firefighters for working more than 40 hours per week. The arbitrator noted that the Weehawken and West New York agreements had provided for some extra pay for this reason and that North Bergen's salary schedule also reflected this concept. However, he observed that the number of hours worked derived from the union-proposed work schedule that he had awarded; the Fair Labor Standards Act did not require the payment; and the vast majority of municipal agreements in evidence did not provide for the sought-after payment for firefighters on a 24/72 schedule. Finally, he found that there was little support for awarding additional payment for hours worked under the normal schedule, as provided in the North Bergen, Weehawken and West New York agreements, where he had unified salaries at the Union City level and Union City did not provide for such payments.

This analysis embodies such considerations as comparability and the factors normally considered in determining wages and hours. We decline to disturb it.

Similarly, the award of an eight-step salary guide for newly hired firefighters is not inconsistent with the arbitrator's stated goal of unifying salaries. While new firefighters will be placed on a longer salary guide, they will achieve the same maximum salary as those previously employed by a municipality.

Thus, the separate salary guides do not create a significant salary disparity among unit members. This is especially so since most previously employed firefighters were at the maximum step of their former guides, and will be placed on the top step of the Union City salary guide effective January 1, 2004. Thus, there will be few if any instances where a firefighter first hired by the Regional will be earning less than a previously employed firefighter with the same years of experience.

#### **Longevity and Holiday Pay - Association Objections**

In effectuating his conclusion that benefits for previously employed firefighters should be unified to the extent feasible, the arbitrator awarded a unified longevity schedule for previously employed firefighters effective January 1, 2003, for time accrued through December 31, 2002. He unified holiday pay for all unit members effective January 1, 2003. After unification, the longevity schedule is the same as that in West New York and less generous than that enjoyed by former Union City firefighters. The award includes a more generous schedule for former Weehawken firefighters and North Bergen firefighters. The award "red-circled" some Union City firefighters already receiving longevity percentages higher than the unified benefit, but it appears that others will receive a lower percentage of salary in 2003 than they did in 2002. For example, an employee with 6 years experience received 8% under the Union City guide

but the next year, with seven years of experience, it appears that the employee would move onto the unified longevity schedule and receive 4% until the 8<sup>th</sup> year of service. The percentage would be applied to a higher salary. With respect to holiday pay, the amount awarded (14 8-hour days) was one day less than had been received by Union City firefighters but the same or more than had been received in the other municipalities.

The Association challenges these provisions, arguing that the arbitrator did not explain, in the context of the statutory criteria, why some firefighters receive more than they had previously and some less. However, these benefit adjustments and variations flow from the arbitrator's reasoned decision to unify some benefits at less than the highest level provided for under the predecessor agreements. We decline to disturb that determination: awarding the highest-level benefits in all of the prior agreements would have culled the provisions most favorable to employees, without incorporating the offsetting concessions that might also have been part of those agreements. The arbitrator anticipated a similar argument when he wrote as follows:

[T]here will be individual effects which will cause some employees to receive more base salary compensation than others during this contract term in order to achieve a unification in base pay. To the extent that this occurs, I do not consider these individual effects as causing inequities between and among firefighters but rather the

inevitable consequence of creating an equitable salary system. [Arbitrator's award at 339]

The same analysis applies to the fact that some firefighters will receive greater overall compensation, vis-a-vis their prior compensation package, than will others. Moreover, to the extent some firefighters' longevity benefit was reduced, that loss must be viewed in the context of the overall award for the unit, which equalized salaries at the Union City level and granted greater longevity benefits to some firefighters. The arbitrator was not required to specifically explain the rationale for each benefit reduction for each particular group of firefighters where the reductions resulted from his award of a unified compensation system and benefit structure and he set forth the principles that underpinned that structure.

We also decline to disturb the arbitrator's decision to award a separate longevity schedule for new hires, despite the Association's position that that result is inconsistent with his goal of unifying longevity benefits. The arbitrator's finding that merger of terms and conditions was desirable was balanced by his conclusion that the provisions governing new hires should be less tied to the terms in the predecessor agreement than those of previously employed firefighters, provided that those terms are not so disparate in relation to the more experienced firefighters that they undermine morale, unity, and the continuity and

stability of employment. We find no flaw in the arbitrator's reflecting these principles in the longevity portion of the award. We add that one of the prior agreements had less favorable longevity schedules for more recent hires.

Finally, the Association maintains that, assuming the longevity portion of the award is affirmed, its effective date should be changed to January 1, 2004, consistent with the adjustment the arbitrator made to the sick leave article in his Decision on Clarification. The Association argues that when the award was issued the longevity article, like the sick leave article, was intended to apply prospectively. It urges that employees who receive reduced longevity benefits under the award should not have to pay back amounts received in 2003.

The arbitrator adjusted the effective date of the sick leave article in conjunction with the changes that he made to the sick leave program pursuant to the limited remand order. That order did not direct him to re-examine the longevity provision and he did not do so. Initial briefs in this matter were filed in March 2003, after the scheduled effective date of the longevity article, but this issue was not raised. In this posture, we decline to entertain the Association's argument.<sup>13/</sup>

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<sup>13/</sup> After submitting a letter indicating that it would not submit comments on the Decision on Clarification, the Regional sought leave to respond to those portions of the Association's comment letter that addressed longevity,  
(continued...)

## Holiday Pay and Clothing Allowance - Regional Objections

The arbitrator awarded a unified clothing allowance benefit of \$650 per year, effective July 1, 2002, along with the holiday pay benefit just discussed. The dollar amount awarded was proposed by the Association and reflected the figure that had been set out in the Union City agreement and then, on January 1, 1998, had been rolled into base salary. The Regional contends that the arbitrator exceeded his authority and issued an imperfect award, N.J.S.A. 2A:24-8d, because clothing allowance was included in the base salary for Union City firefighters and holiday pay was included in the base salary of North Bergen and Weehawken firefighters. The Regional maintains that the award thus results in an unjustified "double payment" for firefighters from the above-noted units.

The arbitrator recognized that some base salaries under some prior agreements included holiday pay or clothing allowance but nevertheless awarded unified benefits on these items for all unit members (Arbitrator's award at 339). He indicated that once an item is included in base salary it becomes an adjustment to salary in the same way as an across-the-board salary increase.

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13/ (...continued)

vacation, and service differential. The Association has filed a reply to the Regional's response. Given that we decline to entertain the Association's argument on these issues, we deny the parties' requests to file further submissions.

(Arbitrator's award at 184). In that vein, the Union City contract stated that the obligation to pay the clothing allowance ended in June 1997 and that, effective January 1, 1998, it was to be "incorporated into the annual base salary of each employee."

The arbitrator could reasonably conclude that it was not relevant whether the base salaries under the predecessor agreements were achieved through successive salary increases or salary increases plus clothing or holiday pay fold-ins, particularly since a fold-in may be agreed to in exchange for lower across-the-board increases. Compare East Orange. We recognize that while a benefit can "disappear" into base salary, as was the case with the Union City clothing allowance, a benefit can also be maintained in an agreement, together with a proviso that it be paid as part of base salary. To the extent that was the case with respect to North Bergen and Weehawken, there is no double payment because any separate holiday pay or clothing allowance provisions in those contracts are superceded by those in the award.

### **Sick Leave**

The arbitrator awarded a uniform sick leave program that pertains both to newly hired firefighters and those previously employed by one of the participating municipalities. Effective January 1, 2004, the program grants unit members a set number of sick days per year based on years of service, and includes

provisions on sick leave verification and an incentive program for non-use of sick leave.<sup>14/</sup> In his Decision on Clarification, the arbitrator addressed whether, after the effective date of the awarded program, firefighters from Union City and Weehawken would have an accumulated sick leave bank available to use for non-work connected illnesses or injuries.

The Association objects to the amount of sick time awarded under the new program; contends that the award conflicts with Department of Personnel (DOP) sick leave regulations; asks us to modify the Decision on Clarification; and maintains that the arbitrator should have, in calculating the award's annual net economic changes, taken into account the reduction in sick leave for some employees. The Regional objects that the award significantly interferes with its prerogative to verify sick leave. We address the Regional's objections in Section VI and turn now to the Association's concerns. We start with its challenges to the uniform sick leave program that goes into effect January 1, 2004.

With respect to the number of sick leave days awarded effective January 1, 2004, we decline to disturb the arbitrator's award of 5 to 10 24-hour sick leave days per year, based on years of service. The arbitrator was faced with the difficult task of

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<sup>14/</sup> As noted earlier, the Decision on Clarification changed the effective date from January 1, 2003 to January 1, 2004.



unifying disparate sick leave benefits. West New York granted seven 24-hour tours and had a provision allowing unit members to apply for up to 21 months of catastrophic sick leave for a non-work-related illness. North Bergen received between 11 and 15 days depending on years of service; and Union City provided a maximum of one year of sick leave, regardless of whether or not the illness or injury was job-related. Weehawken firefighters had unlimited sick leave; no set number of days in any year; and did not accumulate days from year to year.

The arbitrator made a reasoned decision to unify sick leave benefits and awarded a set number of days that is within the range of the benefit levels in the North Bergen and West New York agreements. The Association has not shown either that the weight of the evidence supported award of its proposal for one year of sick leave or that a one-year sick leave benefit for non-work-related illnesses is a common one. We note, as did the arbitrator, that a separate Injury Leave article provides for up to one year of leave for on-duty injuries.

As we have stated with respect to other benefits, the award is not per se deficient because some firefighters receive a lesser annual sick leave benefit than before. We incorporate our earlier analysis about the difficulties and consequences of developing a unified compensation and benefits structure and note that firefighters from West New York will, after five years of

service, receive more sick leave days. Further, as discussed below, the Decision on Clarification addresses the Association's concern that firefighters who did not accumulate sick leave under their prior agreements would not have a sick leave bank to use in the event of a long-term illness.

Moreover, we are not persuaded that the amount of sick time awarded must be modified to conform to Department of Personnel (DOP) regulations governing sick leave. Preliminarily, it appears that the regulations do not apply to this unit. See N.J.A.C. 4A:6-1.1a(4) (vacation and sick leave for police officers and firefighters are set by local ordinance). In any case, the 120 sick leave hours awarded beginning firefighters equals the 15 working days granted State employees, who by regulation work seven or eight hour days. See N.J.A.C. 4A:6-2.2. The 240 hours awarded more senior employees is twice that allotment.

DOP regulations also state that an employee may take sick leave to care for a family member or if the employee is unable to work due to a death in the immediate family. However, there would be no need to modify the award to include such reference, even if the regulations applied, given that statutes and regulations setting terms and conditions of employment are incorporated in negotiated agreements. State v. State Supervisory Employees Ass'n, 78 N.J. 54, 80 (1978).

With respect to the sick leave incentive program, we defer to the arbitrator's judgment in granting a \$500 stipend for employees who do not use any sick leave days in a calendar year. Both parties had proposed such a plan; the arbitrator awarded the amount proposed by the union, but declined to award an incentive for employees who do not use sick leave for four months. He explained that only North Bergen had included incentives for less than a full year, and that the Association had not specified why that type of program was necessary. On appeal, the Association makes no particularized arguments in this vein and, therefore, we will not overturn the arbitrator's analysis.

We next consider the Association's objections to the clarification decision. The arbitrator wrote as follows:

Although not expressly stated, PERC's inquiry concerning the conversion of some employees from "unlimited" sick leave to a specific allotment of paid sick leave is whether those employees would have access to an accumulated sick leave bank, the type of which other firefighters might have accrued by virtue of having had a specific allotment, a portion of which may have been unused and therefore accumulated. If not, that employee might not have access to accumulated sick leave to apply to a non-work connected injury or illness which would force that employee to exceed his newly awarded annual allotment and therefore be put in an unpaid status. It was not my intention to allow such situation to exist as a result of the conversion.

[Decision on Clarification at 9-10]

The arbitrator made these clarifications. First, he concluded that Union City and Weehawken firefighters with twenty or more

years of service as of January 1, 2004, should continue to receive the sick leave benefits to which they were entitled under the prior agreements. Second, for Weehawken firefighters with less than 20 years of service, he created an annual sick leave bank for sick leave use consisting of 72 hours for each full year of service earned prior to January 1, 2004. The bank was created without regard to prior sick leave usage. Third, for Union City firefighters, he found that the terminal leave article in their prior contract had provided for an annual sick leave bank that could be reduced by reason of sick leave use. He clarified that, for Union City firefighters with less than 20 years of service as of January 1, 2004, any accumulated sick leave time earned as of January 1, 2004 shall be carried forward into each employee's sick leave bank, to which allotments earned under the newly awarded sick leave program could be added.

The Association's asks us to modify certain aspects of the clarification decision. We decline to do so.

The Association first objects that there is no basis to red-circle the prior sick leave provisions for Weehawken and Union City firefighters with 20 or more years of service, without doing so for firefighters from other jurisdictions with equivalent experience. The distinction is grounded in the basis for the clarification. We remanded the award so that the arbitrator could review the impact of the new program on Weehawken and Union

City firefighters who might suffer a non-work related illness, given the Association's position that these employees did not accumulate sick days. In undertaking this review, the arbitrator concluded that firefighters with lengthy service should continue to enjoy their prior sick leave benefits, with the result that they would be in no greater jeopardy of being placed in a non-paid status than they would have been prior to regionalization. However, as the arbitrator stated, the concept of having a sick leave bank, and an accumulation of sick leave hours, was consistent with the program previously enjoyed by firefighters from North Bergen and West New York. Thus, the concern that triggered the limited remand did not pertain to these employees, and the arbitrator reasonably found no need to grandfather their prior sick leave benefits.

The Association next requests that we modify the award to provide for a bank of five days per year for Weehawken firefighters. It cites no particularized reason for increasing the awarded sick leave bank and we decline to do so. The clarified award substantially ameliorates the Association's initial objection that Weehawken firefighters would not have a sick leave bank available for an extended illness. For example, as of January 1, 2004, a former Weehawken firefighter with 10 years of service would have a sick leave bank of 30 24-hour days, and would earn 7.5 24-hour days that year. Moreover, the sick

leave bank must be viewed in the context of the unit's work schedule, where firefighters are scheduled to work approximately 91 days per year, less vacation and other leave time.

The Association also objects that the clarification decision may have the effect of reducing terminal leave benefits for Union City firefighters. It maintains that, under their prior sick leave and terminal leave program, Union City firefighters annually received 5 days per year of terminal leave, which could be reduced only by non-work related illness in that year. Thus, it maintains that an employee using 5 or more sick days in any given year would not accumulate any terminal leave days for that year, but the terminal leave bank for prior years would not be debited. It asks us to modify the Decision on Clarification to provide that the use of accumulated sick leave shall not impact on vested terminal leave benefits.

The original award provided that all previously employed firefighters would receive terminal leave payments in accordance with the agreements in the municipalities in which they had been employed. The Decision on Clarification addressed only the issue of accumulated sick leave; did not purport to change the Union City terminal leave provisions; and stated that "[t]his clarification is not intended to affect the contractual right of the Union City firefighters or fire officers to continue to annually credit up to 120 hours of this annual sick leave bank

towards their terminal leave program" (Decision on Clarification at 16). In this posture, we see no need to modify the decision as requested. Any disputes about the terms of the grandfathered terminal leave program may be submitted to grievance arbitration.

Finally, we are not persuaded by the Association's contention that the arbitrator was required to specifically calculate the extent to which salary and benefit increases were offset by the reduction in sick leave benefits for some unit members. It is not possible to determine if any firefighters will, as a result of the award, have insufficient leave time to cover a non-work-related illness. Nor could the arbitrator identify how many, if any, firefighters will receive a lesser terminal leave benefit because they receive fewer sick days than previously.

#### **Vacation**

The arbitrator awarded a unified vacation schedule effective January 1, 2003. As with sick leave, the Association objects to the amount of time awarded and, as with longevity, asks us to make the new vacation schedule effective January 1, 2004 if we affirm this portion of the award. We turn to those issues now. The parties' challenges to award sections concerning vacation scheduling and accumulation of time are addressed in other sections of this opinion.

We find that the arbitrator reasonably exercised his discretion in merging vacation benefits when he awarded between 5 and 10 24-hour vacation days, keyed to years of service.<sup>15/</sup> Neither party has pointed to evidence that the arbitrator did not consider or that is inconsistent with the award.

The arbitrator approached his analysis of vacation leave as follows:

Looking first to the goal of unifying the amount of vacation leave to be provided to the Regional's firefighters, unification should occur, to the extent possible, in a manner consistent with the previous agreements as well as what comparability suggests for the amount of vacation leave provided to firefighters throughout Hudson County and New Jersey. [Arbitrator's award at 237]

The arbitrator explained that the Association proposed that line firefighters receive 14 24-hour vacation days and staff firefighters 42 8-hour days, while the Regional proposed a maximum of 9 days after 21 years of service. The arbitrator noted that under the predecessor agreements, firefighters generally received more generous vacation benefits than those proposed by the Regional (ranging from maximums of 7 to 12 days), but fewer days than proposed by the Association.

The arbitrator's award is in between the parties' proposals and is consistent with his extensive review of vacation benefits

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<sup>15/</sup> Employees are entitled to 12 days if they had more than 20 years of service as of January 1, 2003.



received by other New Jersey firefighters, who receive a median of 10 days per year. To the extent firefighters lost vacation days because the arbitrator did not consider compensatory and personal days in evaluating their entitlements under the prior agreements, that circumstance has to be viewed in the context of the overall compensation package, which equalized salaries at the Union City level. With respect to the Association's challenge to the fact that some firefighters may receive a lesser vacation benefit than under a predecessor agreement, we again incorporate our discussion about the consequences of establishing a single compensation and benefits structure from four separate agreements.

We also find no error in the arbitrator's awarding staff firefighters (who work 8-hour days), 15 to 30 vacation days per year based on years of service. The record does not show that firefighters in other jurisdictions receive more than 30 days per year and the Association does not explain why, or based on what evidence, the arbitrator should have awarded its proposal for 42 vacation days. It states only that it is traditional to give staff firefighters three times the amount of vacation days as 24-hour firefighters. The arbitrator did that, albeit based on the 5 to 10 days awarded for line firefighters rather than the 14 that the Association had proposed.

Finally, for the reasons discussed with respect to longevity, we decline to entertain the Association's request change the effective date of the vacation schedule.

#### Health Insurance

The arbitrator was required to resolve a number of complex and significant issues with respect to health insurance including: whether all firefighters would be covered by the same plan; the type of plan or plans; benefit levels; co-payments for dependent coverage (proposed by the Regional); nature of prescription drug, dental, and eye care coverage; and the type of retiree health care coverage and the eligibility requirements for such. Each party objects to one aspect of the detailed health insurance provision that the arbitrator awarded.

The Association protests the arbitrator's decision to unify health benefit coverage instead of awarding its proposal, whereby the Regional would maintain each of the four health plans that the municipalities had contracted for prior to the regionalization, with any unit member being able to choose any one of the four plans. The Regional objects to the award of retiree dental and eyeglass coverage, arguing the arbitrator had no authority to award it because neither party had proposed it.

The arbitrator explained his decision to unify health benefit coverage as follows:

Health insurance is a major term and condition of employment with significant

implications for each party. Administration, costs and benefit levels are paramount considerations. This benefit is one which should be merged or unified for all employees of the Regional. The testimony of Director Welz must be credited in this regard. The interests of the Regional and all of its employees will be served by a single contract providing comprehensive health insurance benefits [to] all of its firefighting personnel regardless of unit placement. The Union's plea for a continuation of health insurance programs based upon individual prior contracts and arrangements with each municipality is simply not feasible. [Arbitrator's award at 382]

The Association argues that the difficult issue of devising a single health insurance plan should have been left to future negotiations and interest arbitration, given the many other issues the parties and the arbitrator had to address. However, it offers no explanation as to why unification of benefits, which it generally espouses, is not appropriate for health insurance. While the Association contends that the arbitrator did not analyze the cost implications of his health insurance award, neither party presented any cost information and, as we discuss later, the Regional's only cost objection on appeal is to the extension of dental and eyeglass coverage to unit members who retire after the health plan goes into effect.

Further, the Association does not allege that the award will result in benefit reductions and the Regional stated at the hearing that it proposed to enter the State Health Benefits Program (SHBP), which offered each of the plans that the

individual municipalities had offered, thereby preserving employee choice. The arbitrator awarded benefits "equal or better" than the SHBP.

For its part, the Regional maintains that the arbitrator did not have authority to award retiree eyeglass and dental coverage because it was not proposed by either party. See Cherry Hill (arbitrator may not reach out and decide issues not raised by the parties, but may award an item not proposed by either party if it is subsumed within a final offer). It also contends that the arbitrator did not explain this portion of the award and that it adds additional costs to an already expensive award.

Turning first to the arbitrator's authority, we note that the Association proposed continuation of the four individual plans one of which, North Bergen, provided for retiree dental and eyeglass coverage. Since the Association had also proposed that all unit members be able to choose any one of the individual plans, it presumably intended that they could opt for this coverage upon retirement. Further, the Regional presented comprehensive health insurance proposals, including some retiree coverage. Given this background, the issue of retiree dental and eyeglass coverage was subsumed within the parties' overall health insurance proposals. See Cherry Hill (freeze on starting salary was subsumed within the issue of salary increases).

Moreover, while the Regional sought to provide retiree dental and eyeglass benefits only for former North Bergen employees, the arbitrator's extension of the benefit to all future retirees derives from his decision to unify health benefits, an objective that the Regional generally espoused. While the Regional protests the additional cost of the benefits, it did not present argument or evidence about such costs to the arbitrator and does not do so on appeal. Further, it appears that the costs during the term of this agreement will be limited: the benefit pertains only to current employees who retire after the health benefits plan is implemented sometime after 2003. The Regional may present information about the costs of this benefit in the next round of negotiations or interest arbitration but it has not presented grounds to disturb this aspect of the award.

**Terminal Leave**

A major theme that runs throughout the arbitrator's discussion of the major economic issues is the desirability of merging the four salary guides and benefits structures into a single compensation system. However, as noted, the arbitrator also found that it was not feasible to merge some benefits that accrue over the course of a career, and which an individual reasonably expects will continue until retirement.

The record amply supports the arbitrator's conclusion that the terminal leave programs in the prior agreements could not be

merged without reducing benefits for some unit members or imposing substantial costs on the Regional. Also well supported is his decision to "red-circle" terminal leave benefits for certain unit members and the terminal leave provisions he awarded for firefighters hired by the Regional.

The arbitrator carefully analyzed the divergent terminal leave provisions of the prior agreements. He noted that Weehawken, whose firefighters had no fixed number of annual sick days, received 90 days of paid leave prior to retirement. Similarly, Union City firefighters received either 720 hours of paid leave or one-half of their accumulated sick leave, whichever was greater. By contrast, North Bergen's and West New York's terminal leave clauses were tied exclusively to accumulated sick leave, with firefighters from North Bergen receiving payment for one-half of their accumulated sick leave, at their daily pay rate in their last year of employment, up to a maximum of 75% of salary. West New York firefighters received a maximum payment of \$15,000 for accumulated sick leave, paid at the rate of \$120 per 24-hour day.

The arbitrator noted that the Association argued against a uniform terminal leave policy based on sick leave, because Weehawken firefighters would lose their 90-day payment without having had the opportunity to accumulate sick leave during their municipal employment. Instead, the Association proposed that

both previously employed and newly hired firefighters would receive payment "at the applicable rate" for all leave accumulated with a municipality or the Regional. Further, the Association proposed a unified "terminal leave" benefit, not linked to sick leave, that would entitle each firefighter to 120 hours per year for each year of service, with payment not to exceed his salary in the last 12 months of employment.

The Regional opposed the one-year payment provision, arguing that none of the prior agreements included such a clause and that it would entitle all firefighters to the same payment, regardless of how much sick time they used over their careers. The Regional did not appear to put forward a specific proposal for addressing terminal leave accrued under the prior agreements, but urged the arbitrator to apply one standard for awarding terminal leave benefits to these employees. For new employees, it proposed that one-half of unused sick leave (and all vacation) days would be paid at a maximum rate of \$120 per 24-hour day, with the rate of pay based on compensation received at the time the sick leave was earned.

Against this backdrop, the arbitrator observed that the Regional's proposal was significantly less than comparable terminal leave provisions throughout Hudson County, while the Association's proposal exceeded the terminal leave benefits included in most of the prior agreements. Neither party contests

those findings. He found merit in the Regional's arguments for limiting terminal leave benefits, as well as in the Association's position that some terminal leave benefits should be maintained, since all the prior agreements had included such benefits. He then reasoned:

Balancing the firefighter's desire to consolidate all firefighters in a single terminal leave program, while maintaining terminal leave benefits previously accrued while they were employed by the municipal fire departments with the Regional's need to control future costs warrants different terms for those employees originally employed by one of the municipalities that comprise the Regional and for those employees hired directly into the Regional department.

Terminal leave is a benefit where the merger of accrued benefits under the prior agreements is simply not feasible. The benefits for those employees employed by individual municipalities should be retained even though those specific benefit levels cannot be enjoyed by the entire workforce on a uniform basis. Each of the previous agreements included different methods of accumulating time towards terminal leave and different formulas for its calculation. It is generally accepted that leave time accrued by employees towards terminal leave is vested and should not be diminished. [Arbitrator's award at 289-290]

Thus, for previously employed firefighters, the arbitrator awarded a maintenance of the terminal leave benefits received under their prior agreements. For employees directly hired by the Regional, he reasoned that they had no vested interest in a particular terminal leave program, and he awarded a benefit that



was more than that proposed by the Regional and less than that proposed by the Association: compensation for all unused sick leave, at a rate of \$120 per 24-hour day, and subject to a \$15,000 cap. The arbitrator found that the \$120 per tour payment was reasonable and that the cap limited the Regional's future terminal leave costs and enabled it to plan for them.

We are not persuaded by the Association's objections to these terminal leave provisions. While the arbitrator considered the desirability of unifying terms and conditions throughout his award, he was not required to give dispositive weight to this objective in arriving at all award provisions. The Association does not point to any evidence that the arbitrator did not discuss and has not shown why any of the statutory factors weighed in favor of awarding its terminal leave proposal, which the arbitrator found would have had a substantial financial impact on the Regional and which was more extensive than the benefit received by firefighters in comparable jurisdictions or by firefighters under the prior agreements. The Association itself, in urging the arbitrator not to award a uniform policy based on sick leave, implicitly recognized that "merger" of this benefit was not strictly possible, since what the four municipalities had labeled "terminal leave" encompassed very different end-of-career compensation packages.

Similarly, the Regional has not provided a basis to disturb the arbitrator's analysis. Preliminarily, there is ample support for the arbitrator's conclusion that leave time accumulated toward terminal leave should not be reduced absent a knowing and intentional waiver by those adversely affected. See Morris Cty. Schl. Dist., 310 N.J. Super. 332 (App. Div.), certif. denied, 156 N.J. 407 (1998). Thus, the entitlements that previously employed firefighters had earned under the municipal agreements were reasonably preserved. Further, the arbitrator's decision to apply these terminal leave provisions to employees' time with the Regional derives from one of his guiding principles: that there are certain benefits that accrue over the course of a career that employees reasonably expect will continue until retirement. Terminal leave is one such benefit because it is tied to retirement. As we set out earlier, we have deferred to his judgment that the Association's proposal was too costly. We also defer to the arbitrator's judgment that, given the range of terminal leave programs under the prior agreements, prospective unification of terminal leave could not be accomplished without producing harsh inequities either in terms of benefit elimination or excessive cost.

Moreover, while the arbitrator could have awarded different terminal leave provisions for the future, as the Regional maintains he should have, that type of award is not compelled and

would have resulted in more of the complications that the Regional attributes to administering separate terminal leave benefit programs under the prior agreements. That is, the terminal leave entitlements for previously employed firefighters would have had to be allocated between their pre- and post-regionalization service.

In addition, while the Regional objects to the cost of continuing the prior terminal leave provisions, those costs must be considered together with the terminal leave benefits for newly-hired firefighters, which will result in future cost savings by capping terminal leave payments at levels below those in three of the four agreements. Finally, the arbitrator could not have precisely costed out the terminal leave provisions, when the payments for both previously employed firefighters and those directly hired by the Regional largely depend on the amount of sick leave accumulated by an employee at the time of retirement.

#### **Educational Incentives**

With respect to the educational incentive portion of the award, the Association contends that the arbitrator did not explain how he arrived at the amounts awarded and did not discuss the impact of creating two tiers of educational benefits.

The arbitrator reviewed in detail the parties' proposals and arguments and the "widely different" educational provisions in the prior agreements. He noted that the Regional's proposal for

flat dollar amounts for firefighters who received degrees in fire science would confer a new benefit on firefighters previously employed by Weehawken, but would reduce benefits received by some firefighters from the other participating communities, some of whom received a stipend for a non-fire science degree or for course credits short of a degree.

The arbitrator noted that the Association proposed to extend to all unit members the most generous benefits, those in Union City, which provided an additional 10% of base salary for individuals with a bachelor's degree in arts or sciences and 15% for those with a master's or doctorate. He also noted that the Association urged that those who were already receiving an education stipend should not lose it.

The arbitrator decided not to extend the Union City benefits to all unit members; awarded benefits in between the parties' offers for those who had not yet received or embarked on obtaining a degree; and continued the respective education programs under the municipal contracts for firefighters who were already receiving an education stipend or who had begun an educational program. He reasoned as follows:

The issue of incentive pay is an example of a benefit which is difficult to merge or unify for firefighters previously employed in the municipal departments. The benefit itself is a reward for educational progress and attainment and was given widely different treatment among the various municipalities. The Regional's proposal to have a single

benefit for all firefighters is reasonable to the extent that not all firefighters previously enjoyed this benefit. This view, however, must be weighed against the longstanding nature of the benefit, where previously provided, and the time and effort invested by each firefighter towards the incentives and goals required by the prior contracts in order to achieve the benefit. To disturb each prior scheme for those who have earned degrees or commenced participation towards a degree would be inequitable. [Arbitrator's award at 299]

This analysis reflects two of the arbitrator's guiding principles: first, that it is desirable to have uniformity if it can be achieved without excessive cost or causing harsh inequities and second, that all benefits cannot be merged at the highest level. In applying those principles, the arbitrator decided not to extend Union City's education benefits to all unit members. The Association offers no particularized reasons why the arbitrator should have done so and there is thus no basis to disturb his decision in that regard. Again, the arbitrator's decision on this benefit must be considered in the context of the overall award.

While the arbitrator determined not to award the Association's proposal, the decision to red-circle certain individuals is consistent with the Association's position that no individual should lose an education stipend. As with terminal leave, the arbitrator reasonably emphasized the reliance element in finding that it would be inequitable to reduce a benefit where

an individual had invested time and effort in completing or working towards a degree expecting to receive a particular stipend for the remainder of his or her career.

On the other hand, and again consistent with the arbitrator's key objectives, the award does unify educational benefits for those who have not yet matriculated or obtained a degree. With respect to the amounts set for future education stipends, that is the type of detailed, discretionary compensation decision that we will not second-guess. The arbitrator reasonably awarded benefits more generous than those proposed by the Regional but less generous than those the Association proposed, that is: \$750 and \$1,500 annual stipends for associate's and bachelor's degrees from accredited institutions, and \$1250 and \$2,500 annual stipends for associate's and bachelor's degrees in fire science or fire science technology from accredited institutions. Absent any particularized argument as to why he should have awarded higher amounts, we will not disturb this portion of the award.

**Service Differential, Pre-Retirement Benefits,  
Compensatory Days Off, Legal Services Plan**

The Association objects to the arbitrator's decision not to unify four other benefits: service differential; compensatory days off; the payment of additional compensation for firefighters who retire between their 25th and 26th year of service; and a legal services plan. As with longevity and vacation, the

Association asks us to change the effective date of the service differential article should we otherwise affirm it.

The arbitrator's award on all of the above issues is well supported and, as with longevity and vacation, we decline to consider the request to delay by one year the effective date of the service differential article.

The arbitrator found that the issue with respect to these benefits, included in only one or two of the prior agreements, was whether the Association had met its burden of showing that they should be extended to all Regional firefighters. Stated another way, the arbitrator was not confronted with the same task as with, e.g., longevity, sick leave and vacation, where all prior agreements had included the benefit; both parties agreed to continue it; and a major question was whether or how the benefit should be unified. We accept both the arbitrator's approach and his conclusions.

Service differential consists of 1% through 7% of base salary, based on years of service, and is in addition to longevity. The Association sought to extend this benefit to all unit members and to increase the percentage of service differential. However, its limited discussion of the issue in its post-arbitration brief did not state why that result was warranted by the evidence or the statutory factors. The arbitrator awarded a continuation of the benefit, at the

percentage earned as of December 31, 2002, for former North Bergen and Weehawken firefighters. The award thus adopted the Association's argument that no benefit should be "extinguished."

Similarly, the arbitrator reasonably decided not to extend to all firefighters a North Bergen benefit providing for a \$7,000 payment for firefighters who retire between their 25th and 26th year of service. The arbitrator again found that the Association had offered an insufficient basis to extend the benefit, which was to sunset at the end of the North Bergen contract. Again, the Association argued that this benefit should not be eliminated. The arbitrator's award accomplished that by continuing the payment for former North Bergen firefighters who had accrued 20 or more years of continuous service at the time of regionalization.

In addition, the arbitrator provided a reasoned explanation as to why he chose not to award the Association's proposal for eight 12-hour tours of compensatory time. The Association offers no particularized challenge to the arbitrator's conclusion that extension of this benefit to all unit members was not warranted where only North Bergen had had a similar compensatory time provision (for five 12-hour tours off), which appeared to be in lieu of additional vacation time. The arbitrator awarded the Association's proposal that the Regional recognize compensatory time earned with a municipal department, thus adopting the



Association's position that the benefit should not be eliminated for those who were entitled to it under a prior agreement.

Given the analysis we have described, we decline to disturb the arbitrator's conclusions on these points. We also will not second-guess his determination that payment for compensatory time should be at the salary rate when the time was accumulated rather than, as the Association proposed, when the time was used.

Finally, we reject the Association's challenge to the arbitrator's decision not to extend to the Regional the legal services plan included in the Weehawken agreement. The Association does not dispute the arbitrator's finding that the record included no evidence as to the extent of the benefit or how it was used by Weehawken firefighters. Therefore, we will not second-guess the arbitrator's determination that the Association had not met its burden of justifying the proposal.

**Funeral Leave, Leave of Absence, Parking Fees,  
Pay Rate for Acting Assignments**

The Association also challenges those portions of the arbitrator's award governing leaves of absence, funeral leave, parking fees, and compensation for temporary out-of-title assignments. As with many of the "major economic items" discussed above, the arbitrator awarded uniform funeral leave and leave of absence provisions for all unit members. The Association objects that, in doing so, he diminished the leave entitlements of some firefighters without explanation and

provided no rationale for granting only one day of funeral leave for certain relatives.

We are satisfied that the arbitrator thoroughly analyzed the evidence and arguments on these items and reached a reasonable determination of the issues. With respect to funeral leave, he awarded, as both parties had proposed, a clause stating that unit members shall receive leave for two 24-hour tours for the death of an immediate family member. However, he did not include certain relatives in the definition of immediate family - nieces, nephews, brother and sister-in-law. Instead, he awarded one day of funeral leave for these "more distant" relatives. He explained that, given unit members' substantial leave time and ability to exchange tours, they could arrange for more leave if needed. He found that only West New York had defined "immediate family" as expansively as the Association sought.

Similarly, in awarding a uniform leave of absence clause providing for leave without pay, the arbitrator considered the parties' arguments and evidence, together with the prior agreements, and denied the Association's proposal for an additional leave day for a unit member's own marriage, as well as its proposal for leave time to attend certain religious ceremonies. He concluded that given the leave time already awarded, as well as the opportunity for mutual exchanges, additional leave was not warranted.

Thus, the arbitrator provided a rationale for the funeral leave and leave of absence sections and the Association has not shown what additional evidence he should have considered. He was not required to further explain why he awarded leave provisions somewhat less generous than those in a few of the prior agreements. As we stated at the outset, the arbitrator made a reasoned determination not to unify all benefits at the highest level provided in any of the prior agreements.

The Association also objects to the arbitrator's alleged failure to resolve the unsettled issues with respect to its parking fees proposal. Firefighters now park free of charge on municipal streets, but the Association proposed that the Regional pay any fees that are assessed in the future. The arbitrator did not award the proposal, reasoning that it was speculative and would obligate the Regional to pay an uncertain amount on some future date. However, he directed the Regional, upon demand, to "immediately" negotiate over the payment of parking fees should they be instituted. The arbitrator's analysis fully satisfies his obligation under N.J.S.A. 34:13A-16d(2).

Finally, the Association challenges the pay rate awarded for temporary assignments in a higher rank. The Regional had proposed that officers serve without payment and the Association had asked that the acting officer be paid at the maximum step for the higher grade. The arbitrator directed that, after serving

beyond two consecutive tours, the employee acting in a higher title be paid an additional amount equal to one-half the difference between his own rank and the higher rank. He noted that the Regional's proposal was less than provided in any of the prior agreements, while the Association's proposal exceeded those benefits.

As we discussed when reviewing the award provisions on major economic items, the selection of a pay rate is quintessentially a discretionary judgment. We decline to hold that the arbitrator was required to discuss all the statutory criteria in setting this pay rate when the Association did not present arguments or evidence under the criteria. Further, a major theme of the award was that compensation should be unified to the extent feasible and, if possible, while minimizing harsh results for particular individuals. This award section provides unification and the Association does not argue that the section will cause inequities. We also decline to second-guess the arbitrator's decision to award acting pay only after an individual serves in a higher position for two consecutive tours, which strikes a balance between the parties' positions.

**V. Award Provisions on Administrative, Operational & Contract Language Proposals**

We next turn to the parties' objections to a variety of award sections on administrative, operational and contract language proposals. We evaluate those objections by assessing

whether the arbitrator considered the evidence and arguments presented and offered a reasoned explanation for his award. If the arbitrator's analysis satisfies these criteria, we will not disturb his judgment because one or the other party argues that its proposal was preferable to the arbitrator's award.

### **Work Hours**

The Regional maintains that the arbitrator erred in not awarding its proposal for a 24/48 hour work schedule, which would have increased the number of days and hours worked annually. On appeal and before the arbitrator, it urged that the substantial salary and benefit package enjoyed by Regional firefighters warranted this workload increase, given that the legislative intent in adopting the regionalization statute was to achieve cost savings.

The arbitrator rejected the Regional's proposal and instead awarded the Association's proposal to continue the 24/72 work schedule included in all of the prior agreements. The Regional had also been operating on that schedule given its obligation to maintain the status quo. The arbitrator reasoned:

Although an important intent of regionalization was to achieve efficiencies in service and costs, I am not persuaded that this goal encompasses the major changes in work schedule and hours of work proposed by the Regional. The Regional's proposed work schedule would effect such a change by increasing the total number of hours worked annually by one third from 2,184 hours to 2,928 hours. Although Regional firefighters

working 24 hour shifts work fewer days per year than do individuals employed in occupations working eight hour shifts or firefighters working a 10/14 schedule, its firefighters do work 2,184 hours annually. No credible evidence is offered to reflect that the work schedule the Regional proposes is one commonly accepted or adopted in New Jersey and instead reflects the old Guttenberg schedule which was abandoned in favor of West New York's schedule prior to regionalization. There would also be a substantial cost impact attached to the Regional's proposal to increase annual work hours by one-third. Under these circumstances, there is insufficient evidence of the need to modify the current work schedule. [Arbitrator's award at 87]

The arbitrator's decision to deny the schedule change is amply supported by the record. He appropriately considered that the Regional and all participating municipalities had operated on the 24/72, as well as the fact that the Regional offered no operational reasons to institute the 24/48 schedule; the record showed that the 24/72 was common in New Jersey and Hudson County; and the Regional cited no New Jersey communities on the 24/48. Compare Teaneck, 25 NJPER at 455 and City of Clifton, P.E.R.C. No. 2002-56, 28 NJPER 201 (¶33071 2002) (before awarding a major work schedule change, an arbitrator should carefully consider the fiscal, operational, supervision and managerial implications of such a proposal, as well as its impact on employee morale and working conditions).

Further, we agree with the arbitrator that the regionalization statute does not direct a change in the equation

between work hours and compensation beyond what would otherwise be required by application of the statutory factors in any interest arbitration proceeding. The Legislature believed that regionalization would save money and reduce property taxes, presumably because it would eliminate duplicate services. See N.J.S.A. 40:8B-15; N.J.S.A. 54:4-8.77b. However, there is no indication that the Legislature intended that savings would or should result by increasing the work hours or reducing the compensation of employees of local units who become employees of a regional entity. In fact, the CMSA includes a provision preserving the rights of employees of local units that join to form a regional. See N.J.S.A. 40:48B-4.2 (preserving terms and conditions of employment under prior negotiated agreements until a new agreement is reduced to writing).

Within this framework, we find to be well supported the arbitrator's conclusion that the evidence on the interest arbitration criteria did not warrant the change in the work hours/compensation equation that the Regional proposed. While the Regional claims that the compensation package for this unit is excessive unless work hours are adjusted, we have explained why we have affirmed the salary increases awarded and the other aspects of the economic package challenged by the Regional.

For all these reasons, we will not disturb the arbitrator's conclusion that there was insufficient evidence to award a 24/48

work schedule that would significantly change the equation between compensation and hours worked and which might well have a significant impact on employee morale and department operations.

### **Outside Employment**

The arbitrator awarded an outside employment clause, proposed by the Regional, stating that employees shall consider their Regional positions as their primary employment and may not engage in any outside employment or activity that would interfere with that position or constitute a conflict of interest. Also as proposed by the Regional, the award states that an employee may not engage in outside employment while on sick or compensable work-related injury leave. However, the Regional objects that the clauses will have no effect because the arbitrator did not also award its proposal to require employees to report and request approval for all outside employment.

For its part, the Association argues that the prohibition against engaging in outside employment should be modified or vacated, because inability to perform firefighting need not mean that an individual cannot engage in less strenuous employment.

Turning first to the Regional's concerns, we hold that the arbitrator was not required to award the Regional's proposed procedures for reporting outside employment. We have recognized and deferred to the arbitrator's judgment that there is a limit to what can be accomplished in a first agreement. None of the



prior agreements included reporting requirements for outside employment and only one, North Bergen, had an outside employment section. The arbitrator could reasonably decide to incorporate general principles governing outside employment without also awarding the procedures the Regional proposed. As the Association notes, the Regional has the authority to investigate causes of poor performance or abuse of sick leave and, after experience under the award, may again choose to propose a reporting requirement.

Similarly, we will not disturb the award section prohibiting a firefighter from working while on sick or compensatory injury leave. The arbitrator cited testimony from a Regional Director, expressing the Regional's position that a firefighter on sick or injury leave should devote that time to recovering from an injury or illness, because outside work could impair that recovery. The arbitrator had the discretion to give weight to the Director's testimony, despite the Association's position that the Regional had no interest in what a firefighter does on off-duty time.

#### **Drug and Alcohol Testing Procedures**

The Association challenges the section of the award stating that the Regional may administer the drug and alcohol testing policy and procedures contained in the Attorney General's Law Enforcement Drug Testing Policy. It argues that the arbitrator stated that the Attorney General's guidelines require

individualized suspicion, whereas they also authorize random testing. It asks that the award be remanded for the arbitrator to consider whether to include a random testing provision. It maintains that no New Jersey decision holds that an employer has a prerogative to conduct random drug testing of firefighters.

The Attorney General guidelines state that law enforcement employers are authorized, but not required, to test job applicants and conduct a random drug testing program of employees. However, the guidelines stress that law enforcement employers have "an independent obligation" to test officers when there is a reasonable suspicion of drug use. The guidelines include detailed procedures for notifying employees of testing procedures; obtaining and analyzing specimens; and maintaining test records. For employers who choose to conduct random testing, the guidelines require that rules and regulations for the program be adopted and in place for 60 days before the program may be implemented. The rules specify the safeguards that will be used to ensure randomness.

Before the arbitrator, the Regional characterized the guidelines as requiring testing when there is individualized suspicion of drug use and sought to incorporate the guidelines because of the testing provisions they specified. In awarding the clause, the arbitrator wrote:

The enormous responsibilities of the fire service, the expensive nature of equipment

and the need for safety of the citizens and firefighters are sufficient reasons for testing. The policy requires "individualized reasonable suspicion" to be present. Although the decision to test employees for drugs is a managerial prerogative, the Regional seeks to include specific procedures for that drug testing in the agreement. Ensuring that employees are aware of the possibility of drug testing and the procedures for it is likely to act as a deterrent to use of illegal substances and affords protection by having the procedures included in the Agreement. [Arbitrator's award at 124-125]

The Association does not challenge this reasoning and we see no need to vacate or remand the award for the arbitrator to consider the random testing issue. Whether or not this employer has a right to conduct random testing is a constitutional question. See New Jersey State PBA Local 304 v. New Jersey Transit Corp., 151 N.J. 531, 556 (1997) (random drug testing of public employees permitted under Fourth Amendment to the U.S. Constitution and the New Jersey Constitution where the government can demonstrate a special need based on the safety-sensitive functions they perform). The Association may challenge the Regional's authority to institute such a program if and when it proposes to do so. We do not construe the award as conferring a contractual right to conduct random testing.

#### **Vacation Scheduling**

Both parties object to the award provisions governing use of vacation time. Before the arbitrator, the Regional argued that

it needed to limit vacation use on weekends and during the summer to control overtime costs and maintain staffing levels. Accordingly, it sought provisions limiting summer vacations to a maximum of four consecutive 24-hour tours; requiring that spring and fall vacations consist of a minimum of two consecutive 24-hour blocks; and directing that vacation time used for personal business be taken in blocks of at least 24 hours. The Association agreed that summer vacation should be limited to 24-hour blocks but opposed the Regional's other proposed restrictions on vacation scheduling.

The arbitrator thoroughly reviewed the parties' evidence and arguments, including the Regional's exhibits showing vacation patterns, and arrived at an award that recognizes and accommodates both the firefighters' desire for some flexibility in vacation scheduling and the Regional's cost and staffing concerns. The arbitrator limited summer vacations to 24-hour blocks, but allowed 12-hour blocks during the remainder of the year, provided the balance of the tour can be covered on a non-overtime basis. He also awarded contract language stating that firefighters may bid for vacation based on seniority; the Regional shall allow for vacation use throughout the year; and the Regional may consider whether granting vacation would cause an excessive or undue amount of overtime. In addition, the vacation article he awarded includes an Association-proposed

clause allowing one firefighter from each company to be on vacation.

We are not persuaded by the Regional's argument that the weight of the evidence required the arbitrator to award its seasonal scheduling proposal. By allowing the Regional to consider overtime costs in approving vacation time, the award recognizes the Regional's interest in controlling overtime costs, albeit through a different mechanism than it had proposed. With respect to staffing levels, an employer has a prerogative to deny leave requests when allowing time off would cause it to fall below minimum staffing levels; that reserved authority need not be specified in an award or contract. See, e.g., Long Hill Tp., P.E.R.C. No. 2000-40, 26 NJPER 19 (¶31005 1999); Town of Secaucus, I.R. No. 2000-6, 26 NJPER 83 (¶31032 1999).

Further, we are not persuaded that the award must be vacated because the arbitrator assertedly did not consider the implications of allowing one firefighter per company to be on vacation. Before the arbitrator, the Regional did not elaborate on those implications and, on appeal, simply states that it would result in overtime costs. That general concern is not grounds for vacating the award, especially where the article as a whole allows the Regional to consider overtime costs in approving leave. With respect to the Association's concerns, we are satisfied that the arbitrator reasonably exercised his judgment

in allowing vacation to be taken in 12-hour but not 6-hour blocks.

Moreover, the arbitrator did not decline to resolve any issues concerning scheduling and distribution of vacation time: those aspects of vacation leave are governed by award language stating that firefighters have the right to use vacation throughout the year, and by the provisions authorizing the Regional to consider overtime costs in approving vacation requests. The arbitrator did comment that he had awarded a regional-wide vacation program and encouraged the parties to negotiate a more specific vacation use and distribution schedule during the next round of negotiations. However, that language does not establish a lack of finality given the award sections we have noted. Nor does it indicate a belief that interest arbitration is not the proper forum for resolving vacation scheduling issues. Compare Cherry Hill. Rather, it is consistent with the arbitrator's earlier observation that there is a limit to what can be accomplished in a single and initial contract.

#### **Association Rights - Regional and Association Objections**

Before the arbitrator, both parties submitted comprehensive, multi-section proposals with respect to Association Rights and Office Space. The arbitrator explained those proposals and developed a contract article that he believed balanced the

Association's need for adequate time and staffing to administer the agreement in the newly-created department with the Regional's need to ensure its staffing and coverage requirements without excessive overtime costs (Arbitrator's award at 48). The Regional raises several objections to the following clause:

The Employer will permit up to three (3) authorized representatives reasonable time off with pay to attend to Association business, including to investigate and seek to settle grievances and to attend all meetings and conferences on collective negotiations with departmental officials provided the Association gives reasonable notice to the department in advance.

It maintains that the above-quoted language is vague and does not define Association business or what constitutes reasonable notice to the employer. The Regional also states that, when combined with award sections permitting time off to attend conventions or funeral services for fire personnel, the clause could impose substantial costs.

The Regional has not persuaded us to disturb this award section. "Association business" is a term of art and "reasonable notice" is a common term that may derive its content from the circumstances presented. Both may be defined more precisely through the parties' experience and contractual grievance procedures.

For its part, the Association objects that the arbitrator did not explain why he rejected its proposal for a special day

tour for its president and the president's designee. The arbitrator set forth this proposal and the testimony presented concerning it, but did not award the provision. We infer that he found that allowing three representatives reasonable time off with pay to attend to Association business struck an appropriate balance between the Association's and the Regional's needs. We decline to remand the award on this basis.

**Jury Duty; Exchange of Tours; Grievance Procedure;  
Safety and Facilities - Association Objections**

The Association objects to the arbitrator's analysis and determinations with respect to jury duty, exchange of tours, grievance procedures, and safety and facilities - all items on which both parties had presented proposals. We have reviewed the pertinent award sections and the parties' pre- and post-award submissions and are satisfied that the arbitrator carefully considered the parties' evidence and arguments and reached a reasonable determination on these issues. The Association has not pointed to any evidence or arguments that the arbitrator did not consider when he directed that employees be granted necessary time off for jury duty; included a comprehensive exchange of tours provision that permits mutual exchanges for 12 or 24 hours; awarded a grievance procedure article that, among other things, allowed administrative decisions affecting employees to be pursued through step two, but not to arbitration; and awarded a



"safety and facilities" clause more detailed than the Regional's proposal but less specific than the Association had sought.

The salient point about these contract articles is that they address the noted topics, as both parties had sought, and thus set out a framework within which the parties may work and which they may seek to adjust during future negotiations or interest arbitration. Moreover, the arbitrator's analysis addressed the points the Association raises on appeal. For example, the Association maintains that the Jury Duty provision is flawed because it does not provide for travel time if a firefighter is required to report immediately after a shift. However, the arbitrator noted the Regional's commitment, at the hearing, to provide for travel time in these circumstances. He added that any allegedly unreasonable application of the Jury Duty article could be pursued through the grievance procedure.

In declining to allow exchanges of tours for four or eight hours, the arbitrator accepted the testimony of the Regional's Director that such a provision would be detrimental to the Regional's ability to schedule firefighters efficiently. At the same time, he rejected the Regional's proposal to allow exchanges only for a full tour, and found that allowing exchanges for 12 or 24 hours would permit firefighters to maintain some flexibility without undermining the Regional's ability to schedule efficiently. He also awarded the Regional's proposal to limit

exchanges to six per year, finding it reasonable given that firefighters work 91 days annually. The Association may disagree with these conclusions but no further analysis was required.

Similarly, in setting out the Regional's obligation to maintain a clean and safe workplace, the arbitrator explained that he did not award the Association's proposed safety reporting standards because they exceeded requirements in State statutes and regulations. With respect to the Association's proposed language concerning the Regional's obligation to provide and repair enumerated furnishings, the Association presented no pre-arbitration arguments or evidence concerning this aspect of the proposal so we will not disturb the arbitrator's decision to award a more general provision stating the Regional's obligation to provide a safe workplace.

Finally, the arbitrator awarded a comprehensive grievance procedure article that includes a broader definition of "grievance" than proposed by the Regional and, together with the "disciplinary action" article, allows employees to arbitrate all disciplinary determinations, other than major disciplinary actions under DOP's jurisdiction. The Association protests the arbitrator's determination to allow "administrative" decisions affecting employees to be pursued only through step two, the step preceding arbitration. In crafting this aspect of the award, the arbitrator struck a balance between allowing arbitration of such

matters as work assignments and supervisors' attitude, as proposed by the Association, and the Regional's proposal to limit arbitration of minor discipline to suspensions of 48 hours or more. Absent particularized arguments as to how the challenged provision will negatively affect the Association or unit members, we decline to disturb it.

We also decline to disturb the arbitrator's decision not to award the Association's proposal that discipline be initiated within 45 days of the Regional obtaining information sufficient to file the complaint. While the arbitrator noted that the proposal was modeled on a statute pertaining to police officers, he found that the time limits were not always feasible or practical and could unduly restrict the employer. Again, we will not second-guess this judgment absent arguments or evidence as to how the proposal's denial could negatively affect the Association or unit members.

#### **VI. Scope of Negotiations and Statutorily-Based Arguments**

The Regional contends that certain sections of the award conflict with governing statutes and that others impermissibly impinge on its managerial prerogatives. It asks us to vacate or modify the sections identified. Similarly, the Association maintains that the two award sections are inconsistent with pertinent statutes and asks us to remand the articles to the

arbitrator for reconsideration. As noted at the outset of our opinion, we will evaluate allegations that an award provision violates a statute or regulation but will not resolve late-raised claims that an award section significantly interferes with a managerial prerogative.

**Injury Leave, Off-Duty Action, Promotions and Assignments, Sick Leave Verification - Regional Objections**

The arbitrator awarded an injury leave provision that had elements of both parties' proposals. The Regional challenges the underscored language:

Whenever a member of the Fire Department is incapacitated from duty because of an injury sustained in the performance of his duty, he shall be entitled to injury leave with full pay during the period in which he is unable to perform his duties. Typically that period shall not exceed one (1) year. The time may be extended beyond one (1) year at the sole discretion of the Department.

The Regional objects that the "beyond one year" language conflicts with N.J.S.A. 40A:14-16, stating that a municipality may provide for leaves of absences for injured firefighters "not to exceed" one year.

Preliminarily, as the Association notes, the statute may not pertain since the Regional is not a municipality. Further, the underscored sentence is a minor part of the overall award and would not prevent its implementation, even if contrary to statute, since it is not operative until a request to extend a leave is submitted to and granted by the Regional. In addition,

the Regional retains the discretion to deny extension of a leave and thus prevent the problem it fears from arising. In this posture, we decline to modify the award provision as requested.

The Regional also objects to the second clause of the injury leave article, which provides in part:

To be eligible for injury leave benefits, both workers compensation benefit and the enhanced benefit to be paid by the Regional, the employee must report his injury as soon as is reasonably possible. The employer will direct the member to one of a panel of physicians to receive prompt and quality care. . . . A firefighter injured in the line of duty, reserves the right to be treated by a physician and/or surgeon of his own choice, whose fees will be paid by the Department, provided authorization is first obtained from the Department, which authorization shall not be reasonably withheld. A firefighter who is treated by his own physician may be required to present a certificate indicating his continued inability to return to work from time to time. Nothing herein shall prevent the Regional from independently evaluating the medical condition of an employee injured in the line of duty. [Arbitrator's award at 155]

The Regional maintains that this clause also conflicts with N.J.S.A. 40A:14-16, which conditions a municipality's ability to provide a one-year injury leave on "the examining physician appointed by the governing body" certifying to the injury, illness or disability.

Again, N.J.S.A. 40A:14-16 may not apply to the Regional. In any case, the award does not prevent the Regional from adhering

to any obligation to have its own physician certify disability or injury, while honoring the award's provisions allowing an employee to be treated by his or her own physician.

The Regional also objects that the arbitrator's award on off-duty action conflicts with workers' compensation laws. The disputed clause states:

Any action within the State of New Jersey taken by a member of the Department on his time off, which would have been proper action taken by the employee on active duty with the NHRF&R department shall be considered proper Fire Department action, and the employee shall have all of the rights and benefits concerning such action as if he were then on active duty. This excludes an employee regularly performing duties as a member of a volunteer fire company. [Arbitrator's award at 192]

The arbitrator explained that he awarded the union-proposed provision, with some modification, so that firefighters responding to an emergency while off-duty would be entitled to the same benefits under the agreement as if they had been scheduled to work. That is the basis on which the Association had urged award of the provision, and the Regional did not file a scope petition challenging its negotiability or oppose it in its post-hearing brief.

The Regional now argues the award language does not reflect the arbitrator's intent and that, as drafted, it extends workers' compensation benefits to firefighters responding to off-duty emergencies, contrary to controlling statutes and case law.

The award does not refer to workers' compensation and an arbitrator is without authority to grant workers' compensation benefits. That determination is made by the Division of Workers' Compensation, pursuant to the workers' compensation statute and case law. N.J.S.A. 34:15-49. Therefore, there is no basis to vacate or modify the award on this ground. If a unit member claims benefits under this clause and the Regional believes that such benefits would be inconsistent with a statute or beyond the arbitrator's intent, the matter can be resolved through scope of negotiations and grievance procedures.

We turn now to the Regional's managerial prerogative arguments. It claims that the "acting pay" clause in the Promotions, Assignments and Transfers article significantly interferes with its prerogative to assign employees, because it allows employees to refuse to serve in a temporary acting capacity. It also contends that the award is flawed because, unlike the West New York provision which the arbitrator used as a model, the award does not include procedures for making temporary assignments by direct order when use of a rotational list does not identify an individual willing to fill a vacant slot.

The Regional's objections do not go to the overall validity of the award. Roseland. We recognize that employers have a prerogative to make assignments, including out-of-title assignments, to respond to emergencies. City of Newark, P.E.R.C.

No. 85-107, 11 NJPER 300 (¶16106 1985); City of Pitman, P.E.R.C. No. 82-50, 7 NJPER 678 (¶12306 1981). However, we cannot say on this record that the clause would significantly interfere with that prerogative, where employees usually seek to fill acting positions in a higher title because they generally bring premium pay and experience that may help in a future promotional bid. City of Atlantic City, P.E.R.C. No. 2001-56, 27 NJPER 186 (¶32061 2001). Therefore, we will not disturb this award section.

Further, with respect to the alleged need for procedures for making out-of-title assignments, the award provides that temporary assignments to higher rank shall "continue to be made by the Regional in conformity with DOP Rules and Regulations." The Regional has not explained why that clause does not provide the procedures it argues are necessary.

Finally, the Regional maintains that the award interferes with its managerial prerogative to verify sick leave by stating that a doctor's note shall be required when an employee has been on sick leave for more than one tour of duty and may be sought when there is reason to believe that sick leave is being abused. It maintains that, under our scope of negotiations decisions, an employer has the prerogative to determine the number of absences that trigger a doctor's note requirement.

The Association proposed that doctor's notes be required only when an employee is returning from injury leave or surgery,



or has missed two tours of duty. The Regional did not file a scope petition with respect to this proposal and in this circumstance we choose not to entertain its scope objection.<sup>16/</sup> We note that the award preserves the Regional's ability to require a note when abuse is suspected. If the Regional requires a doctor's note after a single absence and a grievance ensues, the Regional may then file a scope petition.

**Association Rights; Accumulation of Vacation  
Leave - Association Objections**

The Association maintains that the award section allowing four Association officials to attend FMBA, IAFF, and AFL-CIO conventions conflicts with N.J.S.A. 11A:6-10 which states:

A leave of absence with pay shall be given to employees who are duly authorized representatives of an employee association defined as a "representative" in subsection e of section 3 of P.L. 1941, c. 100 and affiliated with the New Jersey Policemen's Benevolent Association, Inc., Fraternal Order of Police, Firemen's Mutual Benevolent Association, Inc., Professional Firefighters Association of New Jersey to attend any State or National convention of the organization, provided, however that no more than ten (10%) percent of the employee organization's membership shall be permitted such a leave of absence with pay, except that no less than 2

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<sup>16/</sup> The Regional did file a petition in the companion fire officers case, with respect to that union's proposal to require a doctor's note after three one-day absences or one absence of two or more days. North Hudson Reg. Fire & Rescue, P.E.R.C. No. 2000-78, 26 NJPER 184 (¶31075 2000). We held the proposal not mandatorily negotiable, reasoning that the clause suggested that the employer was prohibited from verifying sick leave in other circumstances.

and no more than 10 authorized representatives shall be entitled to such leave. . . . The leave of absence shall be for a period inclusive of the duration of the convention with a reasonable time allowed for travel to and from the convention, provided that such leave shall be for no more than seven (7) days.

N.J.S.A. 40A:14-177, which the Association also cites, contains substantially similar language.

The Association argues that given that it has almost 200 members, it is entitled, contrary to the award, to send 10 representatives to the conventions of the named organizations. It also objects to this award language:

Whenever a duly authorized representative of the Association exercises his right to attend such convention, the department's vacation schedule for that time period shall be adjusted to reflect such leave so as to avoid the unnecessary expenditure of overtime.

The Association contends that, unlike the statute, the award makes the right to attend conventions contingent on a department's vacation schedule.

The Association proposed, and the arbitrator awarded, a provision enabling four unit members to attend union conventions. To the extent the Association is entitled by statute to send more than that number, the right is incorporated in the contract, State v. State Supervisory Ass'n, and thus there is no need for the arbitrator to reconsider the award provision.

Similarly, while we agree that the statute does not condition the right to convention attendance on a department's vacation schedule, we do not believe that the award does either. It simply states that the vacation schedule may be adjusted to accommodate the statutory and contractual rights of those attending the convention.

The Association next contends that N.J.S.A. 11A:6-3 required the arbitrator to grant its proposal to allow up to one year of vacation time to be banked. The statute provides:

Vacations not taken in a given year because of business demands shall accumulate and be granted during the next succeeding year only.

The arbitrator's award states:

Vacation time earned may not be accumulated unless an employee was prevented by the Regional from taking scheduled vacation time due to departmental needs or disability. In either event, the employee may bank such vacation time for no more than one year. This provision shall not prevent the banking of vacation time for the purposes of placing such time in the terminal leave bank.  
[Arbitrator's award at 450]

Consistent with the statute, the award would allow one year's allotment of vacation time to be banked in the next succeeding year, if the employee was prevented from taking that time during the year in which it was earned. However, the statute does not grant an employee an absolute right to bank one year of vacation time, regardless of when the time was accrued or regardless of why it was not used in the year earned. See State of New Jersey

(Dept. of Higher Ed.), P.E.R.C. No. 96-47, 22 NJPER 37 (¶27018 1995) (statute bars arbitration of grievance claiming payment for vacation days they were permitted to use but did not use during the year in which they were earned or the next succeeding calendar year).

### **VII. Clarification Issues**

In the final section of this opinion, we discuss contentions by both parties that particular award sections are ambiguous and need to be clarified. For the most part, we do not find the provisions unclear and, more to the point, the alleged ambiguities do not implicate the arbitrator's obligation to consider the statutory factors and the parties' evidence and arguments. Nor do they present grounds for delaying implementation of the parties' first agreement. Our discussion explains why we have reached these conclusions, but we stress that we are not definitively interpreting the cited award sections. The parties may jointly request clarification from the arbitrator; amend the award by stipulation, N.J.S.A. 34:13A-19; or allow grievance arbitration to resolve an issue once a dispute arises under a particular award section. Absent mutual agreement, a joint clarification request shall not stay implementation of the award or any portion thereof.

We turn first to the Association's contention that the award's sick leave article does not specify whether firefighters retain sick leave earned prior to the merger of this benefit. The award's terminal leave article provides for payment for accumulated sick and vacation leave upon retirement - and states that payment will be provided for time earned before and after the regionalization. The necessary inference is that the sick leave earned prior to regionalization and merger remains in an employee's sick leave bank. To the extent there is any question about the arbitrator's original intent, the Decision on Clarification states that the sick leave program effective January 1, 2004 shall allow for "the carry forward of any previous accumulated sick leave earned under prior provisions which contain an annual allotment of paid sick time" (Decision on Clarification at 15).

Both parties suggest that the award is unclear as to which firefighters are entitled to 12 vacation days. The pertinent award section, which sets forth a unified vacation schedule effective January 1, 2003, is as follows:

Years of Service	24 Hour Tours of Duty
1 to 5 Years	5
6 to 15 Years	7.5
16 to 20 Years	10
21 Years and above*	12*

The arbitrator explained this schedule as follows:

I have set the number of vacation days for employees after twenty years of service at twelve days with the provision that this benefit shall only apply to firefighters, effective January 1, 2003, who were previously employed by the municipalities prior to regionalization and who achieved more than twenty years of service as of January 1, 2003. [Arbitrator's award at 241]

The award language and the discussion in the arbitrator's opinion indicate that the entitlement to 12 days attaches after completion of 20 years of service, at the beginning of the 21<sup>st</sup> year, provided the 20 years were accrued before January 1, 2003.

On another vacation issue, the Regional maintains that, in order for it to implement the award's vacation provisions, the award needs to be modified or clarified with respect to accrual of vacation time. We see no need to modify the award. Before the arbitrator, the Regional proposed that, during their first year of service, unit members would accrue vacation days at the rate of one every four months. After completing one year of service, they would then be entitled to four days. The arbitrator did not award a provision concerning accrual of leave for employees during their first year. Therefore, in granting five days for firefighters with one to five years of service, it appears that the arbitrator intended that employees would be entitled to this benefit at the outset of their first year of service.

In addition, the Regional seeks clarification on a salary calculation issue. It states that the award does not address the "sequence of adding on all fold-ins or add-ons to the base salary in order to calculate a firefighter's final salary." It suggests that "all percentage fold-ins are to be calculated individually, then added together as one number, along with any flat rate fold-ins, to the base salary." Because the Association does not offer a different interpretation on this point, we decline to clarify or remand the award on this ground.

Finally, the Association seeks clarification or modification with respect to the award's "Emergency Leave" clause, arguing that the award is ambiguous as to whether the leave is paid or unpaid. The clause provides

Employees may be granted emergency leave, with or without pay, for the serious illness requiring hospitalization in the immediate family including childbirth, necessitating the employee's presence at the discretion of the Executive Director, which discretion shall not be unreasonably or arbitrarily exercised. Paid leave shall be limited to one tour annually. [Arbitrator's award at 164]

The text and the arbitrator's opinion indicate that paid leave is to be limited to one tour, but that unpaid emergency leave could be granted as well.

### **Conclusion**

In our issue-by-issue review, we have concluded that the parties' objections do not warrant our disturbing the award. The

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arbitrator's overall approach and guiding principles are sound, and his award establishes a framework within which the parties may work. The arbitrator painstakingly considered the parties' presentations; reached a reasonable determination of the issues; and fashioned an overall award that is supported by substantial credible evidence. It is perhaps inevitable that each party would disagree with some award provisions, given the length and complexity of this conventional award and the extraordinary number of issues it addressed. However, neither party has pointed to evidence or arguments that the arbitrator did not consider or shown that any element of the award is unsupported by the evidence.

We stress that an interest arbitration appeal is not a means to seek adjustments to award provisions with which one disagrees, particularly since, in general, an appeal decision will not vacate or remand one piece of an award without requiring a re-examination of the award as a whole. See Union Cty., P.E.R.C. No. 2003-87, 29 NJPER 240 (175 2003) (award vacated and remanded at employer's request to reconsider its proposals; arbitrator directed to also reconsider union's proposals); contrast East Orange (limited remand ordered for arbitrator to explain how she calculated one item). If the parties still wish to change aspects of the award, N.J.S.A. 34:13A-19 expressly authorizes them to amend or modify the award by stipulation. Absent the




parties' agreement, such efforts shall not stay implementation of the award or any portion thereof.

ORDER

The arbitrator's award, as clarified in his October 10, 2003 decision, is affirmed.

BY ORDER OF THE COMMISSION

  
Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Buchanan, DiNardo, Katz, Ricci and Sandman voted in favor of this decision. None opposed. Commissioner Mastriani recused himself and was not present.

DATED: October 30, 2003  
Trenton, New Jersey  
ISSUED: October 30, 2003

P.E.R.C. NO. 2003-87

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF UNION,

Appellant,

-and-

Docket No. IA-2001-46

UNION COUNTY CORRECTIONS OFFICERS,  
PBA LOCAL NO. 199,

Respondent.

SYNOPSIS

The Public Employment Relations Commission vacates an interest arbitration award and remands the matter to the Director of Arbitration for assignment to a different arbitrator to be either mutually agreed to by the parties or appointed by lot. The County of Union appealed from an interest arbitration award involving approximately 200 corrections officers. The award was issued after a May 15, 2002 award was vacated and remanded to the same arbitrator for reconsideration and further analysis and discussion. Union Cty., P.E.R.C. No. 2003-33, 28 NJPER 459 (¶33169 2002). The Commission concludes that the arbitrator's discussion of salary and health benefits proposals did not include the findings and analysis concerning internal settlements that was directed in Union Cty. The Commission further concludes that the best course is to allow a new arbitrator to consider all of the parties' proposals and issue a new opinion and award in accordance with the statutory criteria and the principles set out in Union Cty.

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 UNION,

Appellant,

-and-

Docket No. IA-2001-46

UNION COUNTY CORRECTIONS OFFICERS,  
PBA LOCAL NO. 199,

Respondent.

Appearances:

For the Appellant, Schenck, Price, Smith & King,  
attorneys (Kathryn V. Hatfield, of counsel)

For the Respondent, Loccke & Correia, attorneys (Leon  
B. Savetsky, of counsel)

DECISION

Union County appeals from an interest arbitration award involving approximately 200 corrections officers. See N.J.S.A. 34:13A-16f(5)(a). The award was issued after a May 15, 2002 award was vacated and remanded to the same arbitrator for reconsideration and further analysis and discussion. Union Cty., P.E.R.C. No. 2003-33, 28 NJPER 459 (¶33169 2002).

The parties' final offers, submitted before the May 2002 award, were as follows. The County proposed a four-year contract from 2001 through 2004, with a 1.5% across-the-board salary increase effective January 1, 2001 and a 1.5% increase effective

June 23, 2001. For 2002 through 2004, it proposed increases of 4% for officers at the maximum guide step and increases of 3.5% for officers "in guide." Almost all officers are at the maximum step. The County also proposed to increase the clothing allowance by \$25 in each of the first three years of the agreement.

The County further proposed health benefits changes for both new and current employees. For current employees, it proposed, effective January 1, 2002, to increase prescription co-payments and institute an employee contribution towards health benefit premiums. Employees earning under \$65,000 would pay a \$10 per month premium contribution; those earning between \$65,000 and \$75,000 would pay \$25; and those earning over \$75,000 would pay \$35. In 2003 and 2004, employees earning over \$75,000 would pay \$40 per month. For members of Horizon PPO (Blue Select), the County proposed a \$5 doctor visit co-pay for 2002 and a \$10 co-pay for 2003 and 2004; and, for all unit members, it proposed an increase in the out-of-network cost share from 80/20 to 70/30. The County also proposed a health benefit buyout option where an officer covered under his or her spouse's plan could decline additional health coverage and receive \$2,500 annually. Effective January 1, 2003, the County proposed to reduce the deductible for any single benefit period.

The County also proposed that, effective January 1, 2002, new employees would be limited to a choice of Physician's Health Service (PHS) or Blue Choice coverage, unless they opted to pay the difference between these plans and their chosen plan. Those choosing PHS or Blue Choice would pay \$15 per month for single coverage and \$25 per month for family coverage. Those contributions would be increased by the proportionate annual increase in the plan cost.

The County also proposed enhancements to sick leave, retiree and vacation benefits, but linked these enhancements to the award of the noted health benefits proposals. Thus, it proposed to increase its subsidy of retiree health benefits from approximately 25% to approximately 75%; raise the maximum reimbursement for unused sick leave, on a graduated basis, for those with more than 200 accumulated sick days; and grant additional vacation days for each year of service from 25 through 30. Finally, the County also sought the award of several proposals that it describes as "operational" and that we described in our first Union Cty. opinion.

The PBA proposed a three-year contract from 2001 through 2003 with 5% increases in each year. It sought to increase the 10-year senior officer differential from \$2365 to \$2500 and also proposed that the 20-year differential be increased by the same

percentage as base salaries were increased, as provided for in the expired contract. In addition, the PBA sought a \$1500 stipend for employees in the Special Operations Unit (SOU) and an increase in the County contribution to the PBA Insurance Development fund from \$135 to \$158 per employee. It also made proposals concerning orthodontic coverage, grievance arbitration, compensatory time, and food pick-up, all of which are described in our first Union Cty. opinion.

In the arbitrator's first award, he awarded a three-year contract from 2001 through 2003, with 4% across-the-board increases for all unit members for each year of the agreement. He also awarded the County's clothing allowance proposal. All other proposals were denied.

When the County appealed the award, we concluded that the award should be vacated and remanded for reconsideration because first, by emphasizing that the health benefits changes sought were best achieved in negotiations, the arbitrator appeared to have applied an improper presumption that the proposal should not be awarded in interest arbitration. Second, the arbitrator did not fully discuss, or explain how he analyzed and weighed, the parties' arguments and evidence concerning internal settlements with other County negotiations units. Finally, we found that a

remand was required because the arbitrator did not analyze the County's operational proposals and did not explain his salary award.

On remand, the arbitrator awarded 4% salary increases for 2001 through 2003, as he had in the first award. However, he awarded a four-year contract extending through 2004 - instead of the three-year term originally awarded - and ordered a 4% salary increase for 2004. As he had in the first award, the arbitrator awarded the County's proposal to increase the clothing allowance but denied all other County and PBA proposals.

The County appeals, contending that the arbitrator did not give due weight to the statutory criteria or comply with our instructions to provide a fuller discussion of the County's settlements with other of its negotiations units in analyzing its salary and health benefits proposals. It also maintains that the arbitrator did not individually analyze its operational proposals and asserts that the award is not supported by substantial credible evidence. It asks us to vacate the award and remand it to a different arbitrator.<sup>1/</sup>

The PBA counters that the issue is not whether the arbitrator complied with Union Cty., but whether the award

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<sup>1/</sup> We deny the County's request for oral argument. The matter has been fully briefed.

comports with the Police and Fire Public Interest Arbitration Reform Act, N.J.S.A. 34:13A-14 et seq. It contends that the arbitrator gave due weight to the statutory criteria and incorporated the analysis of the statutory factors contained in his first award. In considering the internal settlements, the PBA maintains that the arbitrator reasonably focused on the unique circumstances of this work unit. Finally, the PBA contends that the arbitrator fully analyzed each of the County's operational proposals and explained his ruling on the contract term. If a remand is ordered, the PBA asks that it be to the same arbitrator.

The standard for reviewing interest arbitration awards is now established, and has been affirmed by the Appellate Division. We will vacate an award if 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., P.E.R.C. No. 2000-33, 25 NJPER 450 (¶30199), aff'd in part, rev'd and remanded in part on other grounds, 353 N.J. Super. 289 (App. Div. 2002), certif. granted 175 N.J. 76 (2002); 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.

Within this framework, we have interpreted Reform Act provisions and provided direction concerning the analysis required of arbitrators. An arbitrator must provide a reasoned explanation for an award and state what statutory factors he or she considered most important in arriving at the award, explain why they were given significant weight, and explain how other evidence or factors were weighed and considered in arriving at the final award. N.J.S.A. 34:13A-16g; N.J.A.C. 19:16-5.9; Borough of Lodi, P.E.R.C. No. 99-28, 24 NJPER 466 (¶29214 1998).

We applied these principles in vacating and remanding the arbitrator's first award when we required him to analyze the County's operational proposals; explain how his salary award was shaped and supported by the statutory criteria; and more fully discuss, and explain how he analyzed and weighed, the parties' arguments and evidence concerning internal settlements with other County units. We also found that a remand was required because, by emphasizing that the health benefits changes sought were best

achieved in negotiations, the arbitrator appeared to have applied an improper presumption that the proposals should not be awarded in interest arbitration. See Cherry Hill.

We turn first to the County's contention that, in analyzing its health benefits and salary proposals for the second time, the arbitrator did not comply with our instructions to more fully discuss the County's internal settlements. This is the background.

In its presentation and submissions prior to the first award, the County had asserted that its health benefits proposals had been accepted by six other negotiations units, including three law enforcement units. The County maintained that these units had also accepted the salary, sick leave, retiree health benefits, and vacation proposals that it was offering to this unit. It urged the arbitrator to maintain this alleged pattern and argued that to do otherwise would disrupt labor relations stability because it would discourage future settlements and undermine the morale of employees in other units. It also asserted that award of its health benefits proposals would help offset its escalating health care costs.

The PBA countered that the settlements the County reached with other law enforcement units in fact supported the award of its offer, because the County had agreed to substantial economic

benefits in addition to the package offered to this unit. It also asserted that the County had not shown what savings would accrue by extending its health care proposals to this unit.

In reviewing the arbitrator's first award, we first held that he appropriately placed the burden on the County to justify its health benefits proposals. 28 NJPER at 461; see also Cherry Hill. We then set out several principles that underpinned our conclusion that the arbitrator's analysis of the internal settlements did not comport with the Reform Act. Those principles are as follows:

N.J.S.A. 34:13A-16g(2)(c) requires an 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.

Pattern is an important labor relations concept that is relied on by both labor and management.

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. Thus, 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. [28 NJPER at 461]

Against this backdrop, we noted that the arbitrator had reasoned that other units' acceptance of the health care

proposals was "supportive but not persuasive," but that he did not make findings as to whether the settlements differed from the offer to this unit; the significance of any differences; and whether in fact there was a settlement pattern among the County's negotiations units. On remand, we stated that he should make those determinations; discuss and apply the above-noted principles concerning pattern and internal comparability; and explain how he weighed the County's arguments and evidence concerning the settlements vis-a-vis the PBA's. Because the County maintained that there was a pattern as to both health benefits and across-the-board increases, we stated that the arbitrator's review on remand of the parties' salary proposals should be informed by the same findings and analysis.

In his opinion and award on remand, the arbitrator incorporated the analysis of the statutory factors set out in his first opinion and then described how, in March and April of 2001, one-third of the corrections officers' negotiations unit had been laid off. That information had not been discussed in the analysis portion of the first award, but had been included in the summary of the PBA's evidence. Prior to reconsidering the parties' proposals, the arbitrator made the following comments with respect to internal settlements and pattern:

Certainly the efficacy of pattern bargaining  
in cases involving a single employer is

recognized as being reasonable and even desirable in many cases. That does not mean it is feasible or more reasonable in every case, however. In the present case, the increased demands created upon the remaining correction officers by the massive layoffs of one third (1/3) of the rank and file workforce are unique and create all kinds of work problems. They make it more reasonable and equitable to compare the Union County Correction Officers to correction officers of other counties than it does to other employee groups of Union County, both law enforcement and non-law-enforcement, for the sake of achieving some degree of uniformity. . . . Moreover, the PBA offered evidence that there was, in fact, no real uniform pattern and that the County's settlement with several units provided significant economic benefits which were not given to employees in other units. [Arbitrator's second opinion at 6]

The arbitrator then stated that comparisons with four other counties' corrections officers' units warranted the 4% increases. After discussing the County's operational proposals, the arbitrator described the County's health benefits proposals. He stated that the burden was on the County to justify the health benefits changes sought. He then wrote:

Leaving aside the proposed inducements to the acceptance of the change health benefit plan, it is obvious that the County's proposal would effect a major change in a very important employee benefit. While the County demonstrated that the cost of health insurance is rising, it has not demonstrated how much money it would save by the implementation of its proposed plan or how the PBA's inclusion in that plan would affect such cost. . . . The County appeared to primarily base its argument in favor of its

health care proposal upon the fact that it had been accepted by several other County unions. This, and the fact that the County was seeking to offset the costs of higher health insurance premiums, were the main arguments offered in support of its proposal. The County did not offer any evidence of any financial difficulty or inability to pay the premiums of the current plan, nor did it attempt to financially justify its proposal on any basis other than the fact that employee contributions would decrease the cost to the County. Considering the testimony and the evidence presented by the County on this proposal, it cannot be said that the County has demonstrated that its present proposal on health coverage is more reasonable than the health benefit plans which the correction officers presently enjoy. In effect, the County has not met its burden of proof and has not presented sufficient evidence with respect to this proposal to warrant its award by the arbitrator. [Arbitrator's second opinion at 16; emphasis added]

The underscored language is the only discussion of internal settlements vis-a-vis the County's health benefits proposals, but we will assume for purposes of analysis that the arbitrator intended his earlier "pattern" analysis to pertain to both salary and health benefits. In any case, we conclude that the arbitrator's analysis of the internal settlements does not comply with the Act or our earlier decision.

Preliminarily, the arbitrator did not make explicit findings as to whether or not there was a settlement pattern with respect to health benefits and salary - or either of those items. Nor

did he make findings as to whether the settlements differed from the offer to this unit or analyze the significance of any differences. These are critical omissions because, as we explained in Union Cty., the existence - or not - of a pattern is an element that should be considered in determining the weight to be given internal settlements and in assessing the effect of an award on the continuity and stability of employment. 28 NJPER at 461. Further, Union Cty. stated that the Reform Act requires the arbitrator to explain the reasons for adhering or not adhering to any proven settlement pattern. Without specific findings as to the existence, nature or scope of an alleged settlement pattern, we cannot evaluate whether the arbitrator fulfilled that function.

We recognize that the arbitrator identified the layoffs experienced by this unit as a reason for deviating from the pattern - thus implying that one exists. But later he noted that the PBA had "offered evidence" that there was no real uniform pattern and that "several" of the settlements provided significant economic benefits not offered to this unit. That language suggests agreement with the PBA's argument. The opinion does not include an analysis of the PBA's arguments on the settlements and the County's response or explain the reasons for finding or not finding a pattern. Moreover, while alluding to

the PBA's argument about the economic benefits offered to other units, the opinion does not address the County's argument that the agreements with the Sheriff's Superior Officers, Sheriff's Officers, and Prosecutor's Detectives & Investigators Superior Officers should be considered part of a settlement pattern, even though they included senior officer stipends and salary adjustments not offered to this unit.<sup>2/</sup>

We could construe the arbitrator's comments as finding a pattern as to wages and/or health benefits, but not a strong or precise one. Even if we were to do so, however, the arbitrator did not adequately explain his reason for deviating from it.

As the arbitrator recognized, evaluation of whether a pattern should be followed with respect to a particular unit should take into account any unique considerations pertaining to that unit. Here, the arbitrator accepted a PBA witness' recitation of the problems resulting from the closing of one jail

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<sup>2/</sup> The County asserted that the senior officer stipends and \$1486 lump sum payments agreed to for the Sheriff's Officers and Sheriff's Superiors were funded by savings in other areas; noted that this unit already had the stipend; and stressed that the stipend concept emanated from the negotiations with this unit in settling the 1998-2000 contract. It asserted that the elimination of step one on the Prosecutor's Superior Officers guide was not an economic benefit to those unit members, as the PBA had argued, because the agreement provided that newly promoted officers would be placed at step two rather than, as previously, the higher-salary step four.



building and the subsequent layoff of unit members. He characterized as "undisputed" Vincent DeLouisa's testimony that unit members' workload and stress increased when they were required to supervise more inmates and work forced overtime. However, as the County points out, DeLouisa acknowledged on cross-examination, and a County witness also testified, that after the layoff, 250 inmates were transferred to a drug rehabilitation facility (T62; T208-T209).<sup>3/</sup> Thus, the County's position was that the officer-inmate ratio was the same as before the layoff. There was also testimony that forced overtime, while spiking immediately after the layoff, had declined somewhat by the time of the arbitration hearing (T83).

While we make no findings and reach no conclusions about working conditions after the layoff, we cannot accept the arbitrator's basis for deviating from any settlement pattern without a fuller discussion and weighing of all of the evidence presented on post-layoff working conditions.

We have these additional comments concerning the arbitrator's analysis of the County's health benefits proposals. By acknowledging other units' acceptance of the proposals, the

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<sup>3/</sup> There was also testimony that corrections officers transported these individuals to court appearances and medical appointments and that at times they stayed at the jail in holding cells (T63-T64; T210).

arbitrator could be said to have implicitly found a pattern with respect to health benefits. Again, however, that comment falls short of the explicit findings we required. Moreover, the arbitrator's additional analysis of why he rejected the County's health benefits proposals does not comport with the Reform Act or Union Cty.

Union Cty. directed the arbitrator to apply the principles we noted earlier in this opinion -- pattern is an important labor relations concept; the reasons for not adhering to a pattern should be specified; and pattern must be considered in evaluating the continuity and stability of employment. These concepts logically imply that an employer-wide pattern on a particular issue will be entitled to careful consideration in assessing whether a party has met its burden of justifying a proposal consistent with the pattern. However, the arbitrator did not apply these concepts. His opinion appeared to give little consideration to other units' acceptance of the health benefits proposals, and discussed that acceptance in the course of noting that it was insufficient to justify award of the proposals where the County had not shown financial difficulty or inability to pay for existing benefits. Compare PBA Local 207 v. Bor. of Hillsdale, 137 N.J. 71, 86 (1994); Town of Newton, P.E.R.C. No. 98-47, 23 NJPER 599 (¶28294 1997) (financial impact criterion,

N.J.S.A. 34:13A-16g(6), does not require a municipality to prove its inability to pay the other party's offer). The opinion also did not address either the effect of not awarding the proposals on employees in other units or the ability to reach future settlements, factors encompassed within N.J.S.A. 34:13A-16g(8). Union Cty., 28 NJPER at 461; see also Fox v. Morris Cty., 266 N.J. Super. 501, 519 (App. Div. 1993), certif. denied, 137 N.J. 311 (1994).

For these reasons, we conclude that the arbitrator's discussion of salary and health benefits proposals did not include the findings and analysis concerning the internal settlements that we had directed. Therefore, we vacate the award.

In view of our conclusion, we need not address the parties' arguments as to whether the arbitrator properly analyzed the County's operational proposals or explained how his salary award was shaped by the statutory criteria. Nor need we consider whether the arbitrator should have considered information - submitted by the County after the hearing - concerning the savings that would accrue if its health benefits proposals were awarded. Finally, we do not address the County's argument that, in his second opinion, the arbitrator improperly reversed some conclusions in the first award.

We turn now to the issue of whether the case should be remanded to a different arbitrator.

As we explained in Union Cty., we and the Courts have generally remanded interest arbitration awards to the original arbitrator presuming, unless shown to the contrary, that the arbitrator would be able to take a "fresh look" at the case. Union Cty. distinguished cases where we or the Courts had declined to follow this practice, including Borough of Bogota, P.E.R.C. No. 99-20, 24 NJPER 453 (¶29210 1998), where we found that an arbitrator, in his second award, had not adequately considered the private sector wage evidence that we had directed him to consider when we vacated and remanded his first award.

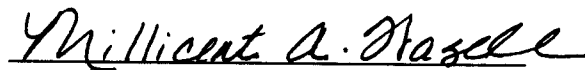
As in Bogota, this second award does not include the findings and analysis that we had directed. Therefore, the best course is to allow a new arbitrator to consider all of the County's and PBA's proposals and issue a new opinion and award in accordance with the statutory criteria and the principles we set out in Union Cty. and this decision. We emphasize that we express no opinion on the merits of the parties' proposals and make no finding either that there is a County-wide pattern on wages and health benefits or that an arbitrator must follow the alleged pattern.

Accordingly, we remand the case to the Director of Arbitration for appointment of an arbitrator. If the parties are unable to agree on a replacement arbitrator, an arbitrator shall be appointed by lot. N.J.A.C. 19:16-8.3. The remand shall be decided on the existing record, unless the arbitrator requires additional submissions.

ORDER

The arbitrator's award is vacated and this matter is remanded to the Director of Arbitration. If the parties are unable to agree upon a replacement arbitrator, the arbitrator shall be appointed by lot.

BY ORDER OF THE COMMISSION



Millicent A. Wasell

Chair

Chair Wasell, Commissioners Buchanan, DiNardo, Ricci and Sandman voted in favor of this decision. Commissioner Mastriani abstained from consideration. Commissioner Katz was not present.

DATED: May 29, 2003  
Trenton, New Jersey  
ISSUED: May 30, 2003

P.E.R.C. NO. 2003-75

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF ALLENDALE,

Appellant,

-and-

Docket No. IA-2002-032

PBA LOCAL 217,

Respondent.

The Public Employment Relations Commission affirms an interest arbitration award rendered to settle contract negotiations between the Borough of Allendale and PBA Local 217. The Borough appealed from the arbitrator's denial of its proposal to eliminate longevity for new hires, contending that his factual conclusions were unsupported and that he did not give due weight to the statutory criteria. The Commission holds that the arbitrator's judgment concerning the total compensation package represents a reasonable determination of the issues and that he fully analyzed the statutory criteria and issued an award 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

BOROUGH OF ALLENDALE,

Appellant,

-and-

Docket No. IA-2002-032

PBA LOCAL 217,

Respondent.

Appearances:

For the Appellant, Wiss, Cooke & Santomauro, attorneys  
(Raymond R. Wiss, of counsel; Thomas K. Bouregy, Jr.,  
on the brief)

For the Respondent, Loccke & Correia, attorneys  
(Richard D. Loccke, of counsel; Michael A. Bukosky, on  
the brief).

DECISION

The Borough of Allendale appeals from an interest arbitration award involving a negotiations unit of approximately 11 police officers. N.J.S.A. 34:13A-16f(5)(a).

The arbitrator resolved the unsettled issues by conventional arbitration, as he was required to do absent the parties' agreement to use another terminal procedure. The parties' final offers were as follows.

The Borough proposed a three-year contract from January 1, 2002 through December 31, 2004. Effective January 1 of each contract year, it proposed a 3% annual increase on the salary guide steps for Academy, Balance of First Year, and Second Year.

For all other steps, it proposed a 3.75% annual increase. It also proposed to raise the clothing allowance from \$750 to \$775 effective January 1, 2003 and to \$800 effective January 1, 2004. Finally, it sought to eliminate the longevity benefit for all new hires, effective September 1, 2002.

The PBA also proposed a three-year contract from January 1, 2002 through December 31, 2004. For each year, it proposed a 5% increase for all steps. In addition, it sought one additional personal day; codification of the Borough's practice of supplying body armor to unit members; and a "preservation of rights" clause. Finally, it proposed contract language on "Term and Renewal," providing that if a successor agreement is not executed before the end of the contract, the expired agreement shall continue in full force and effect until a new agreement is signed.

The arbitrator awarded a three-year contract that, as proposed by the Borough, increased the Academy, Balance of First Year and Second year steps by 3% each year. For all other steps, he granted a 4% increase each year. He also awarded the Borough's clothing allowance proposal and the PBA's proposals for an additional personal day and for "Term and Renewal" language. All other proposals were denied.

The Borough appeals from the arbitrator's denial of its longevity proposal, contending that his factual conclusions were



unsupported and that he did not give due weight to the statutory criteria. N.J.S.A. 34:13A-16g. It asks that we modify the award to eliminate longevity for new hires.<sup>1/</sup>

The PBA counters that the arbitrator fully considered the Borough's evidence and arguments and reached a reasonable determination of the issues after considering all of the relevant criteria. It also notes that the arbitrator's award was dated February 1, 2003 but was not appealed until February 20. It asks us to resolve whether the appeal was timely filed. See N.J.S.A. 34:13A-16f(5)(a) (appeal must be filed within 14 days after receipt of award).

We address this procedural point first. The arbitrator's award was received by the Commission on February 5, 2003, when it was sent to the parties via overnight mail. It was received by them on February 6. Therefore, the appeal deadline was February 20 and the Borough's appeal is timely. We turn to the substance of that appeal.

The standard for reviewing interest arbitration awards is now established, and was recently affirmed by the Appellate Division. We will vacate an award if the appellant demonstrates that: (1) the arbitrator failed to give "due weight" to the subsection 16g factors judged relevant to the resolution of the

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<sup>1/</sup> We deny the Borough's request for oral argument. The matter has been fully briefed.

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., P.E.R.C. No. 2000-33, 25 NJPER 450 (¶30199), aff'd in part, rev'd and remanded in part on other grounds, 353 N.J. Super. 289 (App. Div. 2002), certif. granted, 175 N.J. 76 (2002); City of Clifton, P.E.R.C. No. 2002-56, 28 NJPER 201 (¶33071 2002); 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 a salary award is not a precise mathematical process and, within the parameters of our review standard, we will defer to the arbitrator's judgment, discretion and labor relations expertise. City of Newark, P.E.R.C. No. 99-97, 25 NJPER 242 (¶30103 1999). However, an arbitrator must provide a reasoned explanation for an award and state what statutory factors he or she considered most important, explain why they were given significant weight, and explain how other evidence or factors were weighed and considered in arriving at the final award. N.J.S.A. 34:13A-16g; N.J.A.C. 19:16-5.9; Borough of Lodi, P.E.R.C. No. 99-28, 24 NJPER 466 (¶29214 1998).

The primary issues in the arbitration proceeding were across-the-board salary increases and the Borough's proposal to eliminate longevity for new hires. The parties waived the submission of evidence, testimony and argument with respect to the CAP law, N.J.S.A. 40A:4-45.1 et seq., and two statutory factors: N.J.S.A. 34:13A-16g(5), the lawful authority of the employer, and N.J.S.A. 34:13A-16g(6), the financial impact of the award. They stipulated that, while overall economic impact on a municipality is always a factor, neither proposal would have an adverse impact on the governing body, its residents or taxpayers.

The Borough argued that its wage proposal would maintain unit members' base salaries at the midrange of comparable municipalities and provide an increase of more than twice the increase in the cost of living. It argued that its proposal was closer than the PBA's to the 4% increases received by non-unionized employees and the 3.5% increase received by Department of Public Works (DPW) employees, the Borough's only other negotiations unit.

With respect to its longevity proposal, the Borough maintained that, by 1999, longevity for new hires had been eliminated for all other Borough positions, including the DPW unit, and that there was a growing trend among other Bergen County jurisdictions to modify or eliminate longevity for police officers. It argued that longevity is a vestige of a time when

public employees did not receive compensation commensurate with private sector employees, with the result that a "hidden" compensation system of allowances and stipends was instituted to reward long-term employees. The Borough maintained that longevity was both costly and outmoded, given the significant increases in public employee salaries over the past few decades.

The PBA countered that unit members' salaries were lower than those of police officers in the immediate geographic area, and below the average of the Bergen County municipalities the PBA had selected as comparables. The PBA noted that the 15% increase it proposed over the contract term would still not bring them up to this average, and it questioned why the Borough had proposed an increase lower than what it had granted the Borough's non-contractual employees.

The PBA also stressed that the department was an active one and that the size of the force had decreased (from 16 in 1988 to 11 in 2002) while the Borough's population had expanded. It noted that three officers had left the department in the six months preceding the hearing, seeking greater opportunities in larger departments. It maintained that the Borough's longevity proposal would only increase the department's retention problems and that the Borough had not met its burden of justifying the elimination of the benefit. It disputed that there was a trend to remove longevity. With respect to Borough employees, it

contended that the police chief's longevity was not eliminated but rather was rolled into his base salary.

Against this backdrop, the arbitrator applied the traditional arbitration principle that a party seeking a change in an existing term or condition of employment has the burden of showing a need for the change. With respect to salary, he found that the parties' respective comparables showed very similar average increases, and that his 4% award would maintain the department's midrange position. He found no basis to award the PBA's proposed 5% increases, so as to narrow the gap with the highest paid communities, and no grounds to award the Borough's 3.75% proposal, thereby widening it. He awarded the PBA's proposal to increase personal days to two, noting that the parties' agreement provided financial and operational limits on the use of such days and that DPW members already received three days. He also awarded the PBA's "term and renewal" clause, reasoning that it was a common one that codified what the parties are required to do under the Act.

Similarly, the arbitrator granted the Borough's proposal to increase the clothing allowance by \$50 over the term of the agreement, noting that data submitted showed that the pre-award allowance was \$126 below average. He denied the PBA's "preservation of rights" proposal, finding that the PBA had not offered examples of incidents or grievances that justified

inclusion of the suggested language. Similarly, he found that the PBA had not shown a need for its "body armor" proposal (Arbitrator's opinion, pp. 39; 44-45; 51). Finally, the arbitrator determined that the evidence did not support award of the Borough's longevity proposal.

In analyzing this issue, the arbitrator concluded that the proposal would reduce long-term compensation for new hires and contribute to the Borough's retention problems. He stated that the "record is clear" that the Borough continues to lose young officers to neighboring communities, adding that turnover is expensive; results in a less experienced officer; and thereby jeopardizes the Borough's ability to provide high quality services.

The arbitrator also found that the Borough had not shown that there was a trend among Bergen County municipalities to eliminate longevity for police officers and that "there was no such trend." The arbitrator added that the Borough had offered no quid pro quo for its longevity proposal, unlike one community where he had served as arbitrator, where longevity for current employees was dramatically increased in exchange for reducing it for new hires. He added that the record did not show whether other communities cited by the Borough had provided incentives to eliminate longevity or provide a two-tiered system. However, he later commented that such incentives were offered "in many of

these jurisdictions." As discussed in more detail later, the arbitrator gave more weight to longevity benefits received by police officers in other municipalities, than to the fact that other Borough employees no longer received longevity.

Finally, the arbitrator reasoned that, in a small department like Allendale, the savings to be realized by eliminating longevity for new hires was small and had to be weighed against the "adverse effects that a dual compensation system might yield between employees who must work together on behalf of the public's welfare and safety." In summarizing the rationale for the entire award, the arbitrator noted that the awarded increases, together with the retention of longevity, would allow the Borough to recruit and retain officers (Arbitrator's opinion, pp. 51-54).

The Borough argues that the arbitrator improperly speculated that award of its longevity proposal would increase turnover; disregarded internal and external comparability evidence; made inconsistent findings about whether other jurisdictions had offered financial incentives to modify longevity benefits; did not take into account the savings that would be realized from the proposal; and erred in suggesting that award of the proposal would create intra-departmental tensions.

The PBA counters that the arbitrator reasonably exercised his discretion and labor relations expertise in fashioning an

overall award that addressed the inter-related compensation issues of salary and longevity. It contends that the Borough's financial arguments are irrelevant given the parties' stipulations with respect to N.J.S.A. 34:13A-16g(5) and (6), and that the arbitrator fully evaluated evidence concerning internal and police comparability.

The arbitrator properly placed the burden on the Borough to justify its longevity proposal, see Teaneck, 25 NJPER at 455, and we find no basis to disturb his conclusion that the record did not support award of the proposal. In reviewing the arbitrator's award, we stress that the arbitrator's longevity ruling was one aspect of an overall award. Longevity and salary increases are interrelated elements of the department's compensation structure, as the Borough argued before the arbitrator (Arbitrator's opinion, P. 13). Thus, the issue is not whether an abstract case can be made for eliminating prospective longevity but whether the decision not to award the Borough's proposal is reasonable under all the circumstances here, including a salary award that is 0.75% more than the Borough's proposal for the contract term but 3% less than the PBA's offer.

A key element of the arbitrator's analysis was his undisputed finding that three officers had left the department in a six month period in order to pursue better career and promotional opportunities in larger departments. Also central to



his analysis was his conclusion that eliminating prospective longevity would diminish the unit's overall compensation, which in turn could exacerbate the Borough's retention problems. We decline to disturb that judgment: while the Borough argues that there is no evidence that the officers left because of inadequate salary or longevity, the arbitrator could reasonably infer that better opportunities could include greater compensation and, further, that a reduction in the unit's compensation package vis-a-vis that in comparable communities could prompt a new officer to seek out other opportunities.<sup>2/</sup> Stated another way, the arbitrator reasonably determined that the objective of the award as a whole should be to maintain unit members' current level of benefits so that the Borough could recruit and retain new officers. The arbitrator thoroughly analyzed the parties' evidence and arguments on the relevant criteria in explaining how he arrived at this objective and in determining whether the Borough had met its burden on its longevity proposal.

For example, the arbitrator reasonably exercised his discretion in concluding that the Borough's arguments concerning the cost, nature, and history of the longevity benefit did not warrant its elimination for new hires in this case. The Borough

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<sup>2/</sup> The Borough states that patrolman Michael Blondin testified that he left the Borough because of more opportunity for advancement; better pay; and tuition reimbursement and compensation for college credits.

stipulated that the PBA's proposal to retain longevity - and provide 5% salary increases - would not have an adverse financial impact. In this posture, the arbitrator reasonably decided to place more weight on maintaining benefit levels and preserving the Borough's ability to recruit and retain officers than on reducing future costs. We note that any cost savings would not occur until a new officer was hired and completed four years of service - the point when longevity benefits begin under the parties' agreement.<sup>3/</sup>

The arbitrator also fully considered the Borough's arguments concerning internal comparability. He reasoned as follows:

The Borough cites the elimination of longevity for prospective employees in the Blue Collar (DPW) bargaining unit. The statute requires that this internal comparability be given weight but it cannot be given as much weight as comparability with other police officers in Bergen County. Its value is also diminished by the apparent cost to the Borough to eliminate it for new hires. A review of the CBA with the Blue Collar/DPW bargaining unit shows that salaries increased by 14.9% in 2000 followed by 3.5% increases in 2001, 2002 and 2003. A significant part of the 14.9% increase can be attributed to the "rolling in" of the employees' longevity at that time but the increase is significant and may have included additional incentives for current employees to eliminate longevity for future employees. [Arbitrator's opinion at p. 51]

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<sup>3/</sup> The Borough notes that, under the award, the total annual costs for the three officers receiving the maximum longevity is \$23,481. However, an officer must have twenty years of service to achieve maximum longevity.

We would not endorse an analysis that found that internal comparability could never be given as much weight as police comparables. Compare Union Cty., P.E.R.C. No. 2003-33, 28 NJPER 459 (¶33169 2002). (Reform Act requires arbitrator to consider internal settlements and state reasons for adhering or not adhering to any proven settlement pattern). However, reading the award as a whole, it is evident the arbitrator decided in this particular case to give more weight to police as opposed to internal comparables to further his goals of maintaining benefit levels and preventing turnover.

In reaching this decision, he appropriately considered the total economic package received by the DPW unit at or around the time that longevity for prospective and current employees was eliminated. The Borough argues that DPW unit salaries were increased in 2000, not as a quid pro quo for eliminating longevity for prospective employees, as the arbitrator implied, but because the unit was underpaid. However, the salient point is that longevity and base salary are part of an overall compensation package and, therefore, the arbitrator appropriately analyzed the longevity and salary provisions of the DPW contract together.

Between 1999 and 2000, DPW unit salaries increased by 14.9%; individual employees received raises of between 3% and 23.7%, depending on job classification and salary guide step; and the

2000 salary guides for new hires reflected the increases received by current employees. Therefore, an incumbent employee at grade 1, step 1 in 1999 had his salary increased from \$22,590 to \$27,945 when he moved to step 2 in 2000; a new employee hired at grade 1, step 2 in 2000 would receive a salary of \$27,945; and an individual hired at grade 1, step 1 would receive \$27,000. Thus, although prospective longevity was eliminated in 1999, it was followed shortly afterwards by an upward adjustment of the salary guide for new hires, presumably to make DPW salaries more competitive with those in comparable jurisdictions. In this posture, the arbitrator reasonably concluded that elimination of prospective longevity for the DPW unit occurred in a different context than was proposed for this unit, with more costs to the Borough and more benefits to the employees.<sup>4/</sup>

Similarly, the arbitrator also analyzed the parties' evidence and arguments concerning the longevity benefits received by police officers in comparable communities. There is no

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<sup>4/</sup> The arbitrator stated that part of the 14.9% increase between 1999 and 2000 was attributable to rolling in existing employees' longevity into base salary. The Borough does not specifically dispute that statement but there is no stenographic transcript; the exhibits submitted do not address the point; and one Borough exhibit states that incumbent DPW employees "gave up" longevity in 2001. We can perform our review function without resolving this point, but we note that if longevity was rolled into base salary and the new hire salary guide adjusted to reflect those enhanced salaries, then longevity was not technically eliminated for either new or incumbent employees.

dispute that 5 of 36 departments in one comparability group, and 12 of the 71 departments in the County as a whole, have eliminated or modified longevity for prospective employees. The arbitrator acknowledged and considered this evidence and did not reject it, as the Borough asserts. However, these figures support his findings that "there is no trend" to eliminate longevity and that police comparability favored retaining the longevity benefit. While the Borough may be correct that its proposal was not "radical or groundbreaking", that in itself is not a basis to award it.

Further, we find no reversible error in the arbitrator's comments about the financial incentives that may have been offered in those jurisdictions where longevity benefits were reduced. The theme of these comments is the principle we have endorsed: that the significance of longevity changes should not be evaluated in the abstract, but must be viewed as part of the overall compensation package that is negotiated or awarded. Relying on his experience, the arbitrator appropriately cited the "trade-off" effected to achieve reduced longevity benefits in one jurisdiction. Moreover, because the burden was on the Borough to justify the proposal, it was also appropriate for the arbitrator to note that the record did not show whether or not longevity reductions in other jurisdictions had been accompanied by tradeoffs or union gains in other areas. The arbitrator's

observation reflects his judgment that one part of a compensation package should not be analyzed in isolation. His later comment that financial incentives were offered "in many of these jurisdictions" appears to refer to jurisdictions in general and to reflect this arbitrator's experience. In any case, however, the arbitrator could consider how award of the proposal would affect the unit's overall compensation and give weight to the fact that the Borough offered no trade-off for its proposal.

The Borough also questions the arbitrator's analysis to the effect that a two-tiered longevity system could adversely affect the morale of newly-hired employees, arguing that there is no factual basis to speculate that a police officer would not perform his job duties because of a compensation package of which he or she was aware when hired. The arbitrator did not suggest that police officers would not perform to expectations, but was concerned instead that a two-tiered system could affect morale, a factor included in the public interest, N.J.S.A. 34:13A-16g(1); Teaneck, 25 NJPER at 459. We find no fault with this analysis.

Finally, the Borough also maintains that the arbitrator's analysis put it in a "catch-22": if it offered incentives for current employees in exchange for the PBA agreeing to eliminate longevity for new hires, it would be criticized for creating a two-tiered system. If it did not, it would be criticized for not offering a trade-off. Therefore, it reasons, "[i]f PERC accepts

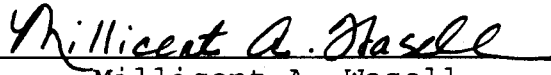
the Arbitrator's analysis, the Borough's proposal to eliminate longevity could never be accepted."

Preliminarily, we note that incentives or trade-offs need not create a two-tiered system but could enhance the compensation package for all prospective and incumbent employees. In any case, however, the arbitrator's award is not an abstract discussion of when proposals such as the Borough's may or may not be awarded; nor should it have been. The cited comments were in response to discrete Borough arguments - concerning savings and police comparability - about why the proposal should be awarded here. The arbitrator's rationale, however, never deviated: the proposal was not justified because it would diminish the unit's overall compensation in light of the salary increases awarded; that diminution was not required by the Borough's fiscal condition; and award of the proposal could exacerbate the Borough's retention problems. That judgment represents a reasonable determination of the issues and we will not disturb it. We also conclude that the arbitrator fully analyzed the statutory criteria and issued an award supported by substantial credible evidence. Therefore, we affirm the award.

ORDER

The award is affirmed.

BY ORDER OF THE COMMISSION

  
Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Buchanan, DiNardo, Katz, Ricci and Sandman voted in favor of this decision. None opposed. Commissioner Mastriani was not present.

DATED: April 24, 2003  
Trenton, New Jersey  
ISSUED: April 25, 2003



P.E.R.C. NO. 2003-39

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

FIREMEN'S MUTUAL BENEVOLENT  
ASSOCIATION LOCAL NO. 23,

Appellant,

-and-

Docket No. IA-2000-56

CITY OF EAST ORANGE,

Respondent.

SYNOPSIS

The Public Employment Relations Commission affirms in part and remands in part an interest arbitration award issued to resolve negotiations between the City of East Orange and Firemen's Mutual Benevolent Association Local No. 23. The FMBA appealed the award alleging that the awarded salary increases are too low and that the arbitrator did not give due weight to several of the statutory factors. The Commission remands the award to the arbitrator for the limited purpose of allowing the arbitrator to address the issue of whether the holiday pay included in base salary effective July 1, 2001 should reflect the increases awarded on July 1, 1999 and July 1, 2000. The Commission concludes that except for this limited issue, the arbitrator reached a reasonable determination of the issues and the award is supported by substantial credible evidence. While a full remand is unnecessary, the award is stayed pending issuance of a supplemental opinion and award within 30 days from the date of this 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.

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FIREMEN'S MUTUAL BENEVOLENT  
ASSOCIATION LOCAL NO. 23,

Appellant,

-and-

Docket No. IA-2000-56

CITY OF EAST ORANGE,

Respondent.

Appearances:

For the Appellant, Courter, Kobert, Laufer & Cohen,  
attorneys (Fredric M. Knapp, of counsel)

For the Respondent, DeCotiis, Fitzpatrick, Gluck & Cole,  
LLP, attorneys (J.S. Lee Cohen, of counsel; Avis  
Bishop-Thompson, on the brief)

DECISION

Firemen's Mutual Benevolent Association Local No. 23  
appeals from an interest arbitration award involving a  
negotiations unit of approximately 138 uniformed firefighters,  
linemen and dispatchers. N.J.S.A. 34:13A-16f(5) (a).

The arbitrator issued a conventional arbitration award,  
as she was required to do absent the parties' agreement to use  
another terminal procedure. N.J.S.A. 34:13A-16f(2).

The parties' final offers were as follows.

The City of East Orange proposed a five-year contract  
from July 1, 1999 through June 30, 2004, with a 0.5% increase  
effective July 1, 1999; a 1% increase effective July 1, 2000; a  
1.5% increase effective July 1, 2001, and 2% increases effective

on July 1 of 2002 and 2003. It also proposed that new hires be paid a \$25,000 probationary salary throughout their working test period, at the end of which they would be placed on a new seven-step salary guide. The City also sought to eliminate longevity payments for new hires, and to freeze current employees' longevity payments at their current dollar amounts. It sought to reduce temporary disability payments to the statutory minimum, or approximately 70% of the employee's wages. With respect to health benefits, it sought to increase HMO co-pays and institute premium co-payments for current employees and retirees with traditional coverage. Finally, it proposed, for employees who are promoted, that their "time on the books" be frozen at the dollar value immediately preceding the promotion.

The FMBA also proposed a five-year contract from July 1, 1999 through June 30, 2004, with 2% increases effective July 1, 1999, January 1, 2000, July 1, 2000, and January 1, 2001. It proposed a 3.75% increase effective July 1, 2001, a 4% increase effective July 1, 2002 and a 4.25% increase effective July 1, 2003. In addition, it proposed that, effective July 1, 2001, holiday pay be included in base salary from the date of hire. The FMBA also proposed to reduce the starting salary for a probationary firefighter to \$25,500 and to increase from five to six the number of salary guide steps required to achieve the Firefighter First Grade rank. It sought additional vacation days for firefighters with fifteen years of service; proposed an

increase in the clothing allowance from \$525 to \$600, and sought tuition reimbursement for courses taken to obtain an associate's or bachelor's degree. It also proposed increases in prescription co-pays and HMO doctor visit co-pays. Finally, it asked that the City be directed to negotiate over the impact of its alternate duty policy and sought a provision specifying that the City assign acting captains on a rotating basis by seniority.

The arbitrator awarded a five-year contract from July 1, 1999 through June 30, 2004 with 1% increases for fiscal years 2000 and 2001 and 3.5% increases for fiscal years 2003 and 2004. She awarded no across-the-board increase for fiscal year 2002 but, effective July 1, 2001, awarded the FMBA's proposal to include holiday pay in base salary from the date of hire. She also awarded the \$25,000 starting salary proposed by the City; directed that the salary guide have six steps after the probationary level; and awarded the FMBA's proposal for prescription and HMO doctor visit co-pays. She directed the City to negotiate with the FMBA over the impact of the alternate duty policy and, at the FMBA's request, the proposal to assign acting captains on a rotating basis in order of seniority. All other proposals were denied.

On June 17, 2002, three days after the arbitrator issued the award, she sent the parties new versions of two award pages. As we discuss later, the replacement pages corrected arithmetical and typographical errors.

On June 25, 2002, the FMBA's attorney wrote to the arbitrator and requested that she clarify the award with respect to the amount of holiday pay included in base salary. On June 28, the City's attorney responded that she could not consent to the request for clarification until she consulted with her client. The award was appealed on July 1, 2002 and the arbitrator has not ruled on the clarification request.

The FMBA appeals, alleging that the awarded salary increases are too low and that the arbitrator did not give due weight to several of the statutory factors, N.J.S.A. 34:13A-16g. It also maintains that the arbitrator abused her discretion in allowing the late submission of the City's final offer and lacked authority to change the award without mutual consent. It asserts that its clarification request, and the arbitrator's June 17, 2002 letter making changes to the award, demonstrate that the arbitrator did not issue a final and definite award, as required by N.J.S.A. 2A:24-8. It asks that we modify the award to provide for salary increases consistent with the evidence. In the alternative, it requests that we remand the case to a different arbitrator.

The City counters that the arbitrator awarded wage increases based on a reasonable determination of the issues. It also maintains that the arbitrator appropriately exercised her discretion and authority in allowing the City to submit its final offer when it did and in making the June 17, 2002 corrections.

However, it maintains that there is no ambiguity in how the arbitrator calculated the amount of holiday pay included in base salary and that this aspect of the award is not grounds for vacation or remand.

The standard for reviewing interest arbitration awards is now established, and was recently affirmed by the Appellate Division. We will vacate an award if 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., P.E.R.C. No. 2000-33, 25 NJPER 450 (¶30199), aff'd in part, rev'd and remanded in part on other grounds, 353 N.J. Super. 289 (App. Div. 2002), certif. granted, \_\_\_ N.J. \_\_\_ (2002); City of Clifton, P.E.R.C. No. 2002-56, 28 NJPER 201 (¶33071 2002), app. pending App. Div. Dkt. No. A-4573-01T2; 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. However, an arbitrator must provide a reasoned explanation for an award and state what statutory factors he or she considered most important, explain why they were given significant weight, and

explain how other evidence or factors were weighed and considered in arriving at the final award. N.J.S.A. 34:13A-16g; N.J.A.C. 19:16-5.9; Borough of Lodi, P.E.R.C. No. 99-28, 24 NJPER 466 (¶29214 1998).

We consider the FMBA's appeal within this framework. Preliminarily, we decline to disturb the arbitrator's discretionary decision to allow the late submission of the City's final offer. N.J.A.C. 19:16-5.7(f) states that the parties must submit their final offers to the arbitrator, and to each other, ten days prior to the hearing. The City submitted its offer on the third day of hearing, without objection by the FMBA, and the FMBA extensively cross-examined the City's witness. The award resolved the unsettled issues, and the FMBA has not shown that it was prejudiced by the arbitrator's decision. Compare Borough of Bogota, P.E.R.C. No. 98-104, 24 NJPER 130 (¶29066 1998) (employer not prejudiced by union's failure to submit written final offer). While we reiterate that compliance with N.J.A.C. 19:16-5.7(f) ensures that the proposals to be considered by the arbitrator are identified prior to the proceeding, Bogota, the arbitrator's decision to relax the rule's time requirement is not a basis to vacate this award.

We turn now to the FMBA's challenges to the across-the-board salary increases awarded.

This is the background.

The FMBA's salary proposal would have resulted in a non-compounded increase of 20% over the life of the contract,

resulting in a maximum salary of \$63,850, while the City's proposal would have resulted in a 7% non-compounded increase, or a maximum salary of \$56,209.<sup>1/</sup> In urging adoption of its proposal, the FMBA emphasized that the maximum salary for the unit ranked below that of most other firefighters in Essex County; stressed that award of the City's proposal would expand that gap; and noted the high level of firefighting activity in the City, including over eighty major fires in 2000 and five civilian fatalities. It asserted that the City's economic proposals would, if awarded, result in a package substantially lower than the cost of living.

The FMBA recognized that the City had experienced a series of cumulative deficits beginning in 1997. However, it stressed that the City had been able to generate budget surpluses in 2000 and 2001 and argued that the City's finances had improved to the extent that it could reasonably and equitably compensate its employees. It maintained that its salary offer would provide an incentive for unit members to remain with the City and that its proposal to include holiday pay in base salary was a relatively inexpensive way to increase firefighter base salaries.

The City argued that its "spartan" offer was the only offer that would not negatively affect City finances and the

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<sup>1/</sup> These figures do not reflect inclusion of holiday pay in base salary, which the FMBA proposed to take effect July 1, 2001.



public interest. It stressed that, in October 1999, it was placed under State supervision, after having accumulated deficits and deferred charges of close to \$26 million, or approximately 25% of its budget. While it acknowledged that "recent years have seen somewhat of a fiscal recovery," it maintained that its fiscal situation was still fragile and that the FMBA's financial analysis did not take into account that, at the close of the June 30, 2001 fiscal year, it still had an accumulated deficit of over \$8 million that had to be paid off in fiscal years 2002 through 2004. It asserted that it does not have a true operating surplus; has been required to issue tax anticipation notes to meet revenue needs; and has relied substantially on State aid. It also cited a decline in tax ratables and a recent increase in taxes and tax title liens.

In addition, the City asserted that the firefighters' compensation was adequate given the City's fiscal constraints and "was generally on par with state and local government employees and private sector employees." It also urged the arbitrator to consider that increases of the magnitude proposed by the FMBA would hamper its ability to comply with the CAP law, since retroactive salary increases for fiscal years 2000 and 2001 would have to be funded out of the budget for subsequent fiscal years,

along with any increase awarded for those years.<sup>2/</sup> Finally, it asserted that the FMBA's proposal to include holiday pay in base pay would increase the overtime rate and the City's pension contributions.

The arbitrator analyzed these arguments and evidence in the context of all of the statutory criteria and stated the relative weight she gave to each factor. For example, she noted that the public interest was of prime importance and that it supported a compromise between the two offers. She reasoned that the evidence on this factor was in equipoise with respect to the competing interests it encompassed -- the need for fiscal constraint versus the need for an adequately compensated work force. She accorded "considerable weight" to the overall compensation criterion and found that unit members' total compensation was lower than it should be considering such factors as workload, population, number of calls per year, number of vacant buildings, level of crime, relative poverty of citizens and the relative wealth of the community (Arbitrator's opinion, pp. 9, 14).

Similarly, she found that comparisons with the salaries of firefighters in adjacent locales, including similarly situated cities, "pointed in the direction of the FMBA's somewhat too

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<sup>2/</sup> The City's financial expert testified that no money was set aside in the fiscal year 2000 budget for a salary increase, and that "very limited" funds were set aside in the fiscal year 2001 budget (T403-T404).

expensive offer." She gave "little weight" to the evidence concerning private sector wage increases and the average percentage increases included in recent interest arbitration awards, commenting that, in her view, raw percentages are not reliable for setting increases in a particular municipality. She found that the continuity and stability of employment criterion was of minimal assistance in resolving the impasse and, as we discuss later, she gave little weight to the cost of living. (Arbitrator's opinion, pp. 12-13, 19).

Finally, the arbitrator determined that the financial impact and lawful authority criteria were entitled to significant weight. (Arbitrator's opinion, p. 18). She concluded that the City's estimate of the financial impact of an award above its offer was overstated, reasoning:

The City has amply demonstrated that it has suffered through devastating economic reverses over the past several years. The record also establishes that the City's aggressive efforts over the past few years have succeeded in reversing the City's economic downslide. The evidence supports the proposition that the City can afford an increase in firefighter salaries that are in line with similar Essex County municipalities. [Arbitrator's opinion, p. 18]

In setting the terms of the award, she concluded that:

[S]alaries should be increased to a level that brings the top salary above \$61,500, which is the County average for 2002 and the anticipated top rate in Irvington in 2003, by the time the agreement expires. This would be accomplished by awarding the FMBA's holiday fold-in proposal. In consideration of the fact that several budget years have already passed, I have awarded only 2% for the first two years,

1999 and 2000, with larger increases towards the end of the contract. [Arbitrator's opinion, pp. 19-20]

The arbitrator commented that the award would increase base salary by 17% -- counting the holiday fold-in as an 8% increase -- without making an untenable dent in the City's budget. She noted that the award was considerably less costly than the FMBA's last offer but found it was high enough to begin to bring East Orange firefighter salaries in line with wage levels in similarly situated municipalities. The arbitrator recognized that the fold-in was not new money in 2001, since it otherwise would have been paid as a lump sum (Arbitrator's opinion, p. 20).

The FMBA maintains that there is no reasoned explanation for the award and that it is inconsistent with her analysis of comparability, financial impact, and the public interest, as well as her stated intention to provide for increases comparable to those received by similarly situated firefighters. It also argues that she did not give due weight to the prior interest arbitration award for this unit or to evidence concerning internal settlements, the cost of living, and private sector employment. It asserts that she exceeded her authority by not awarding an across-the-board salary increase for fiscal year 2002, even though each party had proposed one.

We have often stressed that fashioning a conventional arbitration award is not a precise mathematical process. Given that the statute sets forth general criteria rather than a

formula, the setting of wage figures necessarily involves judgment and discretion and an arbitrator will rarely be able to conclusively demonstrate that an award is the only "correct" one. Lodi; see also City of Newark, P.E.R.C. No. 99-97, 25 NJPER 242 (¶30103 1999); Borough of Allendale, P.E.R.C. No. 98-123, 24 NJPER 216 (¶29103 1998). Further, some of the evidence may be conflicting and an award is not necessarily flawed because some pieces of evidence, standing alone, might point to a different result. Lodi.

Within this framework, we find that the arbitrator provided a reasoned explanation for the award and gave due weight to the statutory factors, reached a reasonable determination of the issues, and issued an award supported by substantial credible evidence.

Considered in isolation, certain of the arbitrator's comments could be read as pointing to increases higher than those she awarded. For example, she stated that comparability weighed in favor the of the FMBA's "somewhat too expensive" offer and commented that the City could afford an increase -- which could suggest a percentage increase -- in line with those granted in similar Essex County municipalities. However, read as a whole, there is no inconsistency between the awarded increases and the arbitrator's findings and discussions concerning comparability, financial impact, lawful authority, and the public interest.

The linchpin of the award is the arbitrator's conclusion that, by the end of the contract, the base salaries of unit members should be above the average 2002 salary for Essex County firefighters and at the level of the anticipated 2003 salary for firefighters in Irvington -- a community both parties found to be comparable to East Orange. The FMBA does not question this objective or challenge the accuracy of the salary figures the arbitrator cites. Instead, it argues that the arbitrator should have placed greater weight on the percentage increases received by public safety employees in other jurisdictions. However, it does not raise any particularized challenge to the arbitrator's decision to focus on actual dollar figures, rather than raw percentages, in setting her award. That decision was an appropriate exercise of her discretion and we will not disturb it. Compare Fox v. Morris Cty., 266 N.J. Super. 501, 518 (App. Div. 1993), certif. denied, 137 N.J. 311 (1994) (disapproving arbitrator's focus on percentage increases in making comparisons between groups of law enforcement employees, and stressing that the statute requires a discussion of actual dollar figures).

Similarly, we find that the increases awarded are consistent both with the arbitrator's finding that the public interest evidence was in equipoise and her characterization of the financial impact evidence. The thrust of her discussion on these factors -- with which the FMBA appears to agree -- was that the City had suffered devastating economic reversals; was emerging

from that crisis; and could afford an award above its offer so that firefighter salaries could begin to be brought in line with those of comparable communities. The salaries that will result from this award accord with this discussion: the maximum salary at the end of the contract term is \$61,623 -- slightly above the anticipated 2003 salary for Irvington. Moreover, the arbitrator declined to award City proposals -- the freeze on longevity, reduction of temporary disability payments, and health insurance premium co-payments -- which would have negatively affected the unit's overall compensation but which the City had argued were necessary given its financial condition.

The FMBA focuses on the increases in the first years of the contract and argues that they are inconsistent with the evidence and the arbitrator's own discussion. However, we review an award as a whole to determine whether it represents a reasonable determination of the issues and is supported by substantial credible evidence. Allendale. In any case, the arbitrator stated that she structured the award in the manner she did because several budget years had already passed when the award issued in July 2002. She thus implicitly accepted, and gave weight to, the City's argument that there were limited funds available for retroactive increases and that increases for the entire contract term would have to be funded from the 2002-2004 fiscal year budgets. In this posture, we decline to disturb the arbitrator's judgment concerning the increases awarded for July 1999 through June 2001.

In that vein, the award is not per se invalid because the arbitrator did not direct an across-the-board increase for July 2001 through July 2002, even though both parties had proposed such an increase. See Hudson Cty. Prosecutor, P.E.R.C. No. 98-88, 24 NJPER 78 (129043 1997) (conventional award is not necessarily flawed because, in evaluating the relationship among, or combined effect of, different proposals, the arbitrator goes outside the parties' positions on one of the issues in dispute).

Instead of an across-the-board increase, the arbitrator awarded the FMBA's proposal to include holiday pay in base salary, a proposal that the FMBA had argued was an important part of its total economic package and one that would help further its goal of raising unit members' base salaries to the level of firefighters in other jurisdictions. The arbitrator accepted the FMBA's position that the proposal was a relatively inexpensive way to improve firefighter compensation while at the same time recognizing that it entailed additional costs to the City -- in the form of higher overtime payments and pension contributions -- that would not be triggered if holiday pay continued to be paid as a lump sum. The arbitrator explained that those additional costs were offset by other elements of the award including, presumably, the lack of an across-the-board increase for fiscal year 2002 (Arbitrator's opinion, p. 22). We note that the fold-in enhanced the effect of the across-the-board increases awarded for the final two years of the contract and will increase overtime payments.



In this posture, we find no basis to disturb the arbitrator's exercise of discretion in awarding only the fold-in for one year of the five-year contract, where it was linked to her objective of raising maximum base salaries, by the end of the contract term, to the level of Irvington firefighters. Compare Hudson Cty. Prosecutor (arbitrator appropriately exercised discretion in awarding, for one year only, step advancement proposed by union, even though both parties had proposed across-the-board increases for each year of the contract).

Nor are we persuaded that, in assessing the financial impact of the award, the arbitrator should have given more weight to the predecessor award for this unit or viewed it as a model for the percentage increases that should be granted given the City's fiscal condition. The arbitrator noted that the award had granted 12.25% in increases over a three and one-half year term. The award included a 3.25% increase in January 1999, when the City was experiencing serious financial problems. However, the City had offered 2.5% to 3.5% in that proceeding; the prior arbitrator found that the City had made a compelling case that its financial condition was tenuous; and he awarded increases much closer to the City's offer than to the FMBA's (Aa, Exhibit 3, pp. 28-29, 33). The award was issued in December 1998, prior to the State supervision plan going into effect in October 1999. In these circumstances, the FMBA has not explained why the award is probative of the increases that should have been awarded for the July 1, 1999 through June 30, 2004 contract term.

We next discuss the FMBA's objections to the arbitrator's analysis of internal comparability evidence, the cost of living, and private sector wage increases.

The FMBA contends that the award is inconsistent with the arbitrator's acknowledgement that two non-public safety units received increases of 2.5%, 3%, and 3.5% in 1997 through 1999, as well as with her statement that, during 1992-1999, the salary ranges of certain City employees and officials increased by 31%. While the arbitrator noted this information, it did not appear to weigh significantly in her analysis of the increases that should be awarded for this unit (Arbitrator's opinion, p. 20). That exercise of judgment is not a basis to disturb the award.

Preliminarily, as we have noted, the arbitrator reasonably exercised her discretion in fashioning an award that focused on the actual salary to be achieved by the end of the contract, rather than on the percentage increases received by other groups. That analysis is also pertinent here. Further, because the noted evidence for the most part covers periods prior to the term of this contract, it is less probative of what should be awarded for July 1, 1999 through June 30, 2004 than more current percentage figures. In any case, under the prior award, this unit received 3% increases for 1997 and 1998 and a 3.25% increase for January 1, 1999 through June 30, 1999. This arbitrator awarded a 1% increase for July 1, 1999 through June 30, 2000. Therefore, this unit received greater increases for calendar years 1997, 1998, and 1999 than the units the FMBA cites.

With respect to the salaries of non-unionized City employees, the City maintains that their salaries were frozen between 1992 and 1999 and that, in asserting that their salaries increased by 31% during that period, the FMBA relies on a proposed salary ordinance (Aa, Exhibit 28) that was never adopted. The FMBA did not seek to rebut that assertion. In any case, it appears that this unit received non-compounded salary increases of 27.25% between 1993 and 1999 (Aa, Exhibits 2 & 3).

Finally, we turn to the arbitrator's discussion of the cost of living and private sector wage increases.

The arbitrator noted the FMBA's position that the City's offer would result in wage increases substantially lower than the cost of living, as reflected in the Consumer Price Index (CPI), as well as the City's contention that the FMBA had proposed increases far in excess of that figure. After noting that the FMBA had submitted recent CPI figures, she stated:

This criterion is entitled to little weight in this decision. Bargaining gains over the past decade have raised public sector wages to respectable levels compared with increases in the cost of living. [Arbitrator's opinion, p. 18]

N.J.S.A. 34:13A-16g(7) requires an arbitrator to consider cost of living evidence unless he or she explains why the factor is not relevant to a particular proceeding, and we would not endorse an analysis that found the criterion irrelevant given general wage trends. However, reading the award as a whole, it appears that the arbitrator placed the greatest weight on the comparability,

financial impact, overall compensation and public interest criteria, and found that the cost of living evidence did not warrant an award higher or lower than was indicated by those criteria. In this posture, we find no basis to remand the award for the arbitrator to reconsider whether the cost of living evidence would support a different award.<sup>3/</sup>

With respect to private sector employment evidence, the arbitrator cited New Jersey Department of Labor statistics showing that average private sector wages increased 3.9% in 1999 and that, for the first nine months of 2000, the Newark labor area showed greater employment growth than the State as a whole. The arbitrator then stated:

This factor is more important in terms of East Orange citizens than it is for determining what a reasonable wage increase would be. Notwithstanding that the City appears high on overall poverty indexes, the data include favorable economic indicators for those individuals employed in the private sector. The FMBA's offer is slightly higher than average private sector settlements in 1999. The City's offer is well below that figure. This criterion is given little weight in setting the economic package. [Arbitrator's award, p. 13]

The thrust of this analysis is that there is a tension between the City's own financial condition and the 1999 private sector wage

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<sup>3/</sup> The CPI for all urban consumers -- the evidence submitted by the FMBA -- increased 10.4% between 1999 and the first half of 2002, U.S. Bureau of Labor Statistics, [www.bls.gov](http://www.bls.gov), and the arbitrator awarded 9% in new money, plus the holiday fold-in.

increases, such that the arbitrator found the latter should not be a significant factor in determining wage increases. That conclusion is supported by substantial evidence.

Finally, we turn to the FMBA's contention that the award should be vacated and remanded because, given its clarification request and the arbitrator's own decision to change the award, the award is not final and definite, as required by N.J.S.A. 2A:24-8.

The FMBA argues that an arbitrator may not clarify or interpret an award without both parties' consent. This principle is codified in the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes (Code), which is in turn incorporated in N.J.A.C. 19:16-5.10. However, a correction is distinct from an interpretation or clarification and we conclude that the arbitrator's corrections do not affect the validity of the award.

In the non-interest arbitration context, N.J.S.A. 2A:24-9a provides that a court shall modify or correct an award where "there was an evident miscalculation of figures or an evident mistake in the description of a person, thing or property referred to therein." This section enables a court to correct simple arithmetical errors or obvious mistakes in identification. Tretina Printing, Inc. v. Fitzpatrick & Assocs., Inc., 135 N.J. 349, 359 (1993); see also Creter v. Davis, 30 N.J. Super. 60 (Ch. Div.), aff'd 31 N.J. Super. 402 (App. Div. 1954). The Reform Act

gives us authority to modify awards and states that an award may be appealed on the grounds that it did not comply with N.J.S.A. 2A:24-9. See N.J.S.A. 34:13A-16f(5)(a). Thus, we have authority to make the types of corrections or modifications referred to in N.J.S.A. 2A:24-9.

The changes the arbitrator made here were of the type referred to in N.J.S.A. 2A:24-9a. The award as initially issued, like the corrected award, set out the maximum salary that would result from the award and directed that holiday pay be included in base salary effective July 1, 2001. The arbitrator stated that this fold-in represented 8% of base salary and, in adding that figure to the across-the-board increases awarded, she calculated that the award increased base salary 16%, with a "new money payout" of 8%. The latter two figures were simple arithmetical errors that were apparent on the award's face: the increases of 1%, 1%, 3.5%, 3.5%, plus the 8% fold-in, add up to 17%, while the two 1% and two 3.5% increases add up to 9%.

The second error was an evident mistake in description that was also apparent on the award's face. In summarizing the proposals she had granted and the increases she had directed, the arbitrator stated that the term of the award was from July 1, 1999 through June 30, 2003, even though both parties had proposed a contract extending through June 30, 2004 and the arbitrator had earlier stated that the contract term was July 1, 1999 through June 30, 2004 (Arbitrator's opinion, p. 19).

These minor typographical and arithmetical errors did not affect the finality and definiteness of the award and, while there is no express statutory or Code authority for an arbitrator to correct an award, no interest would be served by vacating and remanding the award on this ground. This is particularly so because, if the arbitrator had not made the corrections, we would have had the authority to do so on appeal.

On the other hand, we conclude that a limited remand is necessary for the arbitrator to explain one aspect of the holiday pay portion of the award.

The FMBA maintains that the lump sum holiday payments received by unit members prior to July 1, 2001 should have been enhanced by the percentage increases the arbitrator granted on July 1, 1999 and July 1, 2000 before being included in base salary.<sup>4/</sup> The City counters that there is no ambiguity concerning how the arbitrator included holiday pay in base salary and no basis for a remand or clarification.

Because the arbitrator did not discuss whether the holiday pay included in base salary effective July 1, 2001 should reflect the increases awarded on July 1, 1999 and July 1, 2000, we cannot assess the FMBA's arguments. Accordingly, we are remanding this matter for the limited purpose of allowing the arbitrator to address that point. The arbitrator shall issue a supplemental

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<sup>4/</sup> Under the FMBA's calculations, the maximum base salary at the end of the contract would be \$61,710 instead of \$61,623.

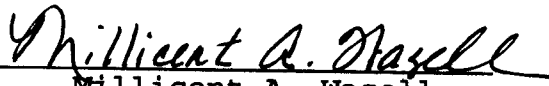
opinion and award that reflects her consideration of the issue, and shall do so within 30 days from the date of this decision, absent an extension of time for good cause shown.

Except for this limited issue, the arbitrator reached a reasonable determination of the issues and her award is supported by substantial credible evidence. While a full remand for reconsideration of the entire award is unnecessary, the award is stayed pending issuance of the arbitrator's supplemental opinion and award.

ORDER

The award is affirmed in part and remanded in part for the limited purpose of allowing the arbitrator to address whether the holiday pay included in base salary effective July 1, 2001 should reflect the increases awarded on July 1, 1999 and July 1, 2000. The arbitrator shall issue a supplemental opinion and award that reflects her consideration of that point, and shall do so within 30 days from the date of this decision, absent an extension of time for good cause shown. The award is stayed pending issuance of the arbitrator's supplemental opinion and award.

BY ORDER OF THE COMMISSION

  
Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Buchanan, DiNardo, Ricci and Sandman voted in favor of this decision. Commissioner Mastriani abstained from consideration. None opposed. Commissioner Katz was not present.

DATED: December 19, 2002  
Trenton, New Jersey  
ISSUED: December 20, 2002



STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF UNION,

Appellant,

-and-

Docket No. IA-2001-46

UNION COUNTY CORRECTIONS OFFICERS,  
PBA LOCAL NO. 199,

Respondent.

SYNOPSIS

The Public Employment Relations Commission vacates and remands an interest arbitration award issued to resolve negotiations between the County of Union and Union County Corrections Officers PBA Local No. 199. The Commission remands the award to the arbitrator for reconsideration and issuance of a new opinion and award no later than 60 days from this decision, absent an extension for good cause shown. The County appealed the award, contending that the arbitrator violated N.J.S.A. 34:13A-16d(2), N.J.S.A. 34:13A-16g and N.J.S.A. 2A:24-8 because he did not provide a reasoned analysis; consider the pattern of settlement in the County; individually analyze the County's operational proposals; or calculate the net annual economic changes for each year of the agreement. It also argued that the arbitrator made a mistake of fact in awarding the contract term and that, contrary to Commission case law, he presumed that interest arbitration was an inappropriate forum for considering the County's health benefits and operational proposals. The Commission concludes that the award must be vacated and remanded for reconsideration because, first, by emphasizing that the health benefits changes sought were best achieved in negotiations, the arbitrator appears to have applied an improper presumption that the proposals should not be awarded in interest arbitration. Second, the arbitrator did not fully discuss, or explain how he analyzed and weighed, the parties' arguments and evidence concerning internal settlements. A remand is also required because the arbitrator did not analyze the County's operational proposals and did not explain his salary award.

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

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF UNION,

Appellant,

-and-

Docket No. IA-2001-46

UNION COUNTY CORRECTIONS  
OFFICERS, PBA LOCAL NO. 199,

Respondent.

Appearances:

For the Appellant, Schenck, Price, Smith & King, attorneys  
(Kathryn V. Hatfield, of counsel)

For the Respondent, Loccke & Correia, attorneys  
(Leon B. Savetsky, of counsel)

DECISION

Union County appeals from an interest arbitration award involving a negotiations unit of approximately 200 corrections officers. See N.J.S.A. 34:13A-16f(5)(a).

The arbitrator issued a conventional arbitration award, as he was required to do absent the parties' agreement to use another terminal procedure. N.J.S.A. 34:13A-16d(2). The parties' final offers were as follows.

The County proposed a four-year contract from 2001 through 2004, with a 1.5% across-the-board salary increase effective January 1, 2001 and a 1.5% increase effective June 23, 2001. For 2002 through 2004, it proposed increases of 4% for officers at the maximum guide step and 3.5% increases for officers "in guide." Almost all officers are at the maximum step. The

County also proposed to increase the clothing allowance by \$25 in each of the first three years of the agreement.

The County proposed health benefits changes for both new and current employees. For current employees, it proposed, effective January 1, 2002, to increase prescription co-payments and institute an employee contribution towards health benefit premiums. Employees earning under \$65,000 would pay a \$10 per month premium contribution; those earning between \$65,000 and \$75,000 would pay \$25; and those earning over \$75,000 would pay \$35. In 2003 and 2004, employees earning over \$75,000 would pay \$40 per month. For members of Horizon PPO (Blue Select), the County proposed a \$5 doctor visit co-pay for 2002; a \$10 co-pay for 2003 and 2004; and, for all unit members, an increase in the out-of-network cost share from 80/20 to 70/30. The County also proposed a health benefit buyout option where an officer covered under his or her spouse's plan could decline additional health coverage and receive \$2,500 annually. Effective January 1, 2003, the County proposed to reduce the deductible for any single benefit period.

The County also proposed that, effective January 1, 2002, new employees would be limited to a choice of Physician's Health Service (PHS) or Blue Choice coverage, unless they opted to pay the difference between these plans and their chosen plan. Those choosing PHS or Blue Choice would pay \$15 per month for single coverage and \$25 per month for family coverage. Those

contributions would be increased by the proportionate annual increase in the plan cost.

The County also proposed enhancements to sick leave, retiree and vacation benefits, but linked these enhancements to the award of the noted health benefits proposals. Thus, it proposed to increase its subsidy of retiree health benefits from approximately 25% to approximately 75%; raise the maximum reimbursement for unused sick leave, on a graduated basis, for those with more than 200 accumulated sick days; and grant additional vacation days for each year of service from 25 through 30.

The County also sought the award of several proposals that it describes as "operational." It proposed to delete the requirement that it provide personal liability insurance for officers; eliminate certain positions from the seniority and shift bidding procedures; and delete a clause allowing officers on overtime at specific posts to switch posts. It also sought contract clauses that would provide that an officer who refuses overtime three times in a three-month period is ineligible for voluntary overtime for the following three months; require that personal and religious leave be taken in no less than one-half day increments; mandate that an officer who is unable to work a holiday due to illness submit a doctor's note and be charged a sick day; and specify that progressive discipline may begin if an officer is late for a regularly scheduled shift three times during a calendar year. In addition, the County sought to eliminate

officers' entitlement to an additional holiday when non-essential County employees receive an extra day off; reduce the number of required labor-management committee meetings; eliminate full release time for the PBA president and delegate; and delete a clause giving officers the right to interchange scheduled days off. Finally, it sought to require that an officer work four hours overtime before receiving an overtime meal allowance.

The PBA proposed a three year contract from 2001 through 2003 with 5% increases in each year. It also sought to increase the 10-year senior officer differential from \$1365 to \$1520 and the 15-year differential from \$2365 to \$2500. It proposed that the 20-year differential be increased by the same percentage as base salaries were increased, as provided in the expired contract. In addition, the PBA sought a \$1500 stipend for employees in the Special Operations Unit (SOU) and an increase in the County contribution to the PBA Insurance Development fund from \$135 to \$158 per employee. It proposed that any overtime worked could, at the employee's option, be paid either at time and one-half or placed in a compensatory time off bank of up to 100 hours, with time off subject to the employer's approval. It also sought orthodontic coverage funded by employees through payroll deductions -- an arrangement it maintained was in effect for some other County employees. It proposed that grievances pursued to arbitration be heard by a member of the Commission's arbitration panel, instead of by one of the five arbitrators designated in the

agreement. Finally, it sought time off for one employee per shift to pick up food for other officers.

The arbitrator awarded a three-year contract from 2001 through 2003 with 4% across-the-board increases for all unit members for each year of the agreement. He also awarded the County's clothing allowance proposal. All other proposals were denied.

The County appeals, contending that the arbitrator violated N.J.S.A. 34:13A-16d(2), N.J.S.A. 34:13A-16g and N.J.S.A. 2A:24-8 because he did not provide a reasoned analysis; consider the pattern of settlement in the County; individually analyze the County's operational proposals; or calculate the net annual economic changes for each year of the agreement. It also argues that he made a mistake of fact in awarding the contract term and that, contrary to Commission case law, he presumed that interest arbitration was an inappropriate forum for considering the County's health benefits and operational proposals. It asks that we vacate the award and remand the case to a different arbitrator.<sup>1/</sup>

The PBA counters that the arbitrator carefully analyzed the County's wage and health benefits proposals in accordance with the statutory criteria; explained his rationale for awarding a three-year contract; and effectively found that the net annual economic changes for each year of the agreement were reasonable.

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<sup>1/</sup> We deny the County's request for oral argument. The case has been thoroughly briefed.

It maintains that the arbitrator never stated that any County proposals were improper subjects for interest arbitration, but simply found that there was insufficient evidence to support the County's operational and health benefits proposals, as well as its own economic and non-economic proposals. It argues that, if a remand is directed, it should be to the same arbitrator.

The standard for reviewing interest arbitration awards is now established, and was recently affirmed by the Appellate Division. We will vacate an award if 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., P.E.R.C. No. 2000-33, 25 NJPER 450 (¶30199), aff'd in part, rev'd and remanded in part on other grounds, 353 N.J. Super. 289 (App. Div. 2002), certif. pending, S.Ct. Dkt. No. 53,497; City of Clifton, P.E.R.C. No. 2002-56, 28 NJPER 201 (¶33071 2002), app. pending App. Div. Dkt. No. A-4573-01T2; 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.

Within this framework, we have interpreted Reform Act provisions and provided direction concerning the analysis required of arbitrators. An arbitrator must provide a reasoned explanation for an award and state what statutory factors he or she considered most important in arriving at the award, 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 (129214 1998).

We have also required arbitrators to apply the traditional arbitration principle that a party proposing a change must justify it. Teaneck; Cherry Hill. However, when an unsettled issue is submitted to interest arbitration, an arbitrator may not presume that interest arbitration is an inappropriate forum for granting or denying particular proposals. Cherry Hill. We have vacated and remanded for reconsideration awards that did not conform to these principles which shape, in part, our approach to this appeal.

Within this framework, we conclude that the award must be vacated and remanded for reconsideration because, first, by emphasizing that the health benefits changes sought were best achieved in negotiations, the arbitrator appears to have applied an improper presumption that the proposals should not be awarded in interest arbitration. Second, he did not fully discuss, or explain how he analyzed and weighed, the parties'



arguments and evidence concerning internal settlements. A remand is also required because the arbitrator did not analyze the County's operational proposals and did not explain his salary award. Given this remand, and the fact that arbitrators often arrive at a conventional award by awarding some of each party's proposals, the arbitrator may also reconsider the PBA's economic and non-economic proposals. We detail the considerations that lead us to this conclusion.

#### Health Benefits Proposals

Before the arbitrator, the County asserted that its health benefits proposals had been accepted by six other negotiations units, including three law enforcement units. The County maintained that these units had also accepted the salary, sick leave, retiree health benefit and vacation proposals that it was offering this unit. It urged the arbitrator to maintain this alleged pattern and argued that to do otherwise would disrupt labor relations stability because it would discourage future settlements and undermine the morale of employees in other units.

With respect to health benefits, the County maintained that the award of its proposals would help offset its escalating health care costs. It maintained that its premium costs had increased 10.5% overall during 2001 and that, by 2003, its proposals would require an annual \$300 contribution toward health care premiums for those current unit members making over \$65,000 per year.

The PBA countered that the settlements the County reached with other law enforcement units in fact supported the award of its offer, because the County had agreed to substantial economic benefits in addition to the package offered to this unit. Further, during cross-examination, the PBA asked what savings the County would realize if the arbitrator awarded the County's health care proposals to this unit. The County responded that it could not provide that estimate, but that it would save 6% of its prescription plan costs and 2% of its other health care costs if all units were covered by the proposals. County witnesses agreed that the impact of the prescription drug changes would vary according to the age and health of an employee and his or her dependents. A County witness acknowledged that the maximum enhanced sick leave buyout would be available only if an employee had accrued all sick days for 26.7 years.

Against this backdrop, the arbitrator reasoned as follows in denying the County's health benefits proposals:

The County's health care proposal seeks significant changes in the provision of employee health insurance. It would for the first time require employee contributions to health insurance, along with a variety of other changes. Although it is claimed that the costs would be minimal to employees, the County seeks these changes because it complains of major increases in the cost of providing health insurance. Given the significance of these changes and the fact that the current health benefits enjoyed by employees are the result of past collective bargaining between the parties, any effort to accomplish this through interest arbitration carries a substantial burden of showing that the proposal is the more

reasonable offer -- by a significant margin. See generally Township of Randolph and Randolph FOP Lodge 25, PERC Docket Nos. IA-95-73, IA-95-79 (Light 1996).

A careful review of the evidence presented does not persuade me that the County has met its burden of establishing the necessity for its health care proposal. The County has demonstrated that the cost of health insurance is rising at a rate higher than the cost of living and that this results in steadily increasing costs to the County. It has also shown that a majority of the County's employees have accepted its proposed changes in health insurance. These facts are obviously significant and make the matter one appropriate for collective bargaining. The PBA, of course, has not accepted these proposals. It was not shown that corrections officers in other jurisdictions have accepted such changes to their health insurance coverage. [Arbitrator's opinion, pp. 50-51]

The arbitrator then found that there was no CAP issue regarding the health care proposals but that the financial impact criterion weighed in favor of them because they would reduce costs. He concluded that the cost of living was not "directly relevant" because it did not pertain to future savings and that the County had not shown that failure to award the changes would affect the continuity and stability of employment. He then stated:

I consider most important the interest and welfare of the public criterion. An award in favor of the County would cause a major change in an important employee benefit through arbitration, rather than negotiation. This would be a detriment to the public given its likely effect on the bargaining unit and the morale of its employees. The County's proposal is far reaching and, as such, is most appropriately dealt with by the parties through the process of collective bargaining. It would not be appropriate to direct such changes

through the issuance of an interest arbitration award, absent more of a showing for their necessity than was made in this case.  
[Arbitrator's opinion, pp. 51-52]

At the conclusion of the award, he added that other units' acceptance of the County's health care proposals was supportive but not persuasive and stated that the County had not proved the necessity and reasonableness of the significant givebacks it sought.<sup>2/</sup>

Although we express no view on the merits of the County's health benefits proposals, a remand is necessary because, first, the arbitrator appears to have applied an improper presumption in considering them. Second, a remand is required so that the arbitrator can more fully discuss, and explain how he analyzed and weighed, the parties' evidence and arguments concerning the internal settlements.

With respect to the first point, the arbitrator appropriately placed the burden on the County to justify its proposals. Cherry Hill; see also Teaneck; Clifton. That burden reflects a traditional arbitration principle and is consistent with the fact that interest arbitration is an extension of the negotiations process and that, within the context of the statutory criteria, an interest arbitrator should fashion an award that the

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<sup>2/</sup> The arbitrator noted that the County had tied its offer of enhanced sick leave, retirement, and vacation benefits to the award of its health proposals (Arbitrator's opinion, pp. 56-57).

parties, as reasonable negotiators, might have agreed to.

Clifton.

Our concern with the arbitrator's analysis is that he did more than state that the County had the burden of justifying the proposals in the context of the statutory criteria. In emphasizing that the proposals were best achieved in negotiations, he appears to have required the County to surmount an additional hurdle of showing why the proposals should be granted in interest arbitration rather than obtained through negotiations. Further, after noting that the County had proffered "significant" evidence concerning its rising health costs and the acceptance of the proposal by other units, the arbitrator found that this evidence made the proposals appropriate for negotiations.<sup>3/</sup> Reading the above-quoted discussion as a whole, we are not satisfied that the arbitrator fully considered the proposals and weighed the evidence offered by the County against that presented by the PBA, free of any presumption that the proposals should not be awarded in interest arbitration. Stated another way, the arbitrator's discussion is reminiscent of the analysis we disapproved in Cherry Hill. In that case, we vacated and remanded the award because we were not

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<sup>3/</sup> He also noted that "it was not shown" that corrections officers in other jurisdictions had accepted similar changes. The appellate record does not include any indication whether such officers have or have not agreed to premium co-payments or the other changes sought by the County.

satisfied that the arbitrator had fully considered the employer's health benefits proposals in light of his comments that such changes should not be awarded by an arbitrator. The same result is required here.

A remand is also required for a fuller discussion of the internal settlements. The following principles underpin this conclusion.

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. Compare 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).

The Reform Act does not specify the weight that must be given to internal settlements. But it does require that an arbitrator carefully consider evidence of internal settlements and settlement patterns, together with the evidence on all of the other statutory factors, and articulate the reasons for adhering or not adhering to any proven settlement pattern.

While this arbitrator stated that other units' acceptance of the proposals was "supportive but not persuasive," he did not make findings as to whether the settlements differed from the offer to this unit; the significance of any differences; and whether in

fact there was a settlement pattern among the County's negotiations units. On remand, he should make those determinations; discuss and apply the above-noted principles concerning pattern and internal comparability; and explain how he has weighed the County's arguments and evidence concerning the settlements vis-a-vis the PBA's.

Finally, we note that the arbitrator also denied the PBA's proposal for orthodontic coverage, reiterating that health insurance was an appropriate topic for negotiations and stating that neither party had convinced him of the reasonableness of its proposals in this area (Arbitrator's opinion, p. 52). Because we are vacating the award and remanding the entire case to the arbitrator, he has the discretion to reconsider the PBA's health benefits proposal and analyze it in accordance with this opinion.<sup>4/</sup>

#### Operational Proposals

We also conclude that, in addressing the County's operational proposals, the arbitrator did not resolve the unsettled issues. Therefore, a remand is also required on this ground.

The arbitrator stated that it was inappropriate for an interest arbitrator to rewrite a contract and that the long list of proposals was properly dealt with in negotiations. He added that

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<sup>4/</sup> It appears from the PBA's final offer that it may also have sought eye care coverage. This point may be clarified on remand.



there was only one day of hearing; that the County's proposals were extensive and complex; and that some of them were not supported by evidence. He reached similar conclusions concerning the PBA's proposals concerning food pickup; insurance defense fund contributions; and grievance arbitration procedures (Arbitrator's opinion, pp. 53-55).

The record shows that County witnesses testified as to the reasons the County sought various changes, and the PBA vigorously cross-examined those witnesses. N.J.S.A. 34:13A-16d(2) requires the arbitrator to resolve the unsettled issues, and our review of the record does not support a conclusion that there was insufficient evidence to make a determination on the entire group of proposals. Indeed, the arbitrator stated that the County had offered legitimate concerns in support of some of its proposals. Therefore, if the County offered evidence and reasons in support of a proposal, the arbitrator is required on remand to discuss that evidence and make a reasoned determination whether or not to award the proposal. We recognize the principle that benefits and provisions agreed upon through years of collective negotiations should not ordinarily be undone in a single contract. On remand, the arbitrator may take this principle into account, but he must fully discuss the evidence on all of the County's operational proposals and explain his basis for accepting or rejecting

them.<sup>5/</sup> Again, because we are vacating the award and remanding the case to the arbitrator, he may reconsider the PBA's insurance, food, and grievance arbitration proposals.

#### Salary proposals

We next consider the County's argument that the arbitrator did not explain his salary award and did not adequately consider the settlements with other County units in reaching that award.

The arbitrator thoroughly summarized the parties' arguments and evidence on their respective proposals and the statutory criteria (Arbitrator's opinion, pp. 14-40). Then, with respect to each statutory factor, the arbitrator recapped the parties' arguments; stated his view of the evidence on that factor; and noted whether a factor favored either party's offer.

(Arbitrator's opinion, pp. 43, 49).

In setting forth his salary award, the arbitrator stated:

Both offers, for the purpose of reaching the most reasonable resolution, are not acceptable. I have reviewed all of the economic data presented, the testimony offered, the CPI figures, recent settlements and awards among County correction departments and municipal police officers, the increases negotiated by other County bargaining units,

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<sup>5/</sup> We agree with the PBA that an arbitrator need not apply every statutory criterion to every facet of every proposal. Cherry Hill. An arbitrator has the discretion to decide that a particular dispute is best analyzed by applying the relevant factors to a cluster of related issues, as long as he or she considers all the evidence and arguments presented. Ibid.

the general public and private sector increases within the state, and the economic condition of the County. I have considered the numerous documents and pages of transcripts submitted by the parties. I have determined that the most reasonable wage increase is as follows:

Effective and retroactive to January 1, 2001 -  
4.0%

Effective and retroactive to January 1, 2002 -  
4.0%

Effective January 1, 2003 -- 4.0% [Arbitrator's opinion, p. 53]

From the foregoing, it is difficult to assess what factors the arbitrator weighed most heavily and how he weighed and balanced the other factors. While the arbitrator applied the statutory factors to the parties' evidence and offers, the rationale for the awarded increases would have been better conveyed if, in setting out his award, he had explained how it was shaped and supported by the statutory criteria. On remand, the arbitrator should explain his award, as opposed to the parties' evidence, in the context of the statutory criteria. That discussion should also be informed by the analysis and findings concerning the internal settlements which we have already directed the arbitrator to undertake.<sup>6/</sup> Again, because we are vacating the award and remanding the case to the arbitrator, he may reevaluate the PBA's proposals concerning

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<sup>6/</sup> The County and the PBA both state that the PBA proposed 5% increases for 2001 through 2003. These representations are consistent with the PBA's final offer, which is included in the appellate record. However, the arbitrator stated that the PBA's proposal was 4% in the third year of the agreement. This point should be clarified on remand.

the senior officer differential, SOU stipend, and compensatory time bank.

We address three final issues concerning the remand. First, in arriving at his second award, the arbitrator must calculate the total net annual economic changes for each year of the agreement and determine that those changes are reasonable. N.J.S.A. 34:13A-16d(2). Fulfilling that obligation requires the arbitrator to state the new dollar costs for each year of the agreement. Teaneck; Rutgers, the State Univ., P.E.R.C. No. 99-11, P.E.R.C. No. 99-11, 24 NJPER 421 (¶29195 1998).

Second, with respect to the contract's duration, the County argued that a three-year term would return the parties to negotiations too soon. The arbitrator noted that that result might not be "such a negative," given the extensive number of issues that the parties were unable to resolve.

The arbitrator may reevaluate the contract term in light of the parties' arguments and our direction that he more fully discuss some of the proposals submitted. However, the County has not shown that he made a "mistake of fact" in stating that three-year contracts were the norm in the public and private sectors. We take administrative notice that, in the over six years since the Reform Act has been in place, interest arbitrators have awarded three-year contracts more frequently than four-year contracts although, as the County notes, four-year contracts were awarded somewhat more often in the January 2000 through April 2001 period.

Third, the remand shall be decided on the present record, unless the arbitrator requires additional submissions.

We now address the County's argument that this matter should be remanded to a different arbitrator.

N.J.S.A. 34:13A-16f(5) (a) authorizes us to remand an award to the same arbitrator or to another arbitrator. The County maintains that the arbitrator did not adhere to Cherry Hill and cannot be impartial because he is philosophically opposed to awarding health benefits changes in interest arbitration. It stresses that the one day hearing was transcribed; no credibility determinations are required; and a new arbitrator could decide the matter quickly, without the need for a new hearing.

The PBA counters that the County has not shown that the arbitrator would be unable to follow remand instructions; the Commission's practice has been to remand a matter to the original arbitrator; and, unlike the cases relied on by the County, the arbitrator did not refuse to hear the County's evidence or find that any of its witnesses were not credible. It argues that a new arbitrator would need time to become familiar with the record and suggests that a remand would require another hearing.

Our decision to vacate and remand the award is based on our conclusion that the arbitrator did not, as required by the Reform Act, resolve all the unsettled issues or fully discuss, and explain how he analyzed and weighed, the parties' evidence and

arguments. In addition, for the reasons stated earlier, we are not satisfied that he fully considered the County's health benefits proposals. In similar situations, we and the courts have remanded interest arbitration awards to the original arbitrator presuming, unless shown to the contrary, that the arbitrator would be able to take a "fresh look" at the case and reach a fair and impartial decision in accordance with Court or Commission guidance. See Fox v. Morris Cty., 266 N.J. Super. at 521-522; Cherry Hill (citing Fox); Lodi. Indeed, after vacating and remanding interest arbitration awards in PBA Local 207 v. Bor. of Hillsdale, 137 N.J. 71 (1994) and Washington Tp. v. New Jersey PBA Local 206, 137 N.J. 88 (1994), our Supreme Court disagreed with the Appellate Division that remands to different arbitrators were required. The Court so concluded even though it found that the arbitrators had not considered several of the statutory factors; had inappropriately relied on the employers' ability to pay; and had unduly emphasized comparisons with police salaries in other communities. Hillsdale, 137 N.J. at 86-87; Washington Tp., 137 N.J. at 92-93. Thus, the fact that an arbitrator has not applied the interest arbitration statute in the manner ultimately required by the Court or Commission does not necessarily disqualify him or her from reconsidering the matter.

Those instances where we or the courts have remanded cases to different arbitrators are distinguishable. In Borough of Bogota, P.E.R.C. No. 99-20, 24 NJPER 453 (¶29210 1998), we vacated

an arbitration award issued on remand, after we found that the second award did not adequately consider the private sector wage evidence that we had earlier directed the arbitrator to consider. By the time of the second Commission appeal, the 1996-1997 contract the arbitrator had awarded had expired and an interest arbitration petition for a successor contract had been filed. In these circumstances, we consolidated the 1996-1997 proceedings with the new interest arbitration and directed that they be heard by the new arbitrator appointed in that proceeding. There is no analogy here. The contract has not expired; there is no separate interest arbitration pending; and this is not an instance where the arbitrator issued two awards that did not comply with the Reform Act.


Nor are we persuaded that either Manchester Bd. of Ed. v. Thomas P. Carney, Inc., 199 N.J. Super. 266 (App. Div. 1985) or Carmichael v. Bryan, 310 N.J. Super. 34 (App. Div. 1998) requires a remand to a different arbitrator. Unlike the arbitration panel in Manchester, the arbitrator did not refuse to hear pertinent evidence and, unlike the judge in Carmichael, he did not make findings concerning witness credibility and intent.

In this posture, we have no reason to doubt that the arbitrator can reconsider this matter in accordance with the guidance we have provided. Accordingly, we direct that the arbitrator issue a new opinion and award within 60 days from the date of this decision, absent an extension of time for good cause shown.

ORDER

The award is vacated and remanded to the arbitrator for reconsideration in accordance with this opinion. The arbitrator shall issue a new opinion and award no later than 60 days from the date of this decision, absent an extension of time for good cause shown.

BY ORDER OF THE COMMISSION

  
Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Buchanan, Katz, McGlynn, Ricci and Sandman voted in favor of this decision. Commissioner Mastriani abstained. None opposed.

DATED: October 31, 2002  
Trenton, New Jersey  
ISSUED: November 1, 2002



STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF TEANECK,

Appellant/Cross-Respondent,

-and-

Docket No. IA-97-45

TEANECK FIREMEN'S MUTUAL  
BENEVOLENT ASSOCIATION,  
LOCAL NO. 42

Respondent/Cross-Appellant.

SYNOPSIS

The Public Employment Relations Commission remands an interest arbitration matter to the arbitrator to determine whether the award of the 24/72 work schedule to this unit would impair supervision and, if so, whether, based on all the circumstances there are compelling reasons to award the schedule that outweigh any supervision concerns. The Commission does so pursuant to an Appellate Division decision affirming in part and reversing and remanding in part the Commission's decision in P.E.R.C. No. 2000-33. The Court reversed and remanded the portion of the Commission's decision modifying the arbitrator's award to state that the 24/72 shall not be implemented for the firefighters "unless the 24/72 schedule is agreed to, or awarded, with respect to the fire officers' unit."

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. 2003-11

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF TEANECK,

Appellant/Cross-Respondent,

-and-

Docket No. IA-97-45

TEANECK FIREMEN'S MUTUAL  
BENEVOLENT ASSOCIATION,  
LOCAL NO. 42

Respondent/Cross-Appellant.

Appearances: ,

For the Township, Peckar & Abramson, P.C.,  
attorneys (David Lew and Jeffrey M. Daitz, of counsel)

For the FMBA, Fox & Fox, LLP, attorneys (David I. Fox and  
Deborah A. Young, of counsel)

DECISION

On July 16, 2002, the Appellate Division affirmed in part and reversed and remanded in part our decision in Teaneck Tp. and Teaneck FMBA Local No. 42, P.E.R.C. No. 2000-33, 25 NJPER 450 (130199 1999). The Appellate Division affirmed those parts of the decision that upheld the arbitrator's award of a 24/72 schedule on a trial basis and his award of a stipend for those firefighters with an EMT certification. Teaneck Tp. and Teaneck FMBA Local No. 42, \_\_\_ N.J. Super. \_\_\_ (App. Div. 2002). The Court also affirmed our decision sustaining the Director of Arbitrator's decision to accept the withdrawal of the first interest arbitrator appointed in the case. However, the Court reversed and remanded that portion of the decision modifying the arbitrator's award to state

that the 24/72 shall not be implemented for the firefighters "unless the 24/72 schedule is agreed to, or awarded, with respect to the fire officers' unit." 25 NJPER at 460.

That modification was linked to our articulation of the standards arbitrators should apply in considering proposals for a major work schedule change, including proposals that would result in supervisors being on a different work schedule from the employees they supervise. We stated:

[A]n arbitrator may award such a proposal only if he or she finds that the different work schedules will not impair supervision or that, based on all the circumstances, there are compelling reasons to grant the proposal that outweigh any supervision concerns. Teaneck, 25 NJPER at 455.

The Court found no error in our establishing this standard, but did find that the implementation delay was arbitrary and unreasonable. It also concluded that we exceeded the scope of our review by foreclosing the arbitrator from applying our standard to his factual findings. It ordered us to remand this matter to the same arbitrator for evaluation of proofs and factual findings in light of our standard.


Accordingly, we direct the arbitrator to consider whether award of the work schedule to this unit would impair supervision and, if so, whether based on all the circumstances, there are compelling reasons to award the schedule that outweigh any

supervision concerns.<sup>1/</sup> As specified in the Court's opinion, the arbitrator may consider receipt of additional testimony or other evidence if he deems it necessary or appropriate.

ORDER

This matter is remanded to the arbitrator to determine whether award of the 24/72 work schedule to this unit would impair supervision and, if so, whether, based on all the circumstances there are compelling reasons to award the schedule that outweigh any supervision concerns.

BY ORDER OF THE COMMISSION

  
Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Buchanan, Katz, McGlynn and Ricci voted in favor of this decisions. Commissioner Muscato voted against this decision. Commissioner Sandman was not present.

DATED: July 25, 2002  
Trenton, New Jersey  
ISSUED: July 26, 2002

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<sup>1/</sup> The FMBA requests input into this stage of the reversal and remand. We deny that request. The Court's direction is straightforward.

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF CLIFTON,

Appellant,

-and-

Docket No. IA-99-69

CLIFTON FIREMEN'S MUTUAL BENEVOLENT  
ASSOCIATION, LOCAL 21,

Respondent.

SYNOPSIS

The Public Employment Relations Commission affirms, with a modification, an interest arbitration award issued to resolve negotiations between the City of Clifton and Clifton Firemen's Mutual Benevolent Association, Local 21. The Township asks the Commission to vacate the award which granted the FMBA's proposal for a 24/72 schedule for a one-year trial period. The award provided that at the end of the trial period the City could petition this arbitrator to eliminate the 24/72 schedule and if the FMBA objected, the arbitrator would hold a hearing, after which he would determine whether the City had shown "reasonable cause" to revert to the 10/14 schedule.

The Commission concludes that the arbitrator comprehensively analyzed the evidence and arguments; gave due weight to the relevant statutory factors; and reached a reasonable determination that the FMBA had met its burden of justifying the schedule change for a one-year trial period. The Commission, however, modifies the trial period portion of the award. The Commission concludes that the best and least complicated mechanism for evaluating the 24/72 schedule, absent the parties' agreement to continue or discontinue the work schedule, is during the post-contract expiration interest arbitration process, where another arbitrator will be appointed. The Commission also concludes that requiring the City to establish "reasonable cause" to revert to the 10/14 schedule is not consistent with Teaneck Tp., P.E.R.C. No. 2000-33, 25 NJPER 450 (130199 1999), app. pending App. Div. Dkt. No. A-001850-99T1. Under Teaneck, the burden is again on the FMBA to justify the schedule, not for the City to show that the new schedule should not be continued.

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 CLIFTON,

Appellant,

-and-

Docket No. IA-99-69

CLIFTON FIREMEN'S MUTUAL BENEVOLENT  
ASSOCIATION, LOCAL 21,

Respondent.

Appearances:

For the Appellant, Ruderman & Glickman, P.C., attorneys  
(Mark S. Ruderman, of counsel; Ellen M. Horn, on the  
brief)

For the Respondent, Fox & Fox, LLP, attorneys (David I.  
Fox, Daniel J. Zirrith, Jennifer E. Walker and Gregory A.  
Busch, of counsel)

DECISION

The City of Clifton appeals from an interest arbitration award involving a negotiations unit of rank-and-file firefighters, firefighter/EMTs, lieutenants, captains and deputy chiefs. See N.J.S.A. 34:13A-16f(5)(a). It asks us to vacate the award, which granted the Clifton Firemen's Mutual Benevolent Association, Local 21's proposal for a 24/72-hour (24/72) work schedule on a one-year trial basis.

The sole issue in the arbitration was the FMBA's proposal to change from a 10/14-hour (10/14) work schedule to a 24/72 schedule (Arbitrator's opinion, p. 2). The parties had agreed to all other terms of a four-year contract from January 1, 1999

through December 31, 2002 (Arbitrator's opinion, p. 2). The terminal procedure was conventional arbitration, since the parties did not agree upon another procedure. N.J.S.A. 34:13A-16d(2).

The parties' final offers were as follows.

The FMBA proposed a 24/72 schedule to be implemented for a one-year trial period. Under the proposed schedule, firefighters would work an eight-day tour of one 24-hour day, followed by 72 hours (three days) off; followed by another 24-hour day on and three days off.

The FMBA also proposed a procedure by which, at the end of the trial period, the City could petition the arbitrator to eliminate the 24/72 schedule; if the FMBA then objected, the appointed arbitrator would hold a hearing, after which he would determine whether the City had shown "reasonable cause" to revert to the 10/14 schedule (Arbitrator's opinion, p. 5). The FMBA's final offer provided that the City could not revert to the 10/14 schedule prior to the arbitrator's decision and that, if the City did not petition to eliminate the 24/72 schedule, or if its request was denied, the awarded schedule would be included in the parties' agreement permanently (Arbitrator's opinion, p. 5). Finally, the FMBA proposed that existing vacation, sick, personal, and compensatory days be adjusted during the trial period to maintain the same level of benefits as under the existing 10/14 schedule (Arbitrator's opinion, p. 8).

The City proposed that the 10/14 schedule be maintained. Under this schedule, firefighters work an eight-day tour of two ten-hour days from 8:00 a.m. to 6:00 pm., followed by one day off, followed by two nights where firefighters work from 6:00 p.m. to 8:00 a.m., followed by 72 hours (three days) off. Under both the 10/14 and 24/72 schedules, firefighters work 48 hours every eight days and, over eight weeks, an average of 42 hours per week (Arbitrator's opinion, pp. 63, 90).

However, as an alternative to maintaining the 10/14 schedule, the City proposed a modified 10/14 schedule in response to the FMBA's concern that, under the current schedule, firefighters had only ten hours off between the two consecutive night shifts. Under the modified 10/14 schedule, firefighters would work two consecutive days, 8:00 a.m. to 6:00 pm.; followed by one night on the 6:00 pm. to 8:00 a.m. shift; followed by one day off; followed by a 6:00 p.m. to 8:00 a.m. night shift on the fifth day, followed by two days off (Arbitrator's opinion, p. 63).

The arbitrator awarded the FMBA's proposal concerning the 24/72 schedule; he ordered that it be implemented for a one-year trial period and that it "remain in effect and unless it is altered or replaced by this Interest Arbitrator pursuant to the procedure set forth below" (Arbitrator's opinion, p. 122). The procedure was the one proposed by the FMBA. The arbitrator also ordered that contract provisions for leave time be adjusted as proposed by the FMBA (Arbitrator's opinion, pp. 5, 123-124).



The City appeals, contending that the arbitrator did not give due weight to the relevant factors in N.J.S.A. 34:13A-16g; the award is not supported by substantial credible evidence in the record as a whole; and the award's post-trial period review procedure violates N.J.S.A. 2A:24-8 and the standards in Teaneck Tp., P.E.R.C. No. 2000-33, 25 NJPER 450 (¶30199 1999), app. pending App. Div. Dkt. No. A-001850-99T1.

The standard of review in interest arbitration appeals is now established. We will vacate an award if the appellant demonstrates that: (1) the arbitrator failed to give "due weight" to the subsection 16g factors judged relevant to the resolution of the specific dispute; (2) the arbitrator violated the standards in N.J.S.A. 2A:24-8 and -9; or (3) the award is not supported by substantial credible evidence in the record as a whole. See, e.g., Cherry Hill Tp., P.E.R.C. No. 97-119, 23 NJPER 287 (¶28131 1997); accord Teaneck; City of Newark, P.E.R.C. No. 99-97, 25 NJPER 242 (¶30103 1999); Borough of Lodi, P.E.R.C. No. 99-28, 24 NJPER 466 (¶29214 1998); cf. PBA Local 207 v. Bor. of Hillsdale, 137 N.J. 71, 82 (1994); Division 540, ATU, AFL-CIO v. Mercer Cty. Improvement Auth., 76 N.J. 245, 253 (1978). 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. Cherry Hill. An arbitrator must provide a reasoned explanation for an award, N.J.A.C. 19:16-5.9, and, once he or she has done so, an appellant must offer a particularized challenge to

the arbitrator's analysis and conclusions. Lodi. As we discussed in Teaneck, additional considerations pertain in reviewing an award ordering a work schedule change. We reiterate and expand on those considerations later in this opinion.

We start with a procedural history of the arbitration and a summary of the arbitrator's opinion and award.

The 24/72 schedule was vigorously proposed by the FMBA and just as strongly opposed by the City. There were eight days of hearing, as well as testimony and certifications from nearly thirty individuals. Close to 200 exhibits were submitted, over 1000 pages of testimony were transcribed, and the arbitrator issued a 124-page opinion (Arbitrator's opinion, pp. 90-91).

The FMBA argued that the 24/72 schedule would further the public interest by improving morale; reducing fatigue and firefighter and civilian injuries; increasing productivity; enhancing communications and training; and reducing sick leave and overtime costs. The FMBA's primary witnesses were New Jersey fire chiefs who had had experience with the 10/14 schedule and whose departments now operate on a 24/72 schedule (Arbitrator's opinion, pp. 41-60).

The City countered that firefighters on a 24/72 schedule would not have the stamina and concentration required to fight fires, perform inspections, and be trained throughout a 24-hour shift. The City argued that, as a consequence, the schedule would increase fatigue and injuries and decrease the safety of firefighters and the public. It also maintained that the

infrequency with which firefighters report for duty on a 24/72 schedule would diminish job commitment and hamper training, productivity, firefighter recalls and follow-through on discipline (Arbitrator's opinion, p. 62-86). Its primary witnesses were Walter DeGroot and John Dubravsky, the former chief and current chief, respectively, of the City's Fire Department, as well as a physician, Dr. David R. Carnow. Carnow testified that the 24/72 schedule would exacerbate the mental, physical, thermal and chemical stressors that firefighters face.

The parties agreed that the 24/72 schedule was a non-economic issue and that the statutory factors concerning the lawful authority of the employer; the financial impact of the award; and the cost of living were difficult to apply (Arbitrator's opinion, pp. 87-88). There was no dispute that the 24/72 schedule would involve the same number of employees working the same number of hours with the same number of supervisors.

The arbitrator found, based on Teaneck and interest arbitration awards involving work schedules, that the FMBA had a "very heavy" burden in seeking to change the 10/14 schedule. He concluded that the FMBA had met this burden, finding that the evidence convincingly showed that implementation of the schedule would promote the public interest and welfare, N.J.S.A.

34:13A-16g(1), which he found to be the most important statutory factor and one that implicated such issues as safety, fatigue, training, productivity, recall procedures, morale and working conditions (Arbitrator's opinion, pp. 88-89, 116, 120). He also

concluded that the 24/72 schedule would improve employee morale and therefore the continuity and stability of employment, N.J.S.A. 34:13A-16g(8), and that a comparison of wages, salaries, compensation and conditions of employment, N.J.S.A. 34:13A-16g(2), favored implementation of the schedule (Arbitrator's opinion, p. 119).

The arbitrator also found that the employer's lawful authority and cost of living were not relevant criteria to the dispute and that the financial impact factor pertained only to the extent the schedule would affect sick time use and overtime. Finally, the arbitrator observed that, unlike Teaneck, award of the schedule would not result in supervisors and employees working different shifts, since Local 21 includes both superior officers and firefighters (Arbitrator's opinion, pp. 87-89, 121). Compare Teaneck, 25 NJPER at 455.

In awarding the schedule, the arbitrator was persuaded by the fire chiefs and superior officers who testified for the FMBA, all of whom testified as to their positive experience with the 24/72 schedule. By contrast, he found that the current and former chiefs' views that operations would be adversely affected by the 24/72 schedule were not based either on research into the schedule or an analysis of the experience of the many communities that had implemented it (Arbitrator's opinion, pp. 97, 112, 121). He reached the same conclusion concerning the opinion of Carnow, the

City's medical expert (Arbitrator's opinion, p. 101-102). We highlight the key aspects of the arbitrator's opinion.

In analyzing the public interest, the arbitrator stressed that the issue of fatigue was "extremely important" because it directly affects the delivery of firefighting services and the safety of firefighters and the public (Arbitrator's opinion, p. 95). He concluded that the 10/14 schedule was potentially fatiguing because it includes only a ten-hour break between the two consecutive night shifts, after which break, with commuting and family obligations, the firefighter often does not return to work rested. By contrast, the arbitrator concluded that a firefighter was much more likely to report to work rested when he or she had been off for 72 hours. Further, the arbitrator stressed that the 72-hour period allowed more time for a firefighter to recuperate and more time for smoke and other toxins to be released from a firefighter's system after an exposure (Arbitrator's opinion, pp. 95-100).

In finding that the 24/72 schedule was more beneficial than the 10/14, the arbitrator cited, among other FMBA evidence, testimony by Roselle Fire Chief Robert Hill and Hillside Fire Chief Frank Caswell. Hill testified that the 24/72 schedule made his job much easier because he had "fresh firefighters" on every shift whereas, under the 10/14, there was "always a problem" with some firefighters coming to work fatigued because of their off-duty activities. Hill also explained that, within the 24-hour

shift, he could control any "fatigue factor" by giving firefighters rest or downtime after fire calls or training exercises. Caswell testified that the 72-hour period between shifts allows both for smoke and chemicals to be released from a firefighter's system and for a firefighter to recoup from the stresses of firefighting (Arbitrator's opinion, pp. 95-100).

Based on this and other evidence, the arbitrator ruled that the 24/72 schedule would reduce fatigue and improve safety (Arbitrator's opinion, p. 103). He also found that the 24/72 schedule would improve firefighter morale, which FMBA witnesses had described as particularly important given the stressful and dangerous nature of the fire service (Arbitrator's opinion, pp. 109-112). The arbitrator concluded that there was no evidence to show that the 24/72 schedule would increase fatigue or sick time use; hamper training or recalls; impede follow-through on discipline; or diminish job commitment (Arbitrator's opinion, pp. 111, 121).

However, while the FMBA had argued that the 24/72 schedule would enhance training and communications and decrease sick leave and overtime, the arbitrator did not cite potential improvements in these areas as grounds for awarding the schedule. While he did advert to the potential for decreased sick leave and overtime at the end of his opinion, such potential reductions were not the focus of his analysis (Arbitrator's opinion, pp. 103-108, 121).

With respect to the comparability criterion, the arbitrator found that the 24/72 hour schedule was a common one in New Jersey; that 70% of fire departments nationally had some form of 24-hour schedule; and that the recent trend in New Jersey fire department negotiations was to move to the 24/72 schedule. He cited testimony to the effect that both large and small fire departments in New Jersey operate under the schedule. He noted that N.J.S.A. 40A:14-46 permits firefighters to remain on duty for 24 hours and that 35 New Jersey fire departments either use the 24/72-hour schedule or will do so within one year (Arbitrator's opinion, pp. 90, 116-118).

In establishing a one-year trial period, the arbitrator stated that he hoped that experience under the schedule would "dispel the negative attitude that the City harbors and that the City of Clifton will experience the same positive results that innumerable communities within the State have realized" (Arbitrator's opinion, p. 120).

On appeal, the City agrees with the arbitrator that the cost of living and lawful authority criteria were not relevant, and that the financial impact factor pertained only as it related to sick time. It also agrees with the arbitrator's characterization of the issues encompassed within the public interest. However, it challenges the arbitrator's analysis of that statutory factor, as well as his consideration of the comparability criterion. It also contends that the arbitrator

erred in finding that the FMBA had met its "very heavy burden" of justifying a schedule change, arguing that that burden could only have been met if the FMBA had shown that the 10/14 schedule did not "work" for the City. It asks that we vacate the award and remand it to another arbitrator or, in the alternative, modify the award as it pertains to the trial period. We start by reviewing the principles that shape our approach to this appeal.

We underscore, as we did in Teaneck, that before awarding a major work schedule change, an arbitrator should carefully consider the fiscal, operational, supervision and managerial implications of such a proposal, as well as its impact on employee morale and working conditions. 25 NJPER at 455. That requirement derives both from the arbitrator's obligation to consider the relevant statutory factors, N.J.S.A. 34:13A-16g, and from Court and Commission decisions recognizing a strong governmental policy interest in ensuring appropriate discipline, supervision and efficient operations in a public safety department. See Teaneck, 25 NJPER at 455 and cases cited therein.

We also reiterate that the party proposing a work schedule change has the burden of justifying it. Teaneck, 25 NJPER at 455; cf. Hillsdale, 137 N.J. at 82. That burden is consistent with the fact that interest arbitration is an extension of the negotiations process and that, within the context of the statutory criteria, an interest arbitrator should fashion an award that the parties, as reasonable negotiators, might have agreed



to. Hudson Cty. Prosecutor, P.E.R.C. No. 98-88, 24 NJPER 78 (¶29043 1997). Over the course of a negotiations relationship between a particular employer and majority representative, department work schedules are not routinely or frequently changed and they should not be changed by an arbitrator without strong reasons.

However, we disagree with the City that a change can be awarded only if the proponent shows that a current schedule does not "work." An arbitrator should consider whether there is evidence of problems with an existing schedule, but interest arbitration must allow for a schedule change that an arbitrator reasonably concludes is warranted after a full and fair consideration of all of the statutory criteria. Where a schedule change is awarded because of potential benefits, as opposed to problems with a current schedule, it is appropriate for an arbitrator to establish a mechanism that allows the parties to evaluate the awarded schedule and ensures that it will not become the new status quo unless the predicted benefits materialize.

Teaneck, 25 NJPER at 457.

Finally, we comment on the evidence that may typically be presented with respect to a proposed work schedule change. Here, as in Teaneck, the FMBA presented witnesses who testified as to their personal experience with the 10/14 and 24/72 schedules and who indicated as well that many fire departments used the 24/72 schedule. In both cases, the employers countered, in part, with

testimony by their own fire chiefs, who explained their reasons for opposing the change. In each case, the arbitrator analyzed the chiefs' concerns and stressed that the employers had presented no evidence of problems in any of the municipalities using a 24/72 schedule. Teaneck approvingly cited the arbitrator's comment to this effect. 25 NJPER at 457.

Lack of evidence that a particular schedule has caused problems in other departments is a factor that an arbitrator should consider. However, the burden remains on the proponent to justify a change. Stated another way, the party opposing the change need not prove that the proposed schedule will not work. Moreover, even absent documentation or experience-based testimony about alleged problems with a schedule, an arbitrator should carefully consider arguments that describe how the inherent features of a proposed schedule will affect the delivery of essential governmental services in a particular jurisdiction. In some cases, such arguments may be entitled to significant weight.

Within this framework, we consider the City's contention that the arbitrator did not give due weight to the components of the public interest criterion and did not properly analyze the comparability factor.

The gravamen of the City's appeal is that the arbitrator did not give due weight to the alleged deficiencies in the 24/72 schedule as described by Carnow, the only medical expert to

testify, and by DeGroot and Dubravsky, both of whom have over 30 years of firefighting experience. We will later discuss the arbitrator's consideration of these individuals' opinions on particular points. However, at the outset, we find that the arbitrator reasonably exercised his discretion when, in weighing the evidence, he generally credited the testimony of the FMBA witnesses over DeGroot, Dubravsky, and Carnow.

In doing so, he highlighted three points. The first is that the FMBA witnesses had experience under both schedules, whereas Dubravsky and DeGroot did not (Arbitrator's opinion, pp. 93, 102, 121). The second is the arbitrator's unchallenged finding that the City's witnesses, including Carnow, did not base their opinions on research into the 24/72 schedule (Arbitrator's opinion, p. 102, 112). In this vein, Carnow stated that he would not be convinced that the 24/72 schedule was workable even if he were shown evidence of decreased injuries and sick leave in 20 communities (6T811). The arbitrator also highlighted a third point: DeGroot has been opposed to the schedule for at least 35 years and, although committed to the delivery of quality fire services, has held to his longstanding views -- expressed in a 1972 report by the New Jersey Career Fire Chiefs Association -- without studying the recent implementation of the schedule in many communities (Arbitrator's opinion, p. 112).

These factors, while not determinative, were appropriately considered by the arbitrator in evaluating, and

providing a context for, the witnesses' objections to the schedule, particularly since those objections took the form of predictions about the negative effects of the schedule rather than concrete examples of how the schedule would adversely affect department operations.<sup>1/</sup>

Public Interest and Welfare

Fatigue and Fire Safety

The City does not question the arbitrator's conclusion that firefighter fatigue impedes effective firefighting and, therefore, the safety of firefighters and the public. Nor does it challenge the key findings that underpinned his award: first, that the 10/14 schedule has a significant potential for fatigue because it includes only a 10-hour gap between the two consecutive night shifts; and second, that the 24/72 schedule always affords a firefighter 72 hours to recuperate from a fire exposure, thereby enabling the firefighter to report to work rested. Nor does the City dispute the accuracy or relevance of a Union Township study

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<sup>1/</sup> The City emphasizes that, contrary to the arbitrator's findings, Dubravsky had at one time worked a 24-hour tour and found it to be "very stressful" (Arbitrator's opinion, p. 93; Aa1742; 8T1080-8T1081). Dubravsky's experience, however, was at the beginning of his career when firefighters worked a 24/48 schedule (8T1080-8T1081). Thus, he does not have experience on the 24/72 schedule. In any case, Dubravsky never linked his experience on the 24-hour tour with the types of problems that he anticipated would flow from award of the schedule. The arbitrator's analysis is not undermined by this point.

showing that firefighter injuries were reduced by 23%, and civilian injuries by 38%, during the six-year period after the Township switched from the 10/14 to the 24/72 schedule. Union Township Battalion Chief Paul Chrystal attributed these reductions to increased inspections and firefighters' ability to recuperate after a strenuous tour of duty (Arbitrator's opinion, p. 95; Aa1056-Aa1057; 2T233-2T234).<sup>2/</sup> Instead, the City primarily contends that whatever the deficiencies of the 10/14 schedule, DeGroot, Dubravsky, and Carnow showed that the 24/72 schedule presents greater problems. Further, it maintains that the arbitrator should have more fully discussed its alternative work schedule. We disagree.

With respect to the alleged problems with a 24-hour shift, the arbitrator recognized that there is a greater potential for fire exposure during a 24-hour shift than during a 10-hour or 14-hour period. However, he observed that similar problems obtain

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<sup>2/</sup> In challenging the arbitrator's analysis, the City does cite an exhibit showing that, for 1998, Clifton had a lower frequency of worker's compensation claims per 100 officers (25), than either Passaic (27.7) or Paterson (32.6), mutual aid communities that are on the 24/72 schedule (Aa186). While the arbitrator did not discuss this exhibit, it does not undercut his conclusion that the 24/72 would likely increase fire safety. Dubravsky acknowledged that Paterson had more fires than Clifton and that that circumstance would likely result in Paterson firefighters experiencing more work-related injuries (7T973-7T974). With respect to the City of Passaic, the difference between its 1998 worker's compensation experience and that of Clifton is not as significant as that between Clifton and Paterson.

on the 10/14 schedule, without the counterbalancing advantages of the 24/72. For example, the arbitrator noted that, given the consecutive night shifts, the 10/14 potentially exposes a firefighter to 28 hours of firefighting within a 38 hour period, without the three-day recuperative period afforded by the 24/72 schedule (Arbitrator's opinion, pp. 95-100).

In response to the concern about fighting fires for 24 hours straight -- or multiple fires within a 24-hour period -- the arbitrator stressed that "rehabilitation is essential and required" in any extended firefighting (Arbitrator's opinion, p. 100). Rehabilitation refers to the availability of medical and other support services at a fire (Aa134), and is required well before a firefighter has been fighting for 10, 14 or 24 hours. DeGroot testified that "good practice" is to have rehabilitation after three or four hours (5T599). Caswell asserted that rehabilitation is essential whatever the work schedule and that, in the unlikely event that there is more than one general alarm in a day, the situation could be handled through mutual aid and rehabilitation (1T97; 1T107).

In that vein, the concern about engaging in firefighting for 24 hours should be placed in perspective. The unrebutted testimony of Local 21 President Nicholas Marchisello was that fires of more than two hours occur only one or two times per year; that about two hours out of each 24-hour period are devoted to

fire calls; and that firefighter/EMTs are out on ambulance calls for an average of 5-6 hours over a 24-hour period (3T303-3T305).<sup>3/</sup>

Marchisello also testified that, in his four years with the department, he experienced only one general alarm -- defined as a fire in which all fire companies respond; mutual aid is called; and firefighters may be required at the scene for "days" either to engage in firefighting or to assist in the fire investigation (3T304-3T306). DeGroot testified that the City has multiple "workers" in a 24-hour period on about three or four occasions per year. A "worker" is a serious fire where all on-duty firefighters respond (4T381; 5T596-5T598).

In addition, the record shows that during both the night shift in Clifton and the 24-hour schedule as typically operated, firefighters are, absent an emergency, able to sleep during the late evening hours (T116; 4T405). Further, during 1993 and 1996, many Clifton firefighters worked 24-hour tours as a result of a hiring freeze; 24-hour tours were also worked during 1999 (5T567-5T571; Aa1346; Aa1548-Aa1549). Although DeGroot stated that there were problems as a result, those problems were not described (5T569).

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<sup>3/</sup> The firefighter/EMTs assigned to the City's three ambulances primarily respond to EMS calls and are only occasionally involved in firefighting (3T296-3T297).

Finally, we believe the prevalence of a 24-hour tour nationwide, and a 24/72 schedule in New Jersey, bears both on comparability and the employer's concerns about safety and the public interest. The record shows that some form of 24-hour shift is and has been the norm nationwide (2T267; Aa130). While that circumstance does not provide a basis to award the 24/72 schedule, it does suggest that fire protection standards can be maintained with firefighters working 24-hour shifts.<sup>4/</sup>

In this posture, the arbitrator reasonably credited the testimony of the chiefs who testified for the FMBA, all of whom had experience under both the 10/14 and 24/72 schedules and all of whom opined that fatigue was better controlled on the 24/72 schedule (Arbitrator's opinion, pp. 95-97). Those opinions meshed with the arbitrator's comparison of the inherent features of the schedules and the evidence that we have summarized.

By contrast, Dubravsky and DeGroot focused on the difficulty of fighting fires for all, or a substantial portion, of a 24-hour shift. That is a serious concern but their testimony did not address the rarity of such demands; the availability of rehabilitation and mutual aid to ameliorate the stresses of extended firefighting; or the prevalence of the 24-hour shift.

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<sup>4/</sup> The 10/14 schedule was put into place in the City in 1969, when the firefighters' workweek was reduced from 56 to 42 hours (4T370; Aa168). City firefighters have also worked 24-hour tours within 60 and 72-hour workweeks (4T371). Nationally, 24-hour tours have also been combined with workweeks of 84, 72, 56, 48 and 42 hours (Aa130).



Further, while they compared a 24-hour shift with a 10 or 14-hour shift, they did not consider how a full tour under each schedule would affect firefighter fatigue and, therefore, the safety of firefighters and the public. For these reasons, there is no basis to disturb the arbitrator's decision to credit the FMBA's witnesses, rather than DeGroot and Dubravsky, on the impact of the 24/72 schedule on fatigue.

We are also persuaded that the arbitrator thoroughly analyzed the testimony of Carnow, the City's medical expert, who wrote that the 24/72 shift exposed firefighters to a "variety of potential health concerns" because of the possibility of extended firefighting and prolonged exposure to smoke and other toxins. He opined that the 10/14 schedule was preferable because of the shorter exposures and the ability to begin recovery sooner, thereby preventing the accumulation of exposures "to the point they cause the body to be damaged" (Aa373).

The arbitrator recognized that these statements merited consideration, but he reached a reasonable determination not to credit Carnow's opinion. The arbitrator noted the substantial exposure possible under the 10/14 schedule during the two consecutive night shifts, as well as Carnow's acknowledgment that it was better to have 72 hours off after a fire exposure than the 10 hours provided between the 10/14 schedule night shifts (Arbitrator's opinion, p. 100). The arbitrator also stressed that Carnow had not analyzed the incidence of injuries and sick leave

in departments on the 10/14 vis-a-vis those on the 24/72 schedule; had not studied the experience of departments that had switched to the 24/72; and was not aware of the amount of time City firefighters spent fighting fires in an average 24-hour period or the number of times per year each fire company responded to a fire. Nor was Carnow aware of the hours worked under a 10/14 or 24/72 schedule (Arbitrator's opinion, pp. 101-102; 6T771-6T780).

In sum, Carnow's opinion was not supported by medical research data or any particularized discussion of the "potential health concerns" that would result from a 24/72 but not a 10/14 schedule.

Similarly, the arbitrator thoroughly analyzed another point highlighted by Carnow: that the 24/72 schedule was undesirable because of the protective firefighting suits required by the New Jersey Department of Labor (NJDOLE) under the Public Employee Occupational Health and Safety Act (PEOSHA), N.J.S.A. 34:6A-25 et seq. The arbitrator observed that these clothing requirements have been in effect since 1995 and there was no evidence that the clothing had caused difficulties in any community operating under the 24/72 schedule. The arbitrator further commented that it was reasonable to infer that the NJDOLE was aware that the 24/72 schedule was a common one when it promulgated the uniform requirements. Finally, he cited a 1997 interest arbitration award rejecting the employer's argument that the new uniform requirements favored its proposal to change from

the 24/72 to the 10/14 schedule. That arbitrator wrote that the employer had not shown any increased injuries as a result of the new uniforms, which had been in use for two years (Arbitrator's opinion, pp. 98-99).

The City has offered no basis for disturbing this analysis. We add that the uniform requirements reflect federal standards and were adopted in accordance with legislation directing that PEOSHA standards conform to federal Occupational Health and Safety Agency (OSHA) requirements. N.J.S.A. 34:6A-29; 30 N.J.R. 4240. Given that the 24/72 schedule is also common nationwide, this circumstance supports the arbitrator's view that the PEOSHA-mandated uniforms are compatible with the 24/72 schedule.

Finally, we disagree that the arbitrator was required to discuss in more detail the City's alternative 10/14 schedule. The City's final offer was to retain the 10/14 schedule and the overwhelming weight of the evidence was directed to either maintaining that schedule or switching to the 24/72 schedule. N.J.A.C. 19:16-5.7(f) does not provide for alternative final offers and DeGroot simply described the schedule while stating that it would lengthen the time between night shifts while retaining 10 and 14-hour shifts (4T465-4T468; Aa188; Aa1772).

The arbitrator in this conventional arbitration could conceivably have awarded a schedule other than the 10/14 or

24/72. See Cherry Hill and Hudson Cty. Prosecutor. However, he was not on this record obligated to discuss his reasons for not selecting an alternative schedule when he fully explained his reasons for awarding the 24/72 schedule on a trial basis and when he could not, given the limited record, fully assess the alternative schedule.

For all these reasons, the record supports the arbitrator's conclusion that the 24/72 schedule would reduce fatigue and improve fire safety.

#### Training

The City argues that the 24/72 schedule will hamper training because training requires repetition yet the 24/72 schedule precludes programs from being scheduled on two consecutive days. It also contends that available training time will be reduced because firefighters will not be able to concentrate on instruction after the first 10 hours of a 24-hour shift.

The arbitrator, recognizing that training was an essential component of firefighting, quoted four fire chiefs who testified that training had improved on the 24/72 as compared to the 10/14 schedule. In response to the City's concerns, these witnesses stated that they have successfully scheduled night training on the 24/72 schedule and that, in their opinion, the inability to schedule consecutive training days does not impede training (Arbitrator's opinion, pp. 92-94). Union Township

Battalion Chief William Chrystal testified that, on the 24/72 schedule, training officers on the day shift can see firefighters at least once and sometimes twice a week, whereas under the 10/14, two weeks could go by before the training officer could see a particular tour. Chief Hill stated that training nearly "doubled" when Roselle switched from the 10/14 to the 24/72 (Arbitrator's opinion, p. 94; 1T133; 1T138).

The arbitrator also cited testimony by the chiefs to the effect that the 24/72 schedule provides more flexibility, because training can be scheduled from morning through evening hours depending on the events of a particular day. They also described how the 24-hour shift provided more time to critique a fire response immediately after it was completed (1T85-1T86). Finally, the arbitrator cited a 1999 memorandum from the City's training officer stating that training had recently been "below par or non-existent" and was not likely to improve unless deputy chiefs assumed more training responsibility (Arbitrator's opinion, p. 94).

Against this backdrop, we find ample support for the conclusion that there was no evidence that the 24/72 schedule would impede training. Thus, there is no basis to disturb the arbitrator's analysis.

#### Sick Leave

The City maintains that the arbitrator erred in concluding that there was no evidence that sick leave use will increase under the 24/72 schedule. The background follows.

The parties had different approaches to evaluating how the 24/72 schedule would likely affect sick leave use and overtime. The City reasoned that sick leave use would increase because an individual who took one sick day on the 10/14 schedule would be charged only 10 or 14 hours leave, while under the 24/72 he or she would be using 24 hours of leave. It presented a chart prepared by the New Jersey Career Fire Chiefs' Association showing that firefighters on the 24/72 schedule firefighters used an average of 4.75 24-hour days per year while firefighters working a 10/14 schedule used an average of 4.1 10 or 14-hour sick days per year (Aa184). It also relied on a chart showing less sick leave use in Clifton than in Passaic -- a mutual aid community on the 24/72 schedule (Arbitrator's opinion, p. 106; Aa1742).

In contrast, the FMBA presented testimony from five fire chiefs, all of whom testified that sick leave and overtime went down, in some cases dramatically, when their departments switched to the 24/72 schedule. In addition, the FMBA presented a study from Union Township, which showed a 35% reduction in sick leave and a 58% decrease in overtime when the township moved from the 10/14 to the 24/72 schedule. The study hypothesized that the additional recuperative time afforded by the 24/72 schedule made it less likely that a firefighter injured or fatigued from fire duty would need to take sick leave when next scheduled to work. Overtime was in turn decreased because there was less need to call in an off-duty firefighter to replace an absent colleague (Arbitrator's opinion, pp. 103-105; Aa1052-Aa1053).

In addition, one chief explained that, on the 10/14, firefighters may be at a fire scene when the shift changes at 6 p.m., and will have to remain on duty -- and be paid overtime -- until they are relieved. That scenario is less likely on the 24/72, where there are fewer shift changes. Finally, the FMBA maintained that the comparison between Passaic and Clifton in fact showed that Clifton firefighters used more sick leave, when Clifton's figures were adjusted to reflect employees on injury leave and retiring firefighters who were exhausting accumulated sick leave while on terminal leave (Arbitrator's opinion, pp. 105-109).

In this posture, the arbitrator emphasized that, as Dubravsky stated, the City has no sick leave problem and almost no overtime (5T630; 5T661). The arbitrator discussed but did not rely on the Clifton/Passaic exhibit, observing that a comparison was an "exercise in pure speculation," presumably because it was not clear whether firefighters on injury or terminal leave were included in the Passaic statistics. He commented that the City and the FMBA should be proud of the low sick leave usage and that there was no reason to believe that abuse would occur under the 24/72 schedule, particularly given the strong evidence of reductions in sick leave in other municipalities after they implemented the 24/72 schedule (Arbitrator's opinion, pp. 107-109). At the conclusion of his opinion, he added that he believed increased productivity, in the form of reduced sick leave

and overtime, would result from implementation of the schedule (Arbitrator's opinion, p. 121). However, this was not a primary basis for awarding the schedule.

The arbitrator's findings and conclusions are supported by the record.

Preliminarily, we need not address the Clifton/Passaic exhibit, because the arbitrator's analysis did not rest on it. And we are not persuaded by the City's position as to the inevitability of the 24/72 schedule increasing sick leave. While a one-day illness might in some cases result in more sick leave under the 24/72 than under the 10/14 schedule, it also appears that a one-day illness is less likely to coincide with a work day and that a longer-term illness or injury might require less sick leave usage under the 24/72 schedule. While the arbitrator did not discuss the Fire Chiefs' Association chart, that evidence is balanced by the testimony of several fire officers with experience under both schedules.

In these circumstances, there is no basis to disturb the arbitrator's conclusion that the City's excellent sick leave record would likely be maintained under the 24/72 schedule. Further, the arbitrator reasonably found that some reduction in sick leave might occur, given the experience of other New Jersey municipalities (Arbitrator's opinion, pp. 109, 121). However, to the limited extent the arbitrator cited reduced sick leave and overtime as a basis for awarding the schedule, these predicted



benefits do not provide a strong basis for awarding the schedule. While decreases in sick leave and overtime are often offered as reasons to change to a 24/72 schedule, FMBA President Bill Lavin explained that those benefits will be less if, as here, a department has no sick leave problem under a 10/14 schedule (2T265).

Productivity/Job Commitment

The City maintains that the arbitrator did not give due weight to the public interest when he awarded a schedule that, it contends, will decrease productivity because it requires substantial downtime. It also alleges that firefighters will not be able to concentrate for the entire shift; will have less commitment to their careers; and will obtain second jobs. The City also contends that, with fewer work days, firefighters will have weaker ties to the community in which they work, resulting in less public support for the department.

The arbitrator considered most of these arguments, some of which are related to the effect of the 24/72 schedule on firefighter morale, and yet reached a reasonable determination to award the schedule. While he did not separately address the City's productivity concerns, he gave weight to the testimony of FMBA witnesses who stated that their departments operated more efficiently and productively under the 24/72 than under the 10/14 schedule.

As the arbitrator noted, all of the FMBA witnesses testified that the 24/72 schedule had improved firefighter morale, with Imperato commenting that morale was extremely important because of the stressful nature of the job; South Orange Fire Chief Markey recounting that "people became more interested" and "participated more" after the schedule was reinstituted; and Caswell opining that better morale provided for a better worker (Arbitrator's opinion, pp. 110-111). The arbitrator reasonably gave weight to this experience-based testimony, which tied improved morale to improved operations. This testimony was logically antithetical to the conclusion that the 24/72 schedule reduced firefighters' productivity and job commitment.

The arbitrator also reasonably rejected the City's argument that the schedule would reduce public support for the department. While we respect this concern, there is little evidence to support it. While one-half of one percent of City residents signed a petition opposing the schedule, the petition does not address safety or productivity issues but instead objects that the 24/72 schedule will increase time off and likely increase the number of firefighters holding second jobs (Aa1633-Aa1673).

In that vein, the record indicates that some firefighters on both the 24/72 and 10/14 schedules have second jobs (8T1032; 5T594). However, even if we were to assume that that figure would increase with a 24/72 schedule, DeGroot stated that the City already tracks and limits outside employment and could do so on a

24/72 schedule (5T594). See Montclair Tp., P.E.R.C. No. 90-39, 15 NJPER 629 (¶20264 1989).

Finally, we turn to the City's concerns about productivity. The record includes substantial evidence that, as operated in recent years, the 24/72 schedule maintains or increases productivity and efficiency over the 10/14. Hillside Chief Caswell explained that his men are always busy and that they work until 9 or 10 p.m. if something needs to be done, going to bed at 11:30 or 12 p.m. (1T116). The Union Township study showed that fire inspections and non-emergency services increased after the 24/72 schedule was implemented, without any staff increase (Arbitrator's opinion, p. 59; Aa1058-Aa1059). Passaic Chief Imperato stated that he believed his department operated more efficiently under the 24/72, with sick leave and overtime dropping, and the head of the Passaics' fire prevention bureau stated that the City's building and inspection program has expanded in the years since the 24/72 was implemented (Arbitrator's opinion, pp. 59-60; 2T169-2T170; Aa1327). Roselle's Chief Hill testified that his department has handled an increased number of calls without adding staff. Finally, Hill and Caswell maintained that communications were better on the 24/72 shift because information about street blockages, construction projects, and staff assignments has to be communicated only once a day (Arbitrator's opinion, p. 55; 1T103-1T104; 1T134-1T135).

All this testimony supports a conclusion that the 24/72 schedule would maintain or increase productivity although, except for the communications impact, the witnesses did not explain why the schedule leads to said results. However, the City's concerns also have some support in the record.

An undated report from the Institute for Training in Municipal Administration recommends against the 24-hour shift, reasoning that it includes only 8 hours of productive non-emergency time, with the remainder devoted to eating and sleeping (Aa132-Aa133). The report recommends the 10/14 shift, explaining that that shift results in 16 hours of productivity because the day shift works ten hours and the night shift works 6 hours (presumably 6 p.m. to 12 p.m.) (Aa132-Aa133).

In a similar vein, the City cites the testimony of Joseph D'Arco, a former city manager/business administrator from South Orange Village, who recalled his observations of how the 24/72 worked in that municipality during the late 1980s. He described how, on his visits to fire stations, he saw little training or fire planning activity and no esprit de corps (7T834-7T836). A consultant's study concluded that the department was a "passive" one that had not adopted the modern approach of using non-emergency time for training, equipment maintenance and inspections (7T838-7T844; Aa396).

However, while D'Arco linked the observed problems in South Orange to the 24/72 schedule, the report did not recommend

changing the schedule. The current chief, Jeff Markey, stated that the village is still on the 24/72 schedule and that he has implemented the report's recommendations to become more active by, for example, bringing in outside trainers; requiring that captains and lieutenants be certified as fire inspectors; increasing fire inspections; and improving physical training (8T1021-8T1024; Aa396-449).

Based on this evidence, we find that a 24/72 schedule does not prevent requiring a similar amount of productive time -- in any one day -- as is required under the 10/14 schedule. The arbitrator credited the testimony of several fire chiefs concerning their positive experiences with the schedule. This testimony, particularly that of Caswell, supports the proposition that, because firefighters report to duty after three days off, they can remain active under the 24/72 schedule from 8 a.m. until well into the evening hours.

#### Recalls

The City maintains that the weight of the evidence shows that the 24/72 schedule will impair its ability to recall off-duty firefighters to a fire scene. Evidence of such difficulties and more particularized arguments could weigh against award of the schedule, since this is an area intertwined with public safety. However, the general concerns expressed by the City do not rise to this level.

The City reasons that the 24/72 schedule will enable firefighters to live farther away, thereby increasing the time required to respond, when recalled to a serious fire. It stresses DeGroot's statement that a firefighter who lives more than 30 minutes away cannot timely respond (4T387).

The arbitrator acknowledged City-submitted data from three communities tending to show a correlation between the 24/72 schedule and a lower percentage -- compared to Clifton -- of firefighters who live in town. However, the arbitrator reasoned that individuals move to or from a community for many reasons, such as the quality of schools, and commented that the City had not shown that communities on the 10/14 schedule retained a stable percentage of firefighters living in town. He cited Lavin's testimony that there had been no "mass exodus" after communities moved to the 24/72 schedule and Caswell's testimony that the percentage of firefighters living in Hillside did not change after the department implemented a 24/72 schedule. He also noted the statutory prohibition against a municipality requiring its firefighters to live in the community, N.J.S.A. 40A:14-9.1, and the fact that the City is required by a consent decree to open up appointments to all New Jersey residents (Arbitrator's opinion, pp. 113-115).

However, the arbitrator did not disagree with the City's position that recalls could be impeded if firefighters lived farther away. Instead, he found that the City had not shown a

firm connection between residence and the 24/72 schedule, and that the comparatively high percentage of firefighters living in the City (50%) reflected the quality of life there (Arbitrator's opinion, pp. 112-116).

We agree with this analysis, and add that Marchisello and Dubravsky both indicated that, when extra firefighters are needed, the City relies primarily on mutual aid rather than recalls, with recalled firefighters being used as "pilots" to guide mutual aid companies (3T305; 8T1054; 8T1058). Further, the fire chief from South Orange -- a jurisdiction cited by the City as having a low percentage of firefighter residents -- stated that 30 out of 32 firefighters responded to a recent recall (8T1028).

In these circumstances, we accept the arbitrator's conclusion that there is no evidence that the 24/72 schedule will impede recalls.

#### Transfers/discipline

The City also argues that the arbitrator did not give due weight to two other elements of the public interest: transfers and discipline.

With respect to transfers, the City states that a fire department "may need" to transfer a firefighter to another shift; cannot reduce the firefighter's off-duty time as a result; and, therefore, must give the firefighter an extra day off. It maintains that under the 24/72 schedule the extra day would be 24 hours as opposed to 10 hours under the 10/14.

The FMBA does not counter this argument and the arbitrator did not address it. However, absent more particularized information and arguments about when and how often transfers have to be made and the projected cost of transfers under the 24/72 schedule, this factor does not undercut the arbitrator's overall public interest analysis.

With respect to discipline, the City contends that the 24/72 schedule could impede a superior officer from "following through" on a disciplinary matter because of the time off between duty days. As the arbitrator found, the City did not present evidence showing that discipline has been impeded in the communities operating under the 24/72 (Arbitrator's opinion, p. 111). Just as important, the City has not described how a disciplinary matter is handled under the 10/14 schedule or particularized how that process would be impeded under the 24/72. Imperato and Chrystal testified that they are able to deal with disciplinary matters on the 24/72, with Chrystal commenting that because discipline is "taken care of immediately" in his department, discipline would be the same under either a 10/14 or 24/72 schedule (2T204; 2T240). And while we have noted the strong public interest in ensuring appropriate supervision in a public safety department, the arbitrator correctly observed that the supervision issues present in Teaneck -- and several of the Court and Commission decisions cited in that case -- are not implicated here, where officers and firefighters are in the same unit. In



these circumstances, there is no basis to disturb the arbitrator's conclusion that the 24/72 schedule will not impair discipline.

### Comparability

The City maintains that the arbitrator's comparability analysis was flawed, arguing that he improperly found that the schedule would be beneficial simply because so many municipalities use it. It emphasizes that it "compares favorably" to the sixteen New Jersey municipalities that operate on the 10/14 schedule.

The arbitrator did not award the 24/72 schedule simply because it is a common schedule in New Jersey and nationally. However, he appropriately considered the prevalence of the schedule vis-a-vis the 10/14: both schedules affect work hours and working conditions and, under 16g(2), he was required to compare the wages, salaries, hours and working conditions of the employees involved in the proceeding with, among other comparisons, employees performing similar services in comparable jurisdictions. The City does not suggest that firefighters in 24/72 jurisdictions are an inappropriate comparison group or that firefighters in 10/14 communities are more appropriate.

In this posture, and given the statistics on the number of departments using the 24/72 schedule and the number using a 10/14, the arbitrator reasonably found that the comparability factor favored implementation of the schedule. Of course, the arbitrator was required to consider all the other relevant statutory factors before awarding the schedule. Further, where,

as here, there are arguments that a work schedule proposal will impair the operation of a public safety department and the delivery of essential services, comparability cannot be the determinative factor in awarding the proposal unless the arbitrator analyzes those arguments and finds that the proponent has met its burden of justifying the change. As we have discussed, the arbitrator considered the City's arguments and evidence in this vein.

The City also maintains that the arbitrator did not consider evidence of private sector work schedules and did not sufficiently weigh the fact that almost all municipalities that operate on the 24/72 schedule adopted the schedule voluntarily and with management's approval.

With respect to the latter point, the arbitrator had to consider all of the City's arguments against the proposed schedule. But the fact of opposition does not itself weigh against award of the proposal: disagreement is inherent in the arbitration process and an arbitrator must resolve the unsettled issues. N.J.S.A. 34:13A-16d(2); Cherry Hill.

Finally, the only private sector evidence that the City submitted was Dubravsky's certification to the effect that no one in the private sector works 24 hours straight. However, neither

the 10/14 nor the 24/72 schedule would appear to be common in the private sector.<sup>5/</sup>

In sum, the arbitrator's consideration of the comparability criterion comported with the statute and was one aspect of the arbitrator's overall analysis.

#### Evidence Arguments

The City makes two evidence-related arguments that pertain to the impact of a schedule change on the public interest. First, it maintains that the arbitrator should have given greater weight to a report prepared by the New Jersey Career Fire Chiefs' Association opposing the schedule. Second, it contends that the arbitrator erred in giving only minimal weight to written statements by Clifton deputy chiefs criticizing the 24/72 schedule.

The arbitrator appropriately exercised his discretion in weighing this evidence. He noted the Fire Chiefs' report but observed that it was not based on empirical data (Arbitrator's opinion, p. 97). We add that the report was prepared in the early 1970's in order to present the negative aspects of the schedule and that the Association is now neutral on the schedule, with most chiefs believing it to be a local issue (2T177; 4T375-4T376;

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<sup>5/</sup> The record shows that another group of public-sector employees, Air Force firefighters, work a 24-hour shift (3T298-3T300).

8T1081-8T1082). In any case, the arbitrator effectively analyzed the points made in the report.

Similarly, the deputy chiefs' concerns about the 24/72 schedule were similar to, although much less detailed than, those expressed by the City during arbitration. The arbitrator analyzed those concerns, together with the FMBA's arguments and evidence, but was not required to give more weight than he did to the deputy chiefs' opinions, particularly since none of them appears to have experience under the 24/72 schedule.

Based on the foregoing, we find that the arbitrator comprehensively analyzed the evidence and arguments; gave due weight to the relevant statutory factors; and reached a reasonable determination that the FMBA had met its burden of justifying the award of the schedule change for a one-year trial period. His award is based on substantial credible evidence in the record as a whole.

We repeat that there must be strong reasons to award a major schedule change, even on a trial basis. They are present in the arbitrator's well supported conclusions that the schedule will improve morale, increase recuperative time, and reduce firefighter fatigue -- thereby improving firefighter safety. The arbitrator's analysis is grounded in extensive testimony in support of the schedule from fire chiefs with supervisory experience under both schedules. We will not disturb his decision to give greater weight to this evidence than to the City's predictions concerning

the possible negative effects of the schedule on department operations.

We also stress that the arbitrator awarded the schedule for a one-year trial period only and that the trial period will allow both parties to evaluate how the schedule has worked. As we will discuss, the schedule will become permanent only if the parties agree or the FMBA, after the trial period, again obtains the schedule in interest arbitration, where it will have the burden of justifying it. That proceeding will enable an interest arbitrator to assess the experience under the trial period in conjunction with the City's evidence and arguments about department operations under the 10/14 schedule.

We turn now to the award's post-trial review procedures.

The City maintains that those procedures violate Teaneck by placing the burden on the City, at the end of the trial period, to show "reasonable cause" to revert to the 10/14 schedule. It also argues that the arbitrator who awarded the schedule should not decide whether it should be continued and that the arbitrator exceeded his power, and violated N.J.S.A. 2A:24-8(a) and (d), by retaining jurisdiction over the work schedule issue even though the trial period will likely not conclude until after the contract he awarded expires.<sup>6/</sup> In addition, citing Teaneck, it asks us

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<sup>6/</sup> N.J.S.A. 2A:24-8(a) and (d) require that an award be vacated where, among other reasons, it was procured by undue means or where an arbitrator exceeded his or her powers.

to specify that it may return to the 10/14 schedule after the trial period expires.

We conclude that the trial period portion of the award must be modified. That one-year trial period will be implemented within 30 days of the parties' receipt of this opinion, or such other time as the parties may agree and, absent the parties' agreement to continue or discontinue the schedule, it will be evaluated by an interest arbitrator appointed in accordance with our regulations. Given the January 1, 1999 through December 31, 2002 contract term and this March 2002 decision, the contract will expire before the one-year trial period is completed, although the arbitrator could not have known this when he issued his September 2001 award.<sup>7/</sup> Thus, evaluation of the trial period will take place during successor contract negotiations. In this posture, the best and least complicated mechanism for evaluating the 24/72 schedule -- absent the parties' agreement to continue or discontinue it -- is the post-contract expiration interest arbitration process, where an arbitrator will be appointed in accordance with our regulations. We do not decide whether an arbitrator who awards a schedule change on a trial basis may retain jurisdiction, during the term of an awarded contract, to consider whether the schedule should be made permanent.

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<sup>7/</sup> N.J.S.A. 34:13A-16(f)(b) effectively stays implementation of an award that is appealed to us.

We next consider whether the award's post-trial review procedure is consistent with Teaneck.

In Teaneck, the arbitrator tied continuation of the schedule after the trial period to the achievement of certain benefits. Consistent with that objective, we clarified that, after the trial period, the new work schedule would not become part of the status quo for successor contract negotiations and could not "be continued into the agreement that follows the completion of the trial period unless there is a mutual agreement to do so or an interest arbitrator awards the schedule anew." 25 NJPER at 457. Teaneck also specified that if there is no mutual agreement, "the burden will be on the FMBA to again justify adoption of a new work schedule proposal." Ibid. These standards apply here, where the arbitrator also awarded the 24/72 schedule primarily because it would improve morale, safety, and working conditions.

Therefore, requiring the City to establish "reasonable cause" to revert to the 10/14 schedule is not consistent with Teaneck. Teaneck contemplated that, after completion of the trial period, the parties would have a body of experience that would allow them, or an interest arbitrator, to assess how the schedule had worked. But analytically, they would be in the same position as before the award: absent mutual agreement, the 24/72 schedule

could only be continued if an interest arbitrator awarded it, in a proceeding in which the union had the burden of justifying the schedule. By contrast, the "reasonable cause" provision places the burden on the City to show that the new schedule should not be continued.

Finally, we consider whether the City may return to the 10/14 schedule after the trial period concludes. While Teaneck referred to the old schedule being "effectively restored" following the trial period, we did not mean that the employer could unilaterally revert to the old schedule after the trial period. Instead, the quoted language signified that the burden was on the union to again justify the schedule. We think it would be destabilizing to allow the employer to revert to an old schedule during negotiations or interest arbitration, with the possibility that it might have to change back should an interest arbitrator again award the schedule. See Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Ass'n, 78 N.J. 25, 48 (1978) and N.J.S.A. 34:13A-21.

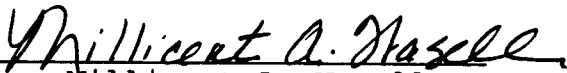
For the foregoing reasons, the award is affirmed with a modification to the trial period consistent with this opinion.



ORDER

The arbitrator's award is affirmed with a modification to the trial period consistent with this opinion. That one-year trial period will be implemented within 30 days of the parties' receipt of this opinion, or such other time as the parties may agree and, absent the parties' agreement to continue or discontinue the schedule, it will be evaluated by an interest arbitrator appointed in accordance with our regulations.

BY ORDER OF THE COMMISSION

  
Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Buchanan, Katz, McGlynn, Muscato, Ricci and Sandman voted in favor of this decision. None opposed.

DATED: March 27, 2002  
Trenton, New Jersey  
ISSUED: March 28, 2002

P.E.R.C. NO. 2002-4

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF ORANGE,

Appellant,

-and-

Docket No. IA-2000-71

ORANGE SUPERIOR OFFICERS  
ASSOCIATION,

Respondent.

Appearances:

For the Appellant, Lum, Danzis, Drasco, Positan & Kleinberg, LLC, attorneys (Thomas M. McCormack, of counsel; Joseph M. Wenzel, on the brief)

For the Respondent, Loccke & Correia, attorneys (Richard D. Loccke, of counsel; Michael A. Bukosky, on the brief)

DECISION

The City of Orange appeals from an interest arbitration award involving a negotiations unit of police sergeants, lieutenants, and captains. See N.J.S.A. 34:13A-16f(5)(a). It asks us to vacate the award as it pertains to holiday pay.

The arbitrator resolved the unsettled issues by conventional arbitration, as he was required to do absent the parties' agreement to use another terminal procedure. N.J.S.A. 34:13A-16d(2).

The arbitrator awarded a four year contract from January 1, 2000 through December 31, 2003 (Arbitrator's opinion, p. 20). Among other things, he awarded the SOA's holiday pay proposal,

ordering that "[h]oliday pay shall be incorporated into base salary for all years of service," effective January 1, 2001.

The City appeals. It asks us to vacate the portion of the award concerning holiday pay, arguing that it violates an April 2000 Police and Fire Retirement System (PFRS) regulation. It contends that this regulation bars holiday pay from being considered pensionable compensation in the circumstances here. Citing Delran Tp., P.E.R.C. No. 99-86, 25 NJPER 166 (¶30076 1999), the SOA counters that the method of payment for holiday pay is a mandatorily negotiable subject; that the arbitrator did not address the pension effect of the "fold-in" he ordered; and that the Division of Pensions has exclusive jurisdiction to determine such pension implications. It also contends that because the City did not file a timely scope of negotiations petition, the City is estopped from alleging that the holiday pay portion of the award is preempted. See N.J.A.C. 19:16-5.5(c).

The background to this issue is as follows. The parties' predecessor agreement stated that holiday pay was to be included in base salary beginning with the 23rd year of service, whereas prior to that point it was paid as a lump sum (Arbitrator's opinion, p. 17; T162). The parties believed that this provision increased an officer's pension because, under pre-2000 regulations, regular, periodic payments were considered in calculating pension benefits, whereas lump sum payments were not (Arbitrator's opinion; p. 17; T162; N.J.A.C. 17:4-4.1(d)

(repealed)). While this distinction between lump sum and regular, periodic payments still pertains, see N.J.A.C. 17:4-4.1(a)1 and 2iv, the new regulation also states that "creditable compensation" does not include "[a]ny form of compensation which is not included in a member's base salary during some of the member's service and is included in the member's base salary upon attainment of a specified number of years of service." N.J.A.C. 17:4-4.1(a)(2)xiii. The rationale underlying N.J.A.C. 17:4-4.1(a)(2)xiii is that end-of-career salary increases, designed primarily to increase retirement benefits, jeopardize the actuarial integrity of the system because they result in retirees receiving benefits which were not adequately funded by employer and employee contributions throughout the employee's career. Fraternal Order of Police, Garden State Lodge #3, et al. v. Bd. of Trustees of the Police and Firemen's Retirement System, \_\_\_\_\_ N.J. Super. \_\_\_\_\_ (App. Div. 2001); Wilson v. Bd. of Trustees of Police and Firemen's Ret. System, 322 N.J. Super. 477, 481-483 (App. Div. 1998).

At the time the SOA filed its interest arbitration petition, N.J.A.C. 17:4-4.1 had been proposed and the SOA sought to fold holiday pay into base salary without regard to years of service. Before the arbitrator, the City maintained that the proposal would not benefit superior officers (Arbitrator's opinion, p. 17). The City argued, as it does now, that N.J.A.C.

17:4-4.1(a)(2)xiii requires that holiday pay must be included in an employee's base wages during all of his or her years of service with the City for it to be used in calculating pension benefits. The City argued that allowing the holiday pay to be considered pensionable compensation for the superior officers only would trigger the actuarial problems referred to in Wilson and would run afoul of N.J.A.C. 17:4-4.1(a)2xiii, since employees do not become superior officers without having some years of service in the rank-and-file unit (Arbitrator's opinion, p. 17).

While the arbitrator appeared to agree with this interpretation of the pension regulations, he nevertheless awarded the SOA proposal. He reasoned:

Conceptually the parties have an accord as to the enrichment of salary to be used for computation of pension benefits. Both parties have benefited from the provision in the 1999 Agreement which delays the combination until the 23rd year since neither makes contributions to the pension for years before that point and the addition to salary is not a function of overtime or other base salary rates prior to the inclusion. However, the Pension Division has made it clear that to be an accepted part of the pay rate for computation of pension benefits the holiday pay or any other element considered to be salary must be incorporated for the entire period of employment.... The City argues that as long as the PBA unit of patrolmen, the source of appointments to the ranks in this unit, do not have such a program, that is incorporation of holiday pay at initial appointment or when the Pension Division may have otherwise allowed, there is no value to the individual to effect a change in this unit. On the other hand, should the demand be rejected and should such an acceptable plan be initiated for patrolmen, then when they are promoted to sergeant they would become ineligible for the value of holiday pay as a

part of their pensionable wages according to the terms of the SOA 1999 Agreement. This would seem to be unfair and probably a disincentive for accepting the promotion as well. If one can presume that such a program, if consummated with the PBA unit, has the support of the City, then having an Agreement with the SOA which precludes it remaining effective appears to be inappropriate. Based on this line of reasoning, I intend to provide a remedy for this situation which reflects the circumstances outlined above. [Arbitrator's opinion, p. 17].

Based on this analysis, the arbitrator ordered that "[h]oliday shall be incorporated into base salary for all years of service", effective January 1, 2001.

We first consider the SOA's contention that, because the City did not file a scope of negotiations petition, it is now barred from arguing that the holiday pay portion of the award is preempted. See N.J.A.C. 19:16-5.5(c) (where party does not file a scope of negotiations petition, it is deemed to have agreed to submit all unresolved issues to interest arbitration).

A claim that a proposal contravenes a statute or regulation is a claim that the proposal is not mandatorily negotiable. See Paterson Police PBA No. 1 v. Paterson, 87 N.J. 78 (1981). Accordingly, it should be raised in a scope of negotiations petition that, under the regulations in effect in

February 2000, had to be filed within 10 days of a respondent's receipt of an interest arbitration petition.<sup>1/</sup>

We will assume for purposes of analysis that the deadline in N.J.A.C. 19:16-5.5(c) did not apply because, while the SOA's February 25, 2000 petition listed "holiday pay in base pay" as one of the disputed issues, the regulation on which the City relies was not adopted until February 28, 2000 and did not become effective until April 3. See 32 N.J.R. 1246(a). While the City could have filed a scope petition after the regulation was adopted, our regulations did not mandate that it do so. Compare Borough of Prospect Park, P.E.R.C. No. 92-117, 18 NJPER 301, 303 n.1 (¶23129 1992) (declining to find that petition filed after N.J.A.C. 19:16-5.5(c) deadline was untimely where revised work schedule proposal raised new negotiability concerns and petition was filed after employer received revised proposal).

In these circumstances, we will consider the merits of the City's claim. We do so given the effective date of the regulation; the principle that a public sector arbitration award must conform to statutes and regulations, see Old Bridge Tp. Bd. of Ed. v. Old Bridge Ed. Ass'n, 98 N.J. 523, 527 (1985) and Jersey City Ed. Ass'n v. Jersey City Bd. of Ed., 218 N.J. Super. 177, 188

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<sup>1/</sup> Regulations effective July 2, 2001 change the deadline to fourteen days after a respondent's receipt of the Director of Arbitration's Notice of Filing of an interest arbitration petition. See 33 N.J.R. 1169(a); 33 N.J.R. 2281(a).

(App. Div. 1987); and the City's contention that the award violates a regulation. Compare Borough of Roseland, P.E.R.C. No. 2000-46, 26 NJPER 56 (¶31019 1999) (one factor that may be considered in evaluating whether to relax the time requirements for filing a scope petition is whether a party alleges that a proposal contravenes a statute or regulation).

We now turn to the merits of the City's appeal. We agree with the SOA that this case is largely governed by two principles set forth in Delran.

The first principle is that an arbitrator may not issue any "finding, opinion or order regarding any aspect of the rights duties, obligations in or associated with ... any governmental retirement system or pension fund...." See N.J.S.A. 34:13A-18.

The second principle is that, while the subject of pensions is not mandatorily negotiable, see N.J.S.A. 34:13A-8.1 and State v. State Supervisory Employees' Ass'n, 78 N.J. 54, 83 (1978), pension statutes and regulations do not automatically preempt proposals relating to terminal leave, longevity or holiday pay, even though those proposals may trigger questions about how the compensation will be treated for pension purposes. Delran; Town of Kearny, P.E.R.C. No. 2001-58, 27 NJPER 189 (¶32063 2001); Town of Harrison, P.E.R.C. No. 99-54, 25 NJPER 40 (¶30016 1998); Galloway Tp., P.E.R.C. No. 98-133, 24 NJPER 261 (¶29125 1998); Voorhees Tp., P.E.R.C. No. 96-77, 22 NJPER 198 (¶27105 1996). Stated another way, our case law has focused not on whether a form



of compensation may, under pension regulations, be used to calculate pension benefits, but on whether it is negotiable separate and apart from its pension implications.

Thus, we affirmed an award in Delran, also involving a police superiors unit, where an arbitrator awarded a union proposal to include holiday pay in base pay. Delran was decided before the 2000 regulation was adopted, but the employer's argument was conceptually the same as the City's: the holiday pay portion of the award should be vacated because, given Division of Pension requirements, SOA members' holiday pay could not be considered part of their base salary for pension purposes. We rejected that claim, reasoning that the arbitrator's award did not address the pension effect of the fold-in he had ordered and that the award could be legally implemented by including holiday pay in base pay for the purpose of calculating overtime -- one of the SOA's objectives in proposing the fold-in. 25 NJPER at 169. We held that the method of payment for holiday pay and the base pay rate for overtime purposes were mandatorily negotiable. We reasoned that these compensation issues were separate from how the holiday pay was treated for pension purposes. While noting that the arbitrator's opinion reflected his view that the award would result in slightly higher pensions for unit members, we stressed that neither we nor the arbitrator had jurisdiction to direct what was to be included in base salary for pension purposes. Ibid.

Delran governs this case. As in Delran, the arbitrator's award addresses a mandatorily negotiable compensation issue: the method of payment for holiday pay that also, as the SOA notes, affects overtime and other pay rates calculated on an officer's base salary. The award does not direct that holiday pay be included in base pay for pension purposes and it can be legally implemented, regardless of whether the Division of Pensions finds the compensation to be pensionable, by adding holiday pay to base salary for the entire period of time an individual is in the SOA unit rather than, as before, with the 23rd year of service. We stress that the Division of Pensions must resolve the pension implications, if any, of changing the method for paying holiday pay for the SOA unit. Delran; Galloway.

Consistent with this analysis, we conclude that the arbitrator did not, as the City argues, exceed his authority by awarding the fold-in when the PBA unit does not have a similar provision. The City's argument rests on the assumption that the holiday pay will be pensionable only if and when holiday pay is also included in the base salary of rank-and-file unit members. Even if we assume that to be the case, the award can, as noted, still be legally implemented as it affects the method of payment for holiday pay -- and overtime and other pay rates -- for this unit. While the arbitrator could, as the City notes, have made his award contingent upon the PBA unit's receiving the provision, see Borough of Matawan, P.E.R.C. No. 99-107, 25 NJPER 324 (¶30140 1999), he was not required to do so.

In so holding, we recognize that the 23rd year fold-in in the parties' predecessor agreement was intended to increase members' pensions. And we also recognize that the SOA may have proposed to fold-in holiday pay without regard to years of service so as to retain or obtain pensions at a particular level, while conforming to the new regulation. However, the fact that an award on a compensation issue may, after Division of Pensions review, also affect pension benefits, does not make the award invalid. See Delran, 25 NJPER at 169 (commenting that one effect of the arbitrator's award could be to increase pension benefits if other requirements then in effect were also met).

In affirming the arbitrator's award, we note one difference between this case and Delran. In Delran, the Division of Pensions had already advised the Township that holiday pay would not be included in an SOA member's pensionable base salary unless all other Township employees who belonged to PFRS -- i.e., rank-and-file police officers -- also received holiday pay on a regular, periodic basis instead of as a lump sum. In this case, we have no Division of Pension communication relating to this employer, and the April 2000 pension regulation appears to take a different approach from the Division of Pensions letter referred to in Delran.<sup>2/</sup> Thus, we have less basis than in Delran to

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2/ N.J.A.C. 17:4-4.1(a)1 and N.J.A.C. 17:4-4.1(a)2xi now focus on whether a form of compensation is paid uniformly among members of the same negotiations unit who: (1) receive the compensation and (2) who are also members of the same retirement system.

surmise that the Division of Pensions will conclude that the holiday pay is not creditable for pension purposes, and less reason to vacate an award that addresses the mandatorily negotiable issue of the method of payment for holiday pay.

ORDER

The arbitrator's award is affirmed.

BY ORDER OF THE COMMISSION

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Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Buchanan, Muscato, Ricci and Sandman voted in favor of this decision. Commissioners Madonna and McGlynn abstained from consideration. None opposed.

DATED: July 26, 2001  
Trenton, New Jersey  
ISSUED: July 27, 2001

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF TEANECK,

Appellant,

-and-

Docket No. IA-97-45

TEANECK FIREMEN'S MUTUAL  
BENEVOLENT ASSOCIATION,  
LOCAL NO. 42

Respondent.

SYNOPSIS

The Public Employment Relations Commission affirms, with a modification, an interest arbitration award issued to resolve negotiations between the Township of Teaneck and Teaneck Firemen's Mutual Benevolent Association, Local No. 42. The Township appeals, contending that the removal of the originally appointed arbitrator violated Commission rules and was contrary to the Interest Arbitration Reform Act's policy of encouraging mediation efforts by arbitrators. It also contends that the arbitrator erred in awarding a 24/72 work schedule; that a 2% stipend for unit members with EMT/EMS certification is not supported by substantial credible evidence; and that the arbitrator did not properly analyze the statutory factors in awarding salary increases.

The Commission first concludes that the Director of Arbitration had the authority to approve the original arbitrator's request to withdraw. The Commission next concludes that the arbitrator's award of a proposal that will result in different work schedules for fire officers and firefighters raises serious supervision concerns and therefore modifies the award to provide that the schedule shall not be implemented unless and until a 24/72 schedule is agreed to or awarded with respect to the fire officers' unit. The Commission approves of the arbitrator's decision to award the 24/72 schedule on a trial basis, but clarifies that unless the parties agree, the 24/72 schedule will not become the status quo for successor contract negotiations. The Commission next concludes that the salary increases and the 2% stipend for EMT/EMS certification awarded are supported by substantial credible evidence in the record as a whole. With respect to the EMT/EMS certification stipend, the Commission notes that if the Township assumes an additional salary obligation by a large number of firefighters obtaining a certification, it may seek to remove the stipend in future agreements.

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 TEANECK,

Appellant,

-and-

Docket No. IA-97-45

TEANECK FIREMEN'S MUTUAL  
BENEVOLENT ASSOCIATION,  
LOCAL NO. 42

Respondent.

Appearances:

For the Appellant, Peckar & Abramson, P.C.,  
attorneys (David Lew and Jeffrey M. Daitz, of counsel)

For the Respondent, Fox & Fox, LLP, attorneys (David I.  
Fox and Stacey B. Rosenberg, of counsel)

DECISION

The Township of Teaneck appeals from an interest arbitration award involving a negotiations unit of 68 rank-and-file firefighters. See N.J.S.A. 34:13A-16f(5)(a). It asks us both to vacate the award and to issue an order defining the scope of our power to approve an arbitrator's withdrawal from a case. As detailed later, the arbitrator who issued the award was the second arbitrator appointed in this proceeding. He was appointed after the Director of Arbitration granted the request of the first arbitrator to withdraw from the case.

The arbitrator resolved the unsettled issues by conventional arbitration, as he was required to do absent the

parties' agreement to use another terminal procedure. N.J.S.A. 34:13A-16d(2). The parties' final offers were as follows.

The Township proposed a four-year contract for 1997 through 2000. For 1997, it proposed a 2.75% across-the-board increase, effective July 1, 1997, and for 1998, 1999 and 2000 it proposed 3% increases, all effective on July 1 of the respective calendar year.

The FMBA proposed a five-year contract from 1997 through 2001, with 5% across-the-board increases on January 1 of each year. In addition, it sought "education stipends" of 3% of base salary for unit members with Emergency Medical Technician/Emergency Medical Services (EMT/EMS) certification; 2% for unit members with first responder training; 1% for unit members with a fire inspector license, and 1% for unit members with HAZMAT training, subject to a maximum total stipend of 4% of base salary. The FMBA also proposed a 24/72 hour work schedule to replace the existing 10/14 hour work schedule. In addition, it presented 22 other proposals on a variety of issues. Some proposals addressed personal days, union leave, education leave, early relief time, acting officer pay, survivors' benefits, and timing of longevity increases. Others would have required that the Township provide unit members with, or modify, certain equipment. The FMBA also proposed clauses concerning access to personnel files, work station uniforms, and establishment of overtime lists, and sought removal of a provision concerning

presentation of tours. Finally, the FMBA proposed that it have sole authority to continue a grievance through steps three and four of the grievance procedure, a proposal the Township did not oppose. In addition to their proposals, the parties signed an April 16, 1998 agreement that lowered the starting salary for new hires. The Township also agreed to fill five vacancies from a Department of Personnel list that expired on April 28, 1998.

The arbitrator issued an award that established a four-year contract from January 1, 1997 through December 31, 2000. He awarded a 4% increase effective July 1, 1997, a 4.25% increase effective July 1, 1998, and 4% increases effective July 1, 1999 and July 1, 2000. He also awarded a stipend of 2% of base salary for unit members with an EMT/EMS certification (Arbitrator's opinion, p. 45). In addition, he awarded the FMBA work schedule proposal on a trial basis and ordered that unit members be changed to a 24/72 hour work schedule "on or before May 1, 1999 or another date to be mutually agreed on..." (Arbitrator's opinion, p. 45). He stated that the schedule was to remain in effect until December 31, 2000, "or until it is altered or replaced by a subsequent collective bargaining agreement" (Arbitrator's opinion, p. 45). In connection with the award of the 24/72 work schedule, the arbitrator ordered that all time-based benefits such as vacations, holidays, personal days and sick leave be adjusted to maintain the same hourly level of costs as under the current schedule (Arbitrator's opinion, p. 45). The



award also provided that mutual exchanges must not result in a unit member working two consecutive tours of duty (Arbitrator's opinion, p. 45). Finally, the arbitrator awarded the FMBA proposal that only the FMBA be permitted to pursue a grievance through steps three and four of the grievance procedure.

(Arbitrator's opinion, p. 46). He denied all other FMBA proposals (Arbitrator's opinion, pp. 42-43).

The Township appeals, contending first that the "removal" of the originally appointed arbitrator violated Commission rules and was contrary to the Reform Act's policy of encouraging mediation efforts by arbitrators. It also contends that the arbitrator erred in awarding a 24/72 hour work schedule; that the 2% stipend for unit members with EMT/EMS certification is not supported by substantial credible evidence in the record; and that the arbitrator did not properly analyze the statutory factors, N.J.S.A. 34:13A-16g, in awarding salary increases. It requests that the award be vacated or, in the alternative, remanded to the original arbitrator for reconsideration.<sup>1/</sup>

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<sup>1/</sup> The Township also requested oral argument, which we granted. Further, it asks that we require the FMBA to remove from its appendix a complaint that the FMBA filed against the Township alleging that it violated the Open Public Meetings Act, N.J.S.A. 10:4-6, et seq., when it voted to appeal the arbitrator's award. That complaint is not part of the record and we have not considered it in rendering this decision. However, its inclusion in the appendix is not prejudicial. On August 6, 1999, the Superior Court granted summary judgment dismissing the complaint.

We turn to the threshold issue of whether the first arbitrator should have been required to continue as arbitrator. This is the procedural history.

In January 1997, the FMBA filed a Petition to Initiate Compulsory Interest Arbitration. In February, the Director of Arbitration appointed an arbitrator who had been mutually selected by the parties. See N.J.S.A. 34:13A-16e(1); N.J.A.C. 19:16-5.6(b) and (d). During March through August 1997, the arbitrator conducted five mediation sessions. See N.J.S.A. 34:13A-16f(3); N.J.A.C. 19:16-5.7(b). The arbitrator issued two written "mediator's recommendations" that the arbitrator believed "addressed the concerns of the parties and represent[ed] an expeditious, fair and reasonable resolution of this impasse." The recommendations were issued "without prejudice to the Arbitrator's continued jurisdiction to conduct a formal hearing and issue an Award consistent with the statutory criteria, in the event that the Mediator's Recommendation is not accepted by both parties."

The recommendations did not result in a settlement and, in September, the arbitrator recommended that the parties negotiate without him until October 20. After the parties informed the arbitrator that they could not reach an agreement, he sought to schedule a formal arbitration hearing. At that point, the FMBA requested that the arbitrator withdraw from the proceeding, while the Township objected to his doing so. On January 7, 1998, the arbitrator wrote to the Director of Arbitration and set forth the above chronology. He then stated:

7. I have worked for PERC for 26 years and this is the first time I have been asked to withdraw from any proceeding. In the past thirteen years I have issued many Mediator's Recommendations and it has never resulted in a request that I withdraw from the proceeding. Although I have issued hundreds of decisions and awards, there has never been a claim that the decision or award was affected by prior settlement discussions.

8. I am fully confident that I can conduct the Interest Arbitration hearing in Teaneck and issue an award consistent with the statutory criteria without any reference to the prior settlement discussions.

9. The revised statute apparently encourages the pursuit of mediation to expedite the impasse resolution.

10. Honoring the request for an arbitrator to withdraw after the issuance of a Mediator's Recommendation may do harm to the interest arbitration process because it could inhibit aggressive mediation efforts by arbitrators.

11. The revised statute also encourages and requires the prompt resolution of impasses in Public Safety departments.

12. This matter was assigned to me on Feb. 24, 1997, based on the mutual request of both parties.

13. Litigation over the status of the arbitrator will further substantially delay the resolution of this impasse.

14. This arbitrator requests that he be relieved of this assignment by the agency so that the impasse may be expeditiously resolved.

15. At the same time, the undersigned intends to raise this issue for consideration by the panel of interest arbitrators in order to achieve a consensus on appropriate guidelines for the processing of these matters.

On January 15, 1998, the Director approved the arbitrator's request to be relieved of his assignment. However, prior to receiving the Director's letter, both the FMBA and the Township wrote to the Director concerning the arbitrator's request. The FMBA urged the Director to appoint a new arbitrator and stated that it was a common and desirable practice for an arbitrator who has issued a mediator's recommendation to withdraw from the proceeding at the request of either party. The Township countered that the arbitrator should be "urged and directed" to continue in the case. It maintained that the arbitrator had acted properly and in accordance with Commission rules in attempting mediation prior to the start of formal arbitration. It further stated that it did not accept the arbitrator's withdrawal, which was prompted by a desire to avoid an FMBA challenge to his standing. It requested "a full hearing before PERC" and reserved its rights to challenge the FMBA's "arbitrary and capricious action".

On February 5, 1998, the Director stated that, after reviewing the parties' positions, he approved the arbitrator's request to be relieved of his assignment.

On February 26, 1998, the Director appointed a new arbitrator and a formal hearing was scheduled. At the outset of the hearing, the Township's attorney stated that he was going forward under protest and was reserving the Township's right, if necessary, to challenge the assignment of the arbitrator (T7).

Against this backdrop, the Township contends that the Director should have required the first arbitrator to continue to serve. It maintains that the Act does not provide for removal of an interest arbitrator after unsuccessful mediation efforts and that, by focusing only on the arbitrator's request to be relieved of his assignment, the Director did not address the arbitrator's concern that honoring a request for withdrawal after issuance of a mediator's recommendation could inhibit mediation efforts. It asserts that while an arbitrator may be disciplined, suspended or removed for violating the Act or for good cause, see N.J.S.A. 34:13A-16e(2), no such cause was established. The Township also argues that Commission procedures for taking disciplinary action with respect to interest arbitrators were not followed; that no motion to disqualify the arbitrator was filed under N.J.A.C. 19:16-5.6(g); and that it should have been afforded a full hearing before action was taken on the arbitrator's letter. Finally, while the Township recognizes that the courts have cautioned against an interest arbitrator relying on information obtained in mediation sessions, see Aberdeen v. PBA, 286 N.J. Super. 372 (App. Div. 1996), it maintains that no such concerns were present in this case.

The FMBA counters that an arbitrator's resignation is not a proper ground for appeal of an interest arbitration award under N.J.S.A. 34:13A-16f(5)(a). It contends that the Township did not timely challenge the Director's decision to approve the first

arbitrator's request to be relieved of his assignment and is barred by laches and estoppel from doing so now, over one year after the Director's decision and after it has participated in hearings before the second arbitrator.<sup>2/</sup> In any case, the FMBA asserts that the arbitrator's resignation was proper and that the arbitrator ultimately agreed with the FMBA that, in rendering an award, he might have been influenced by his extensive mediation efforts, including the issuance of two formal recommendations. It maintains that the Director avoided an Aberdeen problem by approving the arbitrator's request to be relieved of his assignment.

The Township responds that the doctrines of laches and equitable estoppel are inapplicable because it timely objected to the Director's action and never represented that it would not challenge his decision. It notes that while the FMBA urges that it should have filed an interlocutory appeal under N.J.A.C. 19:16-5.17, that rule allows a party to object to an interim ruling in an appeal from a final award.

We comment first on the FMBA's arguments concerning the timeliness of the Township's challenge to the arbitrator's appointment and the grounds for appeal of an interest arbitration

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<sup>2/</sup> The FMBA suggests that the Township could have requested permission to appeal the Director's "interlocutory" decision, N.J.A.C. 19:16-5.17; appealed the Director's decision to the Appellate Division, or filed a motion to disqualify the second arbitrator.

award. The statutory goal of providing for an expeditious, effective and binding procedure for the resolution of disputes, N.J.S.A. 34:13A-14a, is not served where a party appeals an interest arbitration award based on an alleged defect in the arbitrator's appointment that was known at the outset of the proceeding. Compare Barcon Assocs v. Tri-County Asphalt Corp., 86 N.J. 179, 195 (1981) (commercial arbitrators must disclose, prior to the commencement of a proceeding, any facts which might indicate any interest or create a presumption of bias; party who does not object at that time waives the right to do so on the grounds revealed); see also Rutgers, the State Univ., P.E.R.C. No. 99-11, 24 NJPER 421 (¶29195 1998) (declining to vacate late award and holding that restarting proceedings would not serve statutory purpose of expeditiously resolving disputes).

Moreover, N.J.S.A. 34:13A-16f(5)(a) states that an award may be appealed on the grounds that the arbitrator did not apply the statutory criteria or violated the Arbitration Act. It is not clear that the allegedly improper replacement of an arbitrator falls within the ambit of the statute, particularly since a party is not harmed by having the matter heard by another member of the special panel of interest arbitrators. However, rather than resting our decision on these procedural grounds, we prefer to consider the Township's contention that the Director should have denied the arbitrator's request to withdraw. We stress that the Director's appointment of an interest arbitrator is ordinarily not

subject to review by us: the Director either appoints the arbitrator mutually selected by the parties or, lacking an agreement, assigns the arbitrator by lot. N.J.S.A. 34:13A-16e(1); N.J.A.C. 19:16-5.6(d). Where we do review an appointment or other administrative decision of the Director, we will sustain his decision absent a clear abuse of discretion.<sup>3/</sup>

The first arbitrator's letter to the Director balanced what he saw as two competing considerations: on the one hand, the Reform Act's emphasis on mediation and, on the other, its goal of providing an expeditious means of resolving impasses. While he expressed his concern that his withdrawal could inhibit aggressive mediation efforts -- and stated that he could render an award in accord with the statutory criteria -- he concluded that the balance weighed in favor of expeditious resolution of the dispute. He therefore requested that he be relieved of his assignment in order to avoid litigation over whether he had an obligation to withdraw. The Director accepted an experienced arbitrator's judgment that, given the circumstances of the case,

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<sup>3/</sup> Should a party believe that there are circumstances surrounding the appointment of an arbitrator that warrant our review, it should move to disqualify the arbitrator, see N.J.A.C. 19:16-5.6(g), rather than wait until the arbitrator issues his award. See also N.J.A.C. 19:16-5.17.



he should withdraw from the assignment.<sup>4/</sup> The parties were given an opportunity to respond to the arbitrator's letter and we see no need for the Director to have held a hearing where neither party identified substantial and material facts in dispute. Compare N.J.A.C. 19:16-5.16(c). Moreover, N.J.A.C. 19:16-5.6(e) and (f) authorize the Director to select a "replacement" arbitrator where the original arbitrator is "unable to serve." These regulations necessarily permit the Director to approve an arbitrator's request to withdraw from a case.

For these reasons, we hold that the Director had the authority to approve the arbitrator's request to withdraw from the case. His decision to do so was a reasonable exercise of discretion in the circumstances of this case.

In so holding, we stress that the Reform Act, like the predecessor statute, adopts a "mediation-arbitration" model where the assigned arbitrator is authorized to assist the parties in voluntarily resolving their dispute even after the petition for interest arbitration is filed. N.J.S.A. 34:13A-16f(3); N.J.A.C. 19:16-5.7(b). Mediation is integral to the interest arbitration process and, in our administration of the Act, we have emphasized

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<sup>4/</sup> This action plainly was not "discipline" or "removal" within the meaning of N.J.A.C. 19:16-5.16 and there was no requirement to follow the procedures outlined there, which are intended to provide due process to an arbitrator. "Removal" in the context of the regulations means removal from the special panel of interest arbitrators, not removal from a case.

its importance. See Biennial Report of the Public Employment Relations Commission on the Police and Fire Public Interest Arbitration Reform Act, p. 4 (January 1998). Far from being disqualified for attempting to mediate a dispute, arbitrators are encouraged to make such efforts. In assisting the parties in trying to reach a settlement, the first arbitrator properly exercised his authority under the Act. But the Director also properly approved the arbitrator's request to withdraw from the case after those efforts were unsuccessful and the arbitrator concluded that the purposes of the Act would best be served by his withdrawal.

We next turn to the Town's contentions that the arbitrator did not properly apply the statutory factors in 16g in awarding the 24/72 work schedule; across-the-board salary increases and the EMT/EMS stipend. The standard of review for considering such challenges to interest arbitration awards is well established. Consistent with pre-Reform Act case law, we will vacate an award if 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. Cherry Hill Tp., P.E.R.C. No. 97-119, 23 NJPER 287 (¶28131 1997); accord City of Newark, P.E.R.C. No. 99-97, 25 NJPER 242 (¶30103 1999); Borough of Lodi,

P.E.R.C. No. 99-28, 24 NJPER 466 (¶29214 1998); Borough of Bogota, P.E.R.C. No. 99-20, 24 NJPER 453 (¶29210 1998); Borough of Allendale, P.E.R.C. No. 98-123, 24 NJPER 216 (¶29103 1998); Middlesex Cty., P.E.R.C. No. 98-46, 23 NJPER 595 (¶28293 1997); cf. PBA Local 207 v. Bor. of Hillsdale, 137 N.J. 71, 82 (1994); Division 540, Amalgamated Transit Union, AFL-CIO v. Mercer Cty. Improvement Auth., 76 N.J. 245, 253 (1978). Later in this opinion, we will elaborate on how our review standard applies to an arbitrator's consideration of a non-salary proposal to change an existing term and condition of employment.

We discuss the work schedule, salary increase and stipend issues separately.

#### Work Schedule

The FMBA's proposal to change from the existing 10/14 to a 24/72 work schedule was a key issue and the parties were "completely at odds" over it (Arbitrator's opinion, p. 30). Under the 10/14 schedule, unit members work an eight-day tour of two ten-hour days (8:00 a.m. to 6 p.m.), followed by a day off and two 14-hour night shifts (6 p.m. to 8 a.m.), followed by three days off (Ra823). The fire officers unit -- deputy chiefs, captains and lieutenants -- also works this schedule (Aa, Exhibit F, p. 22). The FMBA proposed to change to a schedule where unit members would work an eight-day tour of one 24-hour day followed by 72 hours (3 days) off, followed by another 24-hour day on and three days off. Under a 24/72 or 10/14 schedule, an officer works the

same number of hours: 48 hours every eight days and, over eight weeks, an average of 42 hours per week (Arbitrator's opinion, p. 32; Ra560). In a September 1998 award involving the Township's fire officers' unit, a different interest arbitrator rejected the Professional Fire Officers Association's (PFOA) proposal for a 24/72 work schedule and awarded a contract from January 1, 1997 through December 31, 1999 (Aa, Exhibit F, pp. 38-39). That arbitrator found that there was insufficient justification for imposing a schedule change where the department had operated well under the 10/14 schedule since 1970 and none of the three other professional fire departments in the County had a 24/72 schedule. Ibid.

Before the arbitrator, the FMBA argued that experiences in other communities demonstrated that the 24/72 hour schedule decreased sick time, overtime and firefighter injuries; improved productivity and morale; and was a common schedule agreed to by parties and awarded by interest arbitrators in many communities in the State. It also argued that it could be implemented for this unit even if the fire officers worked the 10/14 schedule.

The Township maintained that, under Borough of Atlantic Highlands and Atlantic Highlands PBA Local 242, 192 N.J. Super. 71 (App. Div. 1983), certif. denied, 96 N.J. 293 (1983), the establishment of the department's overall work schedule was a managerial prerogative. It also urged that the proposal should not be awarded because the fire officers remained on a 10/14

schedule. Further, it cited several potential problems that the fire department chief had set out in a memorandum to the Township administrator. The chief stated that he would need more staff to implement the schedule; there would be a lack of follow-up on disciplinary matters; and officers might move farther from Teaneck because of the diminished need to commute. He also felt that the public might react negatively to the schedule and that it could result in fatigue; firefighters' giving higher priority to second jobs; and firefighter reluctance to accept day shift staff assignments. Finally, the chief was concerned that time off might have to be given in connection with intershift transfers; sick leave might increase after being reduced during a trial run; and it was unfair to other employees, who would have to take more leave time to recover from an illness than firefighters who worked only once in four days.

The arbitrator first rejected the Town's contention that the proposal was not mandatorily negotiable, reasoning that Maplewood Tp. P.E.R.C. No. 97-80, 23 NJPER 106 (¶28054 1997) held otherwise (Arbitrator's opinion, p. 31). However, the arbitrator added that he would be reluctant to order such a major change in operation unless there were compelling reasons to do so (Arbitrator's opinion, p. 31). While he stated that he would normally give "important weight" to a prior award such as that involving the fire officers, he found there was a compelling rationale for reaching a different outcome based on differences in

the evidence presented to him and to the other arbitrator (Arbitrator's opinion, p. 31). The arbitrator reasoned:

In contrast to the evidence available to Arbitrator Buchheit provided by a member of the Fire Officer bargaining unit, the FMBA presented two expert witnesses who presented credible empirical support for the 24/72 shift schedule. Paul J. Chrystal, a Battalion Chief in the Township of Union fire department, reported on a 12-year study of the 24/72 schedule implemented in 1980 that compared various factors six years before and after the implementation of the 24/72 schedule in Union Township (TR 33-103). The findings of the study indicated that with exactly the same staffing levels before and after the change there was a 35% decline in the use of sick allowance/home illness, a 58% decline in overtime expense, a 23% decrease of line-of-duty injuries to firefighters, and a 38% decrease of tour-of-duty civilian injuries. At the same time, there was a 95% increase in productivity as measured by the numbers of classified alarms (up to 30%), tour fire hazard inspections (up 213%), and non-emergency services (up 150%). [Arbitrator's opinion, p. 31]

The arbitrator observed that the study attributed the decline in firefighter injuries to the fact that firefighters had 72 hours off to recuperate from exposure to toxic fumes, while civilian injuries were reduced because of the increased inspections and other fire prevention duties performed on the 24-hour shift (Arbitrator's opinion, p. 32). The arbitrator found that Chrystal's testimony was supported by that of William Lavin, the President of the New Jersey FMBA and the Elizabeth FMBA. Lavin stated that sick leave was reduced when Elizabeth implemented a 24/72 schedule and noted that the Elizabeth fire chief was on

record as stating that training was enhanced under the 24/72 schedule because, unlike a 10/14 schedule, a firefighter is on the day shift every four days and can be trained more frequently, at least where training takes place during the day (Arbitrator's opinion, p. 32). He noted Lavin's opinion that a 24/72 schedule improves both service and a firefighter's quality of life (Arbitrator's opinion, p. 32). The arbitrator also commented that an interest arbitrator in a 1996 award had reached conclusions similar to those of Chrystal and Lavin (Arbitrator's opinion, p. 33). He added that the 24/72 schedule existed in 26 New Jersey communities, with several changing to the schedule recently by agreement or by award (Arbitrator's opinion, pp. 37-38). The arbitrator cited a finding in another interest arbitration award that 70% of paid fire departments nationwide operate on a 24/72 schedule, a point brought out in this proceeding as well (Arbitrator's opinion, p. 38; T115; Ra164).

In contrast to the foregoing, the arbitrator found that the Township had offered no direct evidence from other communities concerning what it speculated would be the negative effects of the proposal. The arbitrator continued:

Despite the fact that there are numerous New Jersey communities with the 24/72 schedule whose experiences could be mined to provide support for hypotheses about the negative effects of the schedule, the Town offered no direct evidence from these communities. The bottom line, however, is that the Chief testified he could live with the schedule if additional supervisory staff were made available.... [Arbitrator's opinion, p. 34]

The arbitrator concluded that the FMBA's "uncontroverted evidence" convinced him that the substantial benefits of the 24/72 schedule to the Town, unit members and the public justified "undertaking a trial run" (Arbitrator's opinion, p. 34). He found that the 24/72 schedule would further the public interest and the continuity and stability of employment by increasing productivity, reducing firefighter and civilian injuries, reducing sick leave and overtime costs and improving morale by increasing the recovery time from stress and toxic fumes (Arbitrator's opinion, pp. 43-44).

The arbitrator also tried to address two of the problems cited by the chief -- fatigue and the cost of time-based benefits. He eliminated consecutive mutual exchanges and specified that all leave time be adjusted to "maintain the same hourly level of costs as under the current schedule" (Arbitrator's opinion, p. 45). The arbitrator also noted the chief's statements that he needed another deputy chief and staff person to implement the 24/72 schedule (Arbitrator's opinion, p. 34). While the arbitrator thus found that there would be substantial costs to implementing the proposal (Arbitrator's opinion, pp. 31, 41), he concluded that there were substantial potential savings as well. He noted that the award and the continuation of the schedule were "conditioned on improvements in productivity and morale, reductions in injuries, sick leave and overtime" that would offset implementation costs (Arbitrator's opinion, pp. 31, 41). In that



vein, he stated that the work schedule would not be continued after the trial run if the schedule did not achieve "some or all" of the above-noted objectives (Arbitrator's opinion, p. 35).

Finally, the arbitrator acknowledged that "supervisory efficiency and teamwork" would best be served if the fire officers and firefighters were on the same schedule (Arbitrator's opinion, p. 35). However, he noted that he could not resolve this issue because he did not have jurisdiction over the fire officers (Arbitrator's opinion, p. 35). While he recommended that the Township implement a common schedule for both units, he concluded, based on the chief's testimony, that different schedules for the two units would not be unworkable (Arbitrator's opinion, p. 35).

The Township maintains that, under Atlantic Highlands, the work schedule of a police or fire department is a managerial prerogative and not subject to mandatory negotiations or interest arbitration. It also contends that, under Maplewood, it proved a particularized need to retain the 10/14 work schedule in order to preserve continuity of supervision and stability within the fire department. It notes that while the arbitrator relied on witnesses who testified about the success of the 24/72 work schedule in other jurisdictions, those witnesses acknowledged that those departments had implemented the schedule for both fire officers and firefighters. It maintains that "chaos" would result if officers and firefighters were on different schedules and contends that the arbitrator did not take into account the cost of implementing the schedule.

The FMBA counters that Maplewood held that a proposal to change to a 24/72 work schedule is mandatorily negotiable and that the Township was required to raise any claim that there was a particularized need to preserve the 10/14 schedule in a pre-arbitration scope petition. See N.J.A.C. 19:16-5.5(c). It also asserts that the arbitrator weighed all the evidence and reasonably concluded that there was compelling evidence to support the shift change.

Preliminarily, we reject the Town's contention that Atlantic Highlands bars all negotiations over police or firefighter work schedules: we have declined to read the case so broadly, and another Appellate Division panel commented that such a per se exclusion would be inconsistent with Local 195, IFPTE v. State, 88 N.J. 393 (1982). See In re Mt. Laurel Tp., 215 N.J. Super. 108, 113 (App. Div. 1987); Borough of Closter, P.E.R.C. No. 85-86, 11 NJPER 132 (¶16059 1985). See also City of Jersey City v. Jersey City POBA, 154 N.J. 555, 574-575 (1998) (approving Mt. Laurel's approach).

We next clarify how Maplewood shapes our approach to this appeal and how we will apply our review standard in cases where the arbitrator was asked to change a term and condition of employment other than salary.

In holding that the 24/72 hour work schedule in Maplewood was mandatorily negotiable, we stressed that, based on Supreme Court cases and the Legislature's decrees, police and firefighter

work schedules are generally viewed as mandatorily negotiable. 23  
NJPER at 113. Maplewood also observed that when the Legislature approved interest arbitration as the means of resolving negotiations impasses over the wages, hours, and employment conditions of police officers and firefighters, it recognized that both management and labor would have legitimate concerns and competing evidence and that interest arbitration was the best forum for presenting, considering, and reviewing those concerns and evidentiary presentations. Id. at 114.

Maplewood noted that both we and the Appellate Division had found exceptions to the rule of work schedule negotiability when the facts prove a particularized need to preserve or change a work schedule to protect a governmental policy determination. Id. at 113-114. But Maplewood held that, in the context of a pre-arbitration scope petition, the query was not whether a work schedule proposal raised legitimate concerns, but whether it so involved and impeded governmental policy that it must not be addressed through negotiations and interest arbitration. Id. at 114. After holding that the Maplewood work schedule did not, on its face, so impede governmental policy, we emphasized that we expressed no view on the merits of the proposal, a necessary caution in view of our authority to review interest arbitration awards. Ibid.

Procedurally, the Township was required to file a pre-arbitration scope petition if it sought to prevent an interest

arbitrator from considering the proposal. N.J.A.C. 19:16-5.5(c). But the Township may still argue in this appeal that the arbitrator did not give enough weight to, or consider evidence concerning, such issues as the proposed work schedule's cost or its impact on department operations, discipline or supervision. A work schedule proposal may raise legitimate concerns about these types of issues, yet still be mandatorily negotiable: the rationale of Maplewood was that the arbitrator would weigh these concerns in evaluating the evidence on all of the relevant statutory factors, including the public interest, N.J.S.A. 34:13A-16g(1). Stated another way, even though a proposal on its face would not inevitably impede governmental policy, an arbitrator may still find, based on all the evidence on all the statutory criteria, that it should not be awarded. And an employer may argue on appeal that an arbitrator should have so ruled based on the evidence presented.

Where an appeal does challenge an arbitrator's ruling on a non-salary proposal to change an employment condition, we will consider whether the arbitrator applied the traditional arbitration principle that the party proposing a change must justify it. Compare Cherry Hill Tp. (it was appropriate for an arbitrator to require a party seeking a contract change to explain why). Application of that standard is particularly important where, as here, one party proposes to change a work schedule that has been in effect since 1970 and that has implications for the

overall management and operations of the fire department. Compare Jersey City, 154 N.J. at 572 (noting that police officers are different from other public employees and that the scope of discretion accorded to the public entities that administer police departments is necessarily broad). Court and Commission decisions recognize that there is a strong governmental policy interest in ensuring appropriate discipline, supervision and efficient operations in a public safety department. See Irvington PBA Local #29 v. Town of Irvington, 170 N.J. Super. 539 (App. Div. 1979), certif. den. 82 N.J. 296 (1980); Borough of Atlantic Highlands; Jackson Tp., P.E.R.C. No. 93-4, 18 NJPER 395 (¶23178 1992); Borough of Prospect Park, P.E.R.C. No. 92-117, 18 NJPER 301 (¶23129 1992); Borough of Closter; Town of Kearny, P.E.R.C. No. 83-42, 8 NJPER 601 (¶13283 1982). Therefore, before awarding a major work schedule change, an arbitrator should carefully consider the fiscal, operational, supervision and managerial implications of such a proposal, as well as its impact on employee morale and working conditions.

In particular, where a proposal, if awarded, would result in superior officers and rank-and-file employees working different schedules, it implicates the above-noted case law and raises serious questions as to whether supervision would be

impaired.<sup>5/</sup> Indeed, we have twice found that a public safety department had a dominant governmental policy interest in aligning supervisory and rank-and-file work schedules. In City of Newark, P.E.R.C. No. 88-87, 14 NJPER 248 (¶19092 1988), we held that a proposal to change from a 10/14 to a 24/72 schedule was not mandatorily negotiable where it would result in firefighters being on a different schedule than their supervisors. We reasoned that the 10/14 schedule had been in effect for 28 years and that, given the different schedules, superior officers would not be able to supervise firefighters effectively. See also Borough of Closter (prerogative found to change patrol officer starting times to conform to schedule of superior officers to ensure that each officer had direct supervision by one superior officer for the officer's entire eight-hour shift).

We do not hold that a proposal that would result in different work schedules for superior officers and rank-and-file employees is not mandatorily negotiable as a matter of law. See Jersey City (negotiability balancing test must be applied case-by-case); Maplewood Tp. (interest arbitrator may generally

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<sup>5/</sup> Several statutes reflect the common understanding that firefighters and superior officers will be on the same schedule. See N.J.S.A. 40A:14-46 (municipality may divide the "members and officers" of a paid fire department into two platoons, one platoon serving 24 hours of duty while the other is off duty for the same period of time); see also N.J.S.A. 40A:14-47 through N.J.S.A. 40A:14-49, authorizing municipalities to divide "members and officers" of fire departments into platoons operating on a specific schedule or working a specified number of hours per week.

consider work schedule proposal in light of parties' evidence and arguments). However, an arbitrator may award such a proposal only if he or she finds that the different work schedules will not impair supervision or that, based on all the circumstances, there are compelling reasons to grant the proposal that outweigh any supervision concerns.

This arbitrator recognized that the burden was on the FMBA to justify the proposal (Arbitrator's opinion, p. 31). However, he did not have the benefit of this opinion clarifying the relationship between our scope-of-negotiations case law and the interest arbitration process, and we find more weight should have been given to the fact that the proposal would result in different work schedules for the two units. At the same time, the FMBA offered undisputed evidence as to the potential benefits of the 24/72 schedule. Absent the supervision issue, we would find that the arbitrator's decision to award the proposal on a trial basis was a reasonable determination of the issues, N.J.S.A. 34:13A-16g, that was supported by substantial credible evidence in the record as a whole. In this posture, we will exercise our authority under N.J.S.A. 34:13A-16f(5)(a) and modify the award to provide that the 24/72 work schedule shall be implemented only if and when the 24/72 schedule is adopted for the superior officers' unit.<sup>6/</sup> We discuss in more detail the considerations that lead us to this conclusion.

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<sup>6/</sup> Given the December 31, 1999 expiration date of the fire officers' contract, successor negotiations were required to begin by August 31, 1999. N.J.S.A. 34:13A-16a(1).

Consistent with Newark, the arbitrator concluded that "supervisory efficiency and teamwork" would be furthered if both units were on the same schedule and he recommended that the Township implement a common schedule for both units (Arbitrator's opinion, pp. 35). He also cited a statement in a 1996 arbitration award, relied on by the FMBA, where the arbitrator indicated that "common sense dictated" that firefighters and fire officers be on the same schedule (Arbitrator's opinion, p. 38; Ra543). The arbitrator decided to award the FMBA proposal, despite his concern about potential supervision problems, because he did not have jurisdiction over the fire officers' unit (Arbitrator's opinion, p. 35). But, in evaluating the public interest and welfare, the arbitrator was required to consider the desirability of having both units on one schedule regardless of whether he had jurisdiction over both units. Where an arbitrator believes a proposal should be implemented for multiple units or not at all, he or she could award the proposal but make implementation contingent upon it being agreed to or awarded for the other unit. Compare Borough of Matawan, P.E.R.C. No. 99-107, 25 NJPER 324 (130140 1999) (interest arbitrator may award a change in employer payments for retiree health coverage that will take effect only when employer meets uniformity requirements in N.J.S.A. 40A:10-23).

Moreover, the arbitrator made no finding that the department could be supervised as effectively with the different work schedules as it had been with both units on the 10/14 schedule. For example, the arbitrator concluded, based on the



chief's testimony, that the different schedules would not be "unworkable," inferring from the chief's statement that the different schedules would be "troublesome" and "cumbersome" but that they would not be an insuperable obstacle to operations (Arbitrator's opinion, p. 35; T516). The arbitrator's conclusion falls short of a finding that the different work schedules would not impair supervision, especially when considered together with the arbitrator's recommendation that the Township implement a common schedule.

Moreover, when Chrystal and Lavin testified as to the benefits of the 24/72 schedule in Union and Elizabeth, they stated that the schedule was implemented for both fire officers and firefighters in those municipalities (T72; T84; T108). While Chrystal appeared to state that the department could operate effectively if the 24/72 schedule was implemented for this unit only, his statement was not drawn from experience and ran counter to the chief's opinion that the different schedules would be troublesome and would interfere with continuity of supervision and the way officers direct firefighters (T73; T472).

We agree with the FMBA that the Township has offered very few particularized examples of the type of operational or supervision difficulties that would flow from the different work schedules. For example, it is not self-evident that, as the Township asserts, chaos would result when fire officers changed shifts at 6 p.m. and firefighters did not: the Township has not

shown why, with firefighters on a 24-hour shift, there would be an automatic need to make new firefighter assignments when fire officers changed shifts. But, as we have stated, the burden was on the FMBA to justify the schedule change and the different work schedules. This record does not support a conclusion that supervision would not be impaired with the two units on different schedules, despite the common sense understanding, reflected in statutes and case law, that supervisors and subordinates should be on the same schedule. See N.J.S.A. 40A:14-46 to -49. Newark; Closter.<sup>7/</sup> Finally, because no evidence was presented as to any problems with the existing 10/14 schedule, there is no suggestion in the record that there were compelling reasons to change the department work schedule, regardless of the supervision problems that might arise from the different work schedules.

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<sup>7/</sup> The FMBA refers to an interest arbitration award where an arbitrator with jurisdiction over a rank-and-file unit only awarded a 24/72 schedule for that unit (Ra1062). However, that award does not demonstrate that the fire department in that jurisdiction operated successfully with different work schedules. The arbitrator also cited Lavin's testimony that training is enhanced under a 24/72 schedule where the training officer is on the day shift. Lavin explained that, where that is the case, a firefighter's schedule coincides with that of the training officer one out of every four days, as opposed to as seldom as one out of eight days under a 10/14 schedule (T117-T119). However, the potential supervision problems that would flow from different work schedules outweighs the possible training benefits that might be derived from that arrangement. In any case, the record does not indicate when training takes place in the Township.

In sum, we agree with the Township that an award that would result in different work schedules for fire officers and firefighters was not warranted on this record. However, we do not agree with the Township's other objections to the award of the 24/72 schedule. Absent the supervision issue, we would find no basis to disturb the arbitrator's decision to award the 24/72 schedule on a trial basis.

The Township does not challenge the arbitrator's findings that the 24/72 schedule is a common one in New Jersey and nationally and that it has improved productivity and morale, increased recovery time from stress and toxic fumes, decreased civilian and firefighter injuries, reduced sick leave and overtime, and enhanced training in other jurisdictions. Indeed, the chief testified that he saw some advantages to the schedule in terms of giving firefighters more time to recuperate from illnesses or on-the-job injuries, decreasing overtime resulting from shift changes, and improving morale (T507-508; T529). As the arbitrator noted, the Township presented no evidence as to problems in any of the municipalities that operate on a 24/72 schedule.

We are not persuaded by the Township's arguments that the arbitrator did not give sufficient weight to the cost of implementing the schedule; the chief's concerns about calculation of leave time under the 24/72 schedule; difficulty in recalling personnel; extra leave time associated with intershift transfers,

and the cost of the extra staff that the chief believed would be needed to implement the 24/72 schedule. First, the award addresses calculation of leave time. Second, the record supports the arbitrator's conclusion that the Township offered no evidence of recall problems in jurisdictions operating under a 24/72 schedule. We note that there was testimony that, in one jurisdiction, the change to a 24/72 work schedule had not resulted in firefighters moving farther from their workplace (T57). Third, in expressing some concern about "intershift transfers," the chief explained that, when a firefighter is transferred from one platoon to another, it is sometimes necessary, under a 10/14 schedule, to give a firefighter time off so as not to trigger overtime costs. He stated that that might be a greater problem under a 24/72 schedule. Even assuming that to be so, the Township does not indicate how that would affect department operations or how often firefighters are transferred from one platoon to another.

Finally, we turn to the Township's contention that the arbitrator did not consider the cost of hiring additional staff to implement the 24/72 schedule.

The arbitrator found that the 24/72 schedule would entail substantial costs and therefore considered it to be an economic issue, although the FMBA had characterized it as non-economic (Arbitrator's opinion, pp. 9, 31). He cited the chief's testimony that, in order to implement the schedule, the chief believed he would need a new supervisory position, at an estimated cost of

\$115,000 per year, plus an additional staff position (Arbitrator's opinion, pp. 31, 34; T586). The arbitrator also concluded that substantial savings could flow from the work schedule in the form of reduced sick leave and overtime costs, and that the schedule would not be continued if those savings did not materialize (Arbitrator's opinion, pp. 31, 41). The arbitrator implicitly concluded that the savings would outweigh the costs since he identified those savings as one reason for awarding the unit an additional .25% salary increase for 1997 and 1998 beyond that received by the fire officers and police units (Arbitrator's opinion, p. 41).

We agree with the Township that the additional cost, if any, of implementing the 24/72 schedule on a trial basis was one of the factors that the arbitrator was required to consider. N.J.S.A. 34:13A-16g(6). Moreover, if the costs of implementing the schedule were immediate and definite -- while the savings were potential only -- those costs might well be a factor militating against the award of the schedule. However, based on our review of the record, we find that there is no basis for concluding that additional staff would be required to implement the 24/72 schedule.

The chief's opinion was based on his conversations with another chief who told him that he would need more staff; his understanding that two departments operating under a 24/72 schedule had more superior officers than the Township; and his

belief, set forth in his memorandum to the Township administrator listing his concerns about the 24/72 schedule, that he would need another deputy chief to accomplish what was assigned to the shift deputy chiefs because his and the deputy chiefs' schedules would coincide only five times a month (Aa, Exhibit N; T500; T544-T545). This evidence, considered together with the rest of the record, does not support a conclusion that more staff would be required to implement the 24/72 schedule.

For example, the chief's testimony does not indicate an optimal fire officer/firefighter ratio for a 24/72 schedule; does not reveal how many firefighters were employed in those jurisdictions that had more superior officers than the Township; does not explain why more staff would be needed under a 24/72 as opposed to a 10/14 schedule; and does not indicate any particular circumstances that would require additional staff under a 24/72 schedule. Further, the chief also stated that he knew of no jurisdiction where more staff had to be hired because of a conversion to a 24/72 schedule (T522), and Lavin and Chrystal stated that the 24/72 schedule was typically implemented without additional costs (T91; T116). Chrystal indicated that, in Union, the switch to a 24/72 schedule was made without hiring additional staff (T46-T47).

Further, the chief's memorandum identifies a problem with deputy chiefs being on different schedules than the chief, a problem that the chief stated existed under the 10/14 schedule but

might be exacerbated under a 24/72 schedule (T472). The chief also acknowledged that he had requested another deputy chief before the 24/72 schedule was under discussion, and wanted to replace one of the captain positions with a deputy chief position (T471; T517). Based on the foregoing, the asserted need for another deputy chief does not appear to be closely connected with the 24/72 schedule. Moreover, because the 24/72 schedule will not be implemented for this unit unless and until it is agreed to or awarded with respect to the fire officers, the deputy chiefs' work schedule can be explored in negotiations or interest arbitration with the fire officers. Nothing prevents the Township from proposing that some or all of the deputy chiefs work the same schedule as the chief.<sup>8/</sup>

Finally, the chief also stated that another staff person might be required to help with the day-to-day operations of the department under a 24/72 schedule (T471). However, there was no explanation as to why a change from a 10/14 schedule would require this result, given that the fire officers are now on a 10/14, not a daytime staff, schedule.

In sum, we conclude that the arbitrator's award of a proposal that will result in different work schedules for fire officers and firefighters raises serious supervision and

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<sup>8/</sup> Under the current table of organization, four deputy chiefs are assigned to platoons and one is a "floater" (Ra820).

operational concerns and should not have been awarded on this record. At the same time, the record supports the arbitrator's conclusion that the FMBA offered undisputed evidence as to the potential benefits of the 24/72 schedule. The arbitrator reasonably gave greater weight to the FMBA's evidence as to these potential benefits, which was based on data from other jurisdictions, than to the Township's contrary evidence, which the chief acknowledged was not similarly grounded (T536). Therefore, we approve the arbitrator's decision to award the 24/72 schedule on a trial basis, with the modification that the schedule shall not be implemented unless and until a 24/72 schedule is agreed to or awarded with respect to the fire officers' unit.<sup>9/</sup>

We specifically approve the arbitrator's establishment of a trial period. Where, as here, a work schedule change was awarded because of potential benefits, as opposed to problems with an existing schedule, it was appropriate for the arbitrator to establish a mechanism to ensure that the awarded schedule will not become the new status quo unless the predicted benefits materialize. A trial period accomplishes that. However, we note that the arbitrator's "trial period" did not clearly provide that the new work schedule would not become part of the status quo for successor contract negotiations, a concept which we believe is a

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<sup>9/</sup> If that happens, the trial period could begin after the expiration of the contract that the arbitrator awarded and during the hiatus period prior to a successor agreement.



necessary part of a trial period. Accordingly, we clarify that the 24/72 schedule will not be continued into the agreement that follows the completion of the trial period unless there is a mutual agreement to do so, or an interest arbitrator awards the schedule anew. If there is no mutual agreement, the old work schedule will effectively be restored and the burden will be on the FMBA to again justify adoption of a new work schedule proposal.

### Salary Increases

We now consider the Township's contention that the arbitrator did not properly analyze the statutory criteria in awarding across-the-board salary increases.

The arbitrator awarded increases of 4% for 1997, 4.25% for 1998, and 4% for 1999 and 2000, effective July 1 of each year. His award was therefore in between the 5% increases proposed by the FMBA for 1997 through 1999 and the increases sought by the Township (2.75% for 1997, and 3% for 1998, 1999 and 2000). The four-year contract term and the July 1 effective dates corresponded to the Township's final offer.

In arriving at these increases, and in discussing the comparability and overall compensation criteria, N.J.S.A. 34:13A-16g(2) and (3), the arbitrator found that, of the four paid fire departments in the County, unit members had the lowest base wages and lagged behind firefighters in the County and other communities with respect to size and timing of longevity payments, holiday pay, shift differential, EMS stipends and amount of leave

time (Arbitrator's opinion p. 39). The arbitrator commented that the Town's offer would result in the unit falling further behind firefighter salaries in comparable communities but also observed that the comparability evidence did not support the wage increases sought by the FMBA (Arbitrator's opinion, p. 36-37).

In arriving at the particular increases that he did, the arbitrator placed primary weight on the agreements and awards involving the Township's three other public safety units, all of which received 3.75% increases in 1997 and 4% increases in 1998 and 1999 (Arbitrator's opinion, pp. 27-28, 40). The fire officers' contract ends in 1999, but the police rank-and-file and superior officers' units received 4% increases in 2000.

The arbitrator reasoned that there was no basis for this unit to receive salary increases lower than other public safety units and noted as well that the Town's offer was lower than the 3.5% increases received by the Township's non-public safety employees (Arbitrator's opinion, pp. 28-29). Further, the arbitrator concluded that certain factors -- the July 1 effective date of the increases he awarded, the FMBA's agreement to a lower starting salary during the term of the agreement, the unit's increased responsibilities with respect to emergency medical responses, and the potential for savings as a result of the 24/72 work schedule -- warranted an additional .25% for 1997 and 1998 over the increases received by the other public safety units for those years (Arbitrator's opinion, pp. 40-41).

The arbitrator noted that average private sector wages in New Jersey increased 4.3% during 1996 and that wages for federal, state and local government employees increased 3.3%, 2.2% and 3% respectively (Arbitrator's opinion, p. 38). While he commented that this data was more consistent with the Town's proposal, he concluded that it was more important that the award be consistent with "both the internal Town labor market regarding public safety wages and the local external labor market regarding increases paid to firefighters in surrounding communities" (Arbitrator's opinion, p. 39). Similarly, the arbitrator stated that the increases awarded -- and the Town's offer -- were higher than the cost of living but were consistent with other statutory criteria regarding internal and external labor market comparability (Arbitrator's opinion, p. 40).

With respect to the financial impact of the award, N.J.S.A. 34:13A-16g(6), the arbitrator stated that the award drew its essence from the internal pattern for public safety units, and that it could be presumed that the Township believed that the voluntarily agreed-to PBA and SOA increases would not have an adverse impact on the Township, its residents or taxpayers (Arbitrator's opinion, p. 40). He noted that there was no evidence that the economic climate had worsened since the settlements and that the small additional cost of the award over the internal public safety pattern -- \$8,978 for 1997 -- constituted a minute portion of the Township's \$36 million budget

(Arbitrator's opinion, p. 41). At the same time, he found that the Town's financial situation did not warrant the larger increases sought by the FMBA (Arbitrator's opinion, pp. 41-42).

Finally, the arbitrator considered the public interest and the continuity and stability of employment, N.J.S.A. 34:13A-16g(1) and (8). He found that there was no turnover problem in the unit and that the "continuity and stability of employment" would be furthered by the award, which maintained "reasonable parity" among the base salaries of the public safety units (Arbitrator's opinion, p. 43).<sup>10/</sup> With respect to the public interest, the arbitrator found that this was a "global criteri[on]" that is furthered when an award both promotes continuity and stability of employment and provides the public with an adequate level and quality of services at a reasonable cost (Arbitrator's opinion, p. 44). He found that the Township had maintained public satisfaction with firefighter services while providing those services at a lower cost than in comparable communities. He stated that the award "should continue this relationship" (Arbitrator's opinion, p. 44).

Against this backdrop, the Township contends that the arbitrator did not adequately consider the public interest or its financial and cost of living evidence and that, consistent with

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<sup>10/</sup> The top 1995 salary for the rank-and-file police unit was \$56,138 vs. \$50,536 for this unit (Ra405).

Bogota and Lodi, the award should be vacated. The FMBA counters that the arbitrator considered all of the statutory criteria and arrived at an award in between the parties' final offers. It urges that its financial expert demonstrated that the Township was on sound financial footing.

Our summary illustrates that the arbitrator stated what statutory factors he considered most important in arriving at the award, explained why they were given significant weight, and explained how he weighed other evidence or factors in arriving at a final award. Lodi; Bogota. The decision to place significant weight on the increases received by other public safety employees in the Township is consistent with the Reform Act, which requires the arbitrator to compare the salaries of employees performing the same or similar services in the same jurisdiction. N.J.S.A. 34:13A-16g(2)(c); N.J.A.C. 19:16-5.14(c). In any particular proceeding, an arbitrator may determine that that subfactor is important, especially where a strong internal pattern exists.

While the Township objects to elements of the arbitrator's analysis and highlights certain pieces of evidence that it alleges should have been given greater weight, we are satisfied that the salary increases awarded are supported by substantial credible evidence in the record as a whole and that the Township has offered no particularized arguments that warrant disturbing the arbitrator's judgment. Lodi; Cherry Hill Tp. We address the Borough's specific challenges to the arbitrator's analysis.

With respect to the arbitrator's assessment of the financial impact criterion, the Township contends that the arbitrator improperly presumed that an award would have no adverse financial impact if it included salary increases close to those included in the Township's agreement with its police units. However, we agree with the arbitrator that the police settlements are probative of what the Township believed it could afford given its other priorities and the financial problems - declining state aid, decreased ratables, and increased tax delinquencies -- it cited to the arbitrator. Compare Newark, P.E.R.C. No. 99-97 (affirming award that was modeled on agreements with other uniformed employees; arbitrator found that those agreements indicated what the City believed it could afford in light of its financial problems). Absent evidence of changed financial circumstances, the arbitrator's analysis was appropriate although, as discussed later, he did consider both parties' financial evidence.<sup>11/</sup>

The Township also asserts that the arbitrator did not consider how the award will affect the local property tax, each taxpayer income segment, and the Township's ability to maintain,

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<sup>11/</sup> In its post-hearing brief before the arbitrator, the Township reviewed its financial status and urged the arbitrator to look to the fire officers' award as a proper application of the statutory criteria. Since the fire officers' award stressed the increases received by the police units, the Township at one point appears to have endorsed the consideration of internal settlements in assessing financial impact (Aa, Exhibit B, p. 18; Aa, Exhibit F, p. 35).

expand or initiate new programs or services. See N.J.S.A. 34:13A-16g(6). However, the statute requires those items to be discussed only "to the extent evidence is introduced." N.J.S.A. 34:13A-16g(6); Middlesex; Newark, P.E.R.C. No. 99-97. The arbitrator found that the "Town did not argue that an increase that met the internal pattern of the public safety units would lead to layoffs, declines in existing programs and services, or the failure to initiate new programs or services" (Arbitrator's opinion, p. 41). The Township does not dispute that finding.

The Township further contends that the arbitrator did not explain how the award could be funded given the severe reduction in State aid and did not consider the Township manager's financial analysis. The background to this issue is as follows.

Between 1993 and 1997, the amount of aid that the Township received from the Aid to Densely Populated Municipalities Program, N.J.S.A. 52:27D-384 et seq., went from approximately \$3.35 million to zero. As a consequence, the Township ended fiscal year 1994 with a deficit and, in fiscal years 1995 and 1996, anticipated all but approximately \$2,000 of the end-of-year surplus for use in the next year's budget (Aa, Exhibit P). However, the record supports the arbitrator's conclusion that the Township had weathered this reduction in State aid and that the

decline was not as relevant as it was several years ago (Arbitrator's opinion, p. 41).<sup>12/</sup>

Moreover, the arbitrator accepted the Township manager's conclusion that the existing surplus was not large in relation to the total budget and that other costs associated with this unit -- increments and early retirement payments -- had absorbed the savings realized from lowering starting salaries and replacing retiring officers with lower-paid officers (Arbitrator's opinion, p. 42). The arbitrator cited those factors in declining to award the FMBA's proposal (Arbitrator's opinion, p. 42). In sum, we conclude that the arbitrator considered both parties' financial evidence and arrived at salary increases in between the parties' offers and consistent with the increases included in agreements with other Township employees. The Township has not presented any budgetary information on appeal that demonstrates that the across-the-board salary increases would have a negative financial impact on the Township.

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<sup>12/</sup> In fiscal year 1997, the Township generated \$2.87 million in surplus, anticipated approximately \$1.865 million for use in the next year's budget, and was left with a \$1 million reserve for emergencies (Aa, Exhibit T). The FMBA's expert estimated, without contradiction from the Township manager, that there would be at least a \$2.3 million surplus at the end of fiscal year 1998, leaving the Township with a \$500,000 surplus if it chose to anticipate \$1.8 million for the fiscal year 1999 budget (Ra148;Ra153). The FMBA's expert also stated that the Township's State aid during the early 1990's was unusually high, and the Township manager stated that, between 1990 and 1998, State aid increased .47% in excess of the CPI (Aa, Exhibit Y; Ra151).



We also find that the arbitrator's discussion of the cost of living, public interest, and overall compensation criteria comported with the statute. The arbitrator's obligation is to weigh the evidence on the various, sometimes competing statutory criteria, and explain the basis for the awarded increases. Lodi. The arbitrator did that. For example, the arbitrator set forth the Township's cost of living data and recognized that the increases he awarded, as well as the increases received by other Township employees, were higher than that figure (Arbitrator's opinion, p. 39). He also discussed evidence concerning wage increases received by New Jersey public employees in general and the average increase included in 1997 and 1998 interest arbitration awards (Arbitrator's opinion, p. 38). Contrary to the Township's suggestion, he also considered its evidence concerning the increments received by unit members and the Township's early retirement obligations, albeit he did so in discussing the financial impact criterion rather than the overall compensation criterion. The arbitrator met his statutory obligation when he explained that his award was based on the internal public safety pattern and his conclusion that the unit should not fall further behind firefighters in comparable communities (Arbitrator's opinion, p. 39-40). The award is not flawed because some pieces of evidence might weigh in favor of a lower award. Lodi.

We also reject the Township's argument that the award is not supported by substantial credible evidence because it awards

increases slightly higher than the average 1997 and 1998 award figures cited in a February 1999 memorandum from the Director of Arbitration to the special panel of interest arbitrators. In setting wage increases, an arbitrator must weigh the evidence and balance the various statutory factors. Lodi. Information as to average increases is not intended to direct arbitrators as to what they should award in a particular proceeding, where circumstances may weigh in favor of lower or higher increases.

We also disagree that the arbitrator did not adequately consider the public interest or the impact of the Cap law, N.J.S.A. 40A:4-45 et seq.

N.J.S.A. 34:13A-16g(1) and (5) require the arbitrator to assess the limitations imposed on the employer under the Cap law, which limits the amount by which municipal appropriations may be increased in each year to the lesser of 5% or a bi-annually established "index rate." N.J.S.A. 40A:4-45.1a; N.J.S.A. 40A:4-45.2; see also New Jersey State PBA, Local 29 v. Irvington, 80 N.J. 271, 291 (1979); City of Atlantic City v. Laezza, 80 N.J. 255, 269 (1979). Certain expenditures are excluded from the Cap calculation, N.J.S.A. 40A:4-45.2, and if a municipality does not appropriate up to its Cap limit in a given year, that appropriation authority can be "banked" and drawn upon for the next two years. N.J.S.A. 40A:-45.15a.

In light of the foregoing, it is difficult for an arbitrator to assess how an award will affect Cap limitations

unless an employer submits its Cap calculations to the arbitrator and explains how an award above a certain amount will affect Cap limits. There is no indication from the appellate record that the Township made such a presentation to the arbitrator, and it does not do so on appeal. Nor does it appear that the Township submitted the budget documents that would have allowed the arbitrator to calculate the Township's Cap limits. In this posture, the arbitrator complied with 16g(1) when he stated that there was no claim by the Township that the award would interfere with limitations imposed on it by the Cap law (Arbitrator's opinion, p. 44). The requirement to assess the impact of the Cap law is prefaced by the general language in 16g, directing the arbitrator to "provide an analysis of the evidence" submitted on each relevant factor. Laezza's and Irvington's admonitions that an arbitrator must consider Cap limitations were set forth in cases where the employer presented that information.

Similarly, we approve the arbitrator's view of the "public interest" as a broad criterion that encompasses considerations of both fiscal responsibility and the compensation package required to maintain a high-productivity and high-morale fire department. See Middlesex; see also Anderson, Krause and Denaco, Public Sector Interest Arbitration and Fact Finding: Standards and Procedures, §48.06[6], contained in Bornstein and Gosline eds., Labor and Employment Arbitration (Matthew Bender 1999) (imprecise public interest criterion included in most

interest arbitration statutes is sometimes used to accommodate the needs of employees and the employer's obligation to other employees and the community). While the Township objects that the arbitrator's analysis of this factor was cursory, it does not suggest what evidence the arbitrator should have discussed.

Finally, the Township asserts that the arbitrator did not calculate the total net annual economic changes for each year of the agreement, as required by N.J.S.A. 34:13A-16d(2). The arbitrator stated the "net annualized costs" of the agreement by setting forth the percentage increases he awarded; calculated that the annual cost of a 4% increase was \$140,000, and stated the 1999 cost of the EMT/EMS stipend, which became effective January 1, 1999 (Arbitrator's opinion, pp. 26, 41-42). The arbitrator should have stated the new dollar cost of the across-the-board increase awarded for each year of the agreement, plus the year 2000 cost of the EMT/EMS stipend. Rutgers. However, we find that he substantially complied with N.J.S.A. 34:13A-16d(2). Given the range of increases awarded, we do not think it is necessary to vacate and remand the award for a more precise calculation of the net annual economic changes for each year of the agreement.

#### EMT/EMS Stipends

The Township contends that the arbitrator's award of a stipend for unit members who obtain an EMT/EMS certification is not supported by substantial credible evidence given the "minimal assistance" that firefighters provide to the ambulance corps and

its decision not to have the department provide EMS services. The FMBA responds that the arbitrator properly found that there were compelling reasons to award the stipend, including the increase in medical response duties and the prevalence of such stipends in other communities. The background to this issue, which is related to the FMBA's request for a 2% stipend for "first responder" certification, is as follows.

A Township witness, Captain Richard Silvia, testified that from at least the 1970s to the present, firefighters have been called upon to respond to non-fire accidents or emergencies (T394; T443). Engine companies and the fire department rescue truck are dispatched, and firefighters provide whatever assistance they can in conjunction with, or until the arrival of, the Township's volunteer ambulance corps (T394; T436; T443; T459). That corps has 100 members most of whom, we were informed at oral argument, have EMT certification.<sup>13/</sup> The goal of the fire department in responding to such calls has been the same since the 1970s: to stabilize the patient until the arrival of more advanced help (T400; T459). When the corps arrives, patient care is turned over to it; firefighters will remain and offer whatever assistance they can or, if they are not needed, they will return to the firehouse (T448). Firefighters may also arrive after or at the same time as the ambulance corps (T449; T460). They presumably offer to provide back-up assistance in those instances as well.

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<sup>13/</sup> A hospital paramedic service may also come to the scene (T394).

While the goal of assisting the corps has remained constant, since 1985, the department has been responding to increasingly complex incidents (T403; T420). Further, in the late 1990s, three things occurred. First, beginning in approximately 1996-1997, both Silvia and the chief stated that the department began to receive more calls from the police department asking firefighters to respond to non-fire emergencies (T433-435; T541-T542). Silvia understood that the police department had been directed to send the fire department out if the ambulance corps did not respond after two alarms (T435).

Second, in March 1998, at Silvia's recommendation, all firefighters were required to complete 30 hours of "first responder" training, after which they received three certifications: American Red Cross Emergency Response certification, American Red Cross CPR for the Professional Rescuer, and the Hackensack Medical Center Certification of Pre-Hospital Defibrillation (T402; T413). Until the mandatory training, only six firefighters had these certifications, and eight others had the more advanced EMT certification (T415; Arbitrator's opinion, p. 26).<sup>14/</sup> Before 1998, firefighters had received first aid and CPR training, but not on a regular basis (T448).

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<sup>14/</sup> It appears that EMT/EMS responsibilities may include services at the scene of an emergency, transferring patients to a hospital, and providing necessary services during transport. First responder duties are limited to stabilizing the patient until an ambulance arrives. N.J.S.A. 26:2K-21 et seq.; Maplewood, 23 NJPER at 107.

Third, after firefighters received the first responder training, each engine company received equipment -- oxygen, blood pressure cuffs, and an automatic defibrillator - that had previously been available only on the rescue truck (T438). Silvia stated that firefighters now provide a higher level of care and that all firefighters are trained to do such things as perform an initial patient assessment, administer oxygen, resuscitate a patient, and use a defibrillator (T407; T424-T431). He believes they are also better able to communicate with the corps on medical issues (T440; T443).

Silvia stated that he had no plans to recommend that firefighters receive the more advanced EMT training and the Township administrator confirmed that no one was required to obtain an EMT certification (T445; T753). However, the administrator noted that "[u]sually, somebody volunteers for it, wants to do it, and the town cooperates" (T753). At the time of the arbitration hearing, that cooperation took the form of "encouraging" firefighters to obtain the certification and paying for continuing professional education to maintain it (T753).<sup>15/</sup>

Against this backdrop, the FMBA argued to the arbitrator that "in recognition of the additional training and duties

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<sup>15/</sup> The FMBA had proposed a contract clause requiring the Township to give firefighters paid time off to obtain an EMT certificate -- a proposal the arbitrator denied (Arbitrator's opinion, pp. 12, 46). At oral argument, the Township attorney stated that the Township will no longer encourage firefighters to obtain EMT training (2T14).

associated with EMT and First Responder training," firefighters with an EMT certificate should receive a stipend of 3% of base salary and those with a first responder certificate should receive a 2% stipend (Ra100; Ra265). It also argued that EMT stipends were common, and cited an exhibit listing nine New Jersey jurisdictions that paid firefighters an EMT/EMS stipend, five of which provided ambulance service (Ra100; Ra688).

The Township did not, in its post-hearing brief, address the request for the EMT/EMS stipend. It did argue that additional compensation was not appropriate for the first responder training because the Township had trained the firefighters on work time. It also referred to its administrator's statement that new equipment such as the defibrillator enabled the firefighters to perform first response duties more quickly (Aa, Exhibit B, p. 27).

The arbitrator awarded an EMT/EMS stipend of 2% base salary based on "the uncontroverted evidence" that stipends for EMT/EMS certification are paid in many communities and the "demonstrable increase in the first medical response workload" of the unit (Arbitrator's opinion, pp. 35, 38). He calculated that the cost would be approximately \$1000 for each of the eight unit members who have the certification and commented that, by providing an incentive to obtain this training, the award furthered the public interest (Arbitrator's opinion, pp. 26, 44). He found that the stipend, together with the 24/72 work schedule, would provide a quid pro quo for the July 1 effective dates for



the across-the-board salary increases (Arbitrator's opinion, p. 36). The arbitrator denied the FMBA's proposal for a "first responder" stipend -- a stipend which all unit members would be entitled to receive given the March 1998 training.

Several points are pertinent to resolving this issue. First, we have held that EMT certification is related to a firefighter's job duties and that, therefore, an employer may unilaterally require firefighters to undergo EMT training. City of Orange, P.E.R.C. No. 90-119, 16 NJPER 392 (¶21162 1990); Borough of Avalon, P.E.R.C. No. 93-105, 19 NJPER 270 (¶24135 1993).<sup>16/</sup> An employer may also decide not to require such training. See, e.g., Wayne Tp., P.E.R.C. No. 98-85, 24 NJPER 71 (¶29040 1997); Borough of Dunellen, P.E.R.C. No. 95-113, 21 NJPER 249 (¶26159 1995); Town of Hackettstown, P.E.R.C. No. 82-102, 8 NJPER 308 (¶13136 1982). Second, we have also held that the decision to have a fire department provide ambulance/EMS services is a governmental policy determination that can be made outside the negotiations sphere. See Maplewood, 23 NJPER at 111. Third, additional compensation for education or training that is not a job requirement is mandatorily negotiable. See Englewood Bd. of Ed. v. Englewood Teachers Ass'n, 64 N.J. 1, 8 (1973); North Arlington Bd. of Ed., P.E.R.C. No. 79-12, 4 NJPER 448 (¶4203

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<sup>16/</sup> The Department of Personnel job specification for firefighter lists, as one responsibility, "[a]ssists victims at scene of emergency by administering appropriate treatment (such as first aid, CPR or EMT treatment)...."

1978). Fourth, and as we have stated earlier, an interest arbitration award must be supported by substantial credible evidence in the record as a whole. See, e.g., Hillsdale; Cherry Hill Tp.

Within this framework, we note that the record includes no evidence that firefighters are required to perform duties that require an EMT certification. For example, there was no testimony that firefighters transport patients to the hospital. In that sense, there is no direct connection between the increase in first response calls and the stipend awarded.<sup>17/</sup> Further, the fact that the FMBA cited nine jurisdictions which paid a stipend does not provide strong support for the award, where five of those municipalities provided ambulance service and presumably required EMT training.

However, on balance, we conclude that the arbitrator's award, as modified by this opinion, is supported by substantial credible evidence in the record as a whole. See Allendale (Commission evaluates entire award in determining whether it is supported by substantial credible evidence). The Township encouraged some firefighters to obtain an EMT certification. Given that circumstance, the arbitrator reasonably concluded that it was appropriate, as part of an overall economic package, to

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<sup>17/</sup> An FMBA exhibit stated that it sought a stipend for unit members who have EMS/EMT certification "and who [are] actually assigned to perform those duties" (Ra677). However, neither its final offer nor its post-hearing brief include the quoted language in describing the proposal.

compensate those unit members who obtained training that their employer believed was useful, although not required, for their position. The award of the stipend does not dictate the type of assistance the department must provide the ambulance corps or require that firefighters provide EMT/EMS services. It simply compensates employees for training their employer has encouraged, presumably because it enhances their ability to perform first responder functions and to provide assistance at fire scenes.

We recognize that the stipend could prompt more firefighters to obtain EMT training and that this could have an economic impact on the Township that it believes outweighs the benefits of firefighters having the certification. However, at the time of the hearing, only eight of 68 firefighters were eligible to receive the stipend, which is effective as of January 1999. The contract awarded expires in December 2000, and the economic impact within the contract term is relatively minor. If a large number of firefighters obtain the certification, the Township may emphasize this additional salary obligation in future negotiations and interest arbitration. See Newark, P.E.R.C. No. 99-97 (where no unit member would be eligible for "senior step" salary until after expiration of contract that arbitrator awarded, employer could consider that salary obligation in planning future negotiations strategy). It may also seek to remove the stipend from the agreement. But the possible future effects of the

arbitrator awarding the stipend do not provide a basis for disturbing this award.

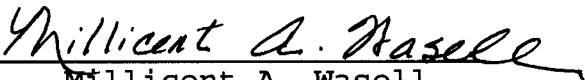
We conclude with the following comments. This is the first decision that addresses the standard an arbitrator should apply in considering a major work schedule change. While the arbitrator reviewed and analyzed all the parties' evidence and arguments concerning the work schedule, he did not have the benefit of this opinion, which provides guidance as to when an arbitrator may award a proposal that would result in superior officers and rank-and-file officers being on different schedules. As we have stated, an arbitrator should award such a proposal only if he or she is satisfied that the department supervision would not be impaired by the different work schedules or finds that there are compelling reasons to award the proposal that outweigh any supervision concerns. The arbitrator here did not make such findings. However, in all other respects, the arbitrator adequately analyzed the evidence presented on the relevant statutory factors and reached conclusions supported by substantial credible evidence in the record. We also find that he gave "due weight" to each of those factors and decided the dispute based on a reasonable determination of the issues. N.J.S.A. 34:13A-16g; N.J. State PBA Local 29 v. Irvington, 80 N.J. 271, 295 (1979). We therefore affirm the award, with the modification that the trial period for the 24/72 work schedule shall not be implemented unless

and until the schedule is agreed to, or awarded, for the fire officers unit.<sup>18/</sup>

ORDER

The arbitrator's award is affirmed, with the modification that the trial period for the 24/72 work schedule shall not be implemented unless the 24/72 schedule is agreed to or awarded with respect to the fire officers' unit.

BY ORDER OF THE COMMISSION

  
Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Buchanan, Madonna, McGlynn, Muscato and Ricci voted in favor of this decision. None opposed.

DATED: October 28, 1999  
Trenton, New Jersey  
ISSUED: October 29, 1999

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<sup>18/</sup> Because the work schedule issue was largely independent of the other proposals, there is no need, in light of our modification, to remand the award to allow the arbitrator to reconsider the award as a whole. The award of the work schedule had a minor relationship to the other aspects of the award and our modification would not appear to affect the arbitrator's overall economic package. The arbitrator stated at one point that the savings resulting from the work schedule was one of three reasons he was awarding salary increases slightly higher than those received by other Township public safety units (Arbitrator's opinion, p. 40). At another point, he commented that the work schedule, and the EMT/EMS stipend, were a quid pro quo for the July effective dates of the salary increases (Arbitrator's opinion, p. 36).

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF NEWARK,

Appellant,

-and-

Docket No. IA-97-82

NEWARK FIRE DEPUTY CHIEFS'  
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission affirms an interest arbitration award issued to resolve negotiations between the City of Newark and Newark Fire Deputy Chiefs' Association. The City appeals the award and asks the Commission to remand the case back to arbitration. In formulating an award, an arbitrator must 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 a final award. The Commission concludes that the arbitrator here fully complied with these requirements and, because he did, the City must offer a particularized challenge to his analysis and conclusions. Aside from its objections to the senior pay aspect of the award, the City has not done so and the arbitrator's conclusions are supported by substantial credible evidence in the record. As for the senior pay issue, the Commission rejects the City's position that the award is necessarily deficient because the arbitrator did not calculate the cost to the City of maintaining a system that would result in employees obtaining senior pay salaries outside the four years covered by 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. 99-97

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF NEWARK,

Appellant,

-and-

Docket No. IA-97-82

NEWARK FIRE DEPUTY CHIEFS' ASSOCIATION,

Respondent.

Appearances:

For the Appellant, Michelle Hollar-Gregory, Corporation Counsel, attorney (Richee-Lori Smith, of counsel)

For the Respondent, Zazzali, Zazzali, Fagella & Nowak, attorneys (Paul L. Kleinbaum, of counsel)

DECISION

The City of Newark appeals from an interest arbitration award involving a seven-member unit of deputy fire chiefs. See N.J.S.A. 34:13A-16f(5)(a). It asks us to remand the award back to arbitration.

The arbitrator resolved the unsettled issues by conventional arbitration, as he was required to do absent the parties' agreement to use another terminal procedure. N.J.S.A. 34:13A-16d(2). The parties' final offers were as follows:

The City proposed a three-year contract for 1996 through 1998. For deputy fire chiefs appointed after January 1, 1992 (referred to as "non-grandfathered" deputy chiefs), the City proposed, for 1996, a \$70,872 salary for those deputy chiefs not entitled to senior pay and a \$71,945 salary for those who were

entitled to this benefit, as a result of having served five years as deputy chief. For 1997 and 1998, the City proposed salaries of \$74,643 and \$77,442, respectively, for all non-grandfathered deputy chiefs, with no senior pay. These proposed salaries represented 3.75% increases for 1996 and 1998 and, since none of the non-grandfathered employees were entitled to the 1996 senior pay salary, a 5.32% increase for 1997. For grandfathered employees, all of whom were at the senior pay step under the predecessor contract, the City proposed 3.75% increases for 1996, 1997, and 1998. The City also proposed that, for all deputy chiefs, three of their contractual holidays would, effective January 1, 1998, be credited toward compensatory time.

The Association proposed a four-year contract from 1996 through 1999. Its final salary offer consisted of a four-year salary guide with four steps, including a senior pay step. For grandfathered employees, the salary guide would result in 5.5% increases for 1996 and 1997 and 4.5% increases for 1998 and 1999. The Association proposed that non-grandfathered employees be placed on step one of the proposed guide in 1996 and that they receive, with increments, increases of 5.5%, 8.9%, 7.8% and 7.7% for 1996 through 1999, respectively. The Association also proposed that deputy chiefs receive senior pay at the beginning of the fourth year in rank instead of, as under the predecessor contract, at the beginning of the sixth year. Under the Association's proposed salary guide, all deputy chiefs --



grandfathered and non-grandfathered -- would be at the same salary step in 1999. Finally, the Association sought a \$53 increase in hazardous duty pay for 1996 and \$25 increases for 1997 and 1998.

The arbitrator awarded a four-year contract for 1996 through 1999. For grandfathered deputy chiefs, he awarded increases of 3.75% for 1996 and 1997 and 4.5% increases for 1998 and 1999. For non-grandfathered deputy chiefs, the arbitrator stated that he awarded 5.5% increases for 1996 and 1997 and 4.5% increases for 1998 and 1999 (Arbitrator's op., pp. 33, 40, 49).<sup>1/</sup> In addition, the award provided that non-grandfathered officers were entitled to senior pay at the beginning of their fifth year of service and included a senior pay salary for those unit members although, as discussed below, none of the non-grandfathered deputy chiefs would be entitled to that salary until 2001 (Arbitrator's op., pp. 40, 41). Finally, the arbitrator awarded the Association's hazardous duty pay proposal (Arbitrator's op., p. 50).

The City appeals, contending that, in including a senior pay step for non-grandfathered employees, the arbitrator did not take into account the City's severe and chronic economic problems or the continuity and stability of employment, N.J.S.A. 34:13A-16g(6) and (8). It also argues that the arbitrator did not calculate the cost of the senior pay step for non-grandfathered

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<sup>1/</sup> The award provides that the 1996 salary is effective May 1996.

deputy chiefs and exceeded his powers, and therefore violated N.J.S.A. 2A:24-8d, by including a pay step that will not affect any employee until 2001 - after the agreement he awarded expires. It asks us to remand the award back to arbitration.<sup>2/</sup> Finally, in addition to its objections to the senior pay aspect of the award, the City appears to argue that its offer was more reasonable than the Association's and should have been awarded.

The Association counters that the arbitrator properly considered all of the statutory criteria, including the financial impact of the award, and denies that the arbitrator exceeded his authority by retaining a senior pay step for non-grandfathered unit members. It emphasizes that both parties' final offers included a senior pay step and that, given the parties' proposals, the arbitrator had the authority to award a new eligibility guidepost for senior pay. Finally, it contends that the arbitrator complied with N.J.S.A. 34:13A-16d(2) in calculating the costs of the award.

In requiring that disputes be resolved by conventional arbitration unless the parties agree to another terminal procedure, the Reform Act entrusts the arbitrator with weighing the evidence and fashioning an award. An arbitrator must assess the evidence on the individual statutory factors and then weigh and balance the relevant, sometimes competing, factors. In

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<sup>2/</sup> It also requests oral argument. We deny that request because the parties' briefs fully address the issues.

reviewing a challenge to an award, we will determine whether the arbitrator considered the criteria in N.J.S.A. 34:13A-16g and rendered a reasonable determination on the issues. Cherry Hill Tp., P.E.R.C. No. 97-119, 23 NJPER 287 (¶28131 1997); N.J.A.C. 19:16-5.9. Consistent with pre-Reform Act case law, we will vacate an award if the appellant demonstrates that: (1) the arbitrator failed to give "due weight" to the section 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. Borough of Allendale, P.E.R.C. No. 98-123, 24 NJPER 216 (¶29103 1998); Middlesex Cty., P.E.R.C. No. 98-46, 23 NJPER 595 (¶28293 1997); Cherry Hill Tp.; cf. PBA Local 207 v. Bor. of Hillsdale, 137 N.J. 71, 82 (1994); Division 540, Amalgamated Transit Union, AFL-CIO v. Mercer Cty. Improvement Auth., 76 N.J. 245, 253 (1978).

In applying this review standard, we are mindful that fashioning an interest arbitration award is not a precise mathematical process. Borough of Lodi, P.E.R.C. No. 99-28, 24 NJPER 466 (¶29214 1998); Allendale. Given that the statute sets forth general criteria rather than a formula, the setting of wage figures necessarily involves the exercise of judgment, discretion and labor relations expertise. Lodi; Allendale. While an arbitrator must explain the basis for an award, we recognize that he or she will rarely be able to conclusively demonstrate that an

award is the only "correct" one. Lodi; Allendale. Therefore, within the parameters of our review standard, we will not disturb the arbitrator's exercise of discretion in weighing and analyzing the evidence and fashioning an award. Cherry Hill.

The primary issue in this dispute was salary increases, with the parties disagreeing over the amount of annual salary increases; whether to maintain a two-tiered salary guide for non-grandfathered and grandfathered employees; and the appropriate differential between deputy chiefs and their immediate subordinates, battalion chiefs. In arriving at his award, the arbitrator carefully reviewed and analyzed all the statutory criteria. For example, in discussing the public interest and welfare, N.J.S.A. 34:13A-16g(1), he found that the number of structural fires in the City had increased between 1994 and 1997 and that the increased workload was performed by a smaller number of deputy fire chiefs than in 1994 (Arbitrator's op., p. 24). He also recognized that the City had a "planned program" designed to limit the cost of its uniformed services so that it could both preserve and enhance other City services and maintain as low as possible a tax rate for a population plagued with high unemployment and low per capita income (Arbitrator's op., p. 25). In reviewing the overall compensation criterion, N.J.S.A. 34:13A-16g(3), the arbitrator found that the unit enjoyed an outstanding overall compensation package, except for an inadequate differential between the pay of the highest paid battalion chief

and the lowest paid deputy chief (Arbitrator's op., p. 37). In formulating his award and analyzing the comparability criterion, N.J.S.A. 34:13A-16g(2), the arbitrator considered and gave "significant" weight to private sector wage increases, and "great" weight to the City's settlements with its other uniformed public safety units and to the salaries of deputy fire chiefs in the other "big six" cities in New Jersey (Arbitrator's op., pp. 28, 48).<sup>3/</sup> He also considered average interest arbitration awards and settlements statewide, as well as the increases received in public employment in general (Arbitrator's op., pp. 28-30, 33-35). In awarding increases in between the parties' offers, he reasoned that:

[T]he Association proposal exceeds the rate of increase in the cost of living, exceeds the average of current wage increases, exceeds the rate of increase in the private sector and the rate of increase in the other uniformed service agreements negotiated with the City of Newark. On the other hand, the City proposal would decimate the differential between the non-grandfathered Deputy Fire Chiefs and the Battalion chiefs because it is proposing for all Deputy Fire Chiefs a lesser percentage increase than was negotiated for Fire Officers for 1996, 1997 and 1998. [Arbitrator's op., p. 26]

Further, in fixing the salary increases that he did, the arbitrator stated:

In consideration of the financial constraints faced by the City, including unemployment, poverty, loss of State Aid, low per capita income

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<sup>3/</sup> The "big six" cities are Newark, Camden, Paterson, Jersey City, Elizabeth and Trenton.

and loss of revenue due to reassessments, the undersigned has utilized percentage salary increases which the City has negotiated with the other uniformed services, apparently with full recognition of its limited economic resources and its goal of providing better services to the residents and taxpayers of the City of Newark. [Arbitrator's op., pp. 39-40]

The 3.75% increases that the arbitrator awarded to grandfathered deputy chiefs for 1996 and 1997 corresponded to the percentage increases proposed by the City as well as to the increases included in its agreement with the deputy police chiefs for 1996 and 1997. The agreement with the deputy police chiefs expired in 1997 and, for 1998 and 1999, the arbitrator awarded 4.5% increases, the same increases included in the City's agreement with the police superiors for those years (Arbitrator's op., pp. 33, 40).

For the non-grandfathered deputy chiefs, the arbitrator retained the two-tier salary guide for the term of the agreement and "followed the City's suggestion that all four non-grandfathered Deputy Fire Chiefs move to a 'one step for all status' for January 1, 1997 and January 1, 1998" (Arbitrator's opinion, p. 40). However, the arbitrator awarded a senior pay salary as of the 5th year of service. That senior pay salary is the same as the 1999 salary for grandfathered deputy chiefs. The 5.5% increases awarded for 1996 and 1997, as well as the 4.5% increase for 1998, corresponded to the increases included in the City's agreement with its fire officers, which expired in 1998

(Arbitrator's op., pp. 33, 40).<sup>4/</sup> The 4.5% increase for 1999 was the same as the increase awarded to the police superiors' unit for that year (Arbitrator's op., p. 33). These increases resulted in 1998 salaries that, for both grandfathered and non-grandfathered unit members, are lower than the average 1998 deputy fire chief salary in the "big six" municipalities that both parties maintained were comparable (Arbitrator's op., pp. 32, 41).

In assessing the financial impact of the award, section 16g(6), the arbitrator completed a detailed cost analysis of the four-year award, noting that, for the first three years, it would cost \$29,606 more than the three-year contract offered by the City and that the payroll costs for the unit for 1997 through 1999 would be lower than in 1996, the first year of the award, because there were fewer deputy chiefs and some unit members had retired and been replaced with new, lower-paid appointees (Arbitrator's op., p. 46). The arbitrator also calculated the differential between battalion chiefs and grandfathered and non-grandfathered deputy chiefs for the first three years of the award, stating that it increased from 2.73% to 4.55% under the award, as opposed to declining from 2.73% to .13% (or \$104) under the City's offer.<sup>5/</sup> While the arbitrator noted that the other "big 6"

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<sup>4/</sup> The 1997 increase was also very close to the 5.32% increase proposed by the City.

<sup>5/</sup> The differential would have increased from 2.73% to 9.43% under the Association's proposal (Arbitrator's op., p. 44).

municipalities had substantially higher differentials, he stated that the award improved the differential modestly, both because of the fiscal constraints faced by the City and the small differential between police deputy chiefs and their highest-paid immediate subordinates (Arbitrator's op., pp. 37, 45).

The arbitrator also considered the cost of the award in the context of the City's 1998 budget of \$440,995,000 and concluded that the Cap law did not impede funding it (Arbitrator's op., p. 46). He reasoned that, because the workload was being adequately handled by a smaller staff, the unit had effectively contributed to the budget and had thereby helped the City defray expenses and enhance services to taxpayers and residents (Arbitrator's op., p. 46). He concluded that the award for this seven-member unit was unlikely to influence the negotiations pattern for the other, much larger uniformed units and that, in any event, the award drew on the existing pattern of settlements (Arbitrator's op., pp. 46-47). He found the award would have a modest financial impact on the City's residents and taxpayers and would improve the continuity and stability of employment, N.J.S.A. 34:13A-16 g(8), by addressing the differential problem (Arbitrator's op., p. 49). Finally, he observed that, while both parties proposed annual salary increases higher than the rate of inflation, the City's offer was closer to the current inflation rate and, therefore, the cost of living was one factor that led him to fashion an award closer to the City's offer than to the Association's (Arbitrator's op., p. 38).



The City does not specifically challenge the arbitrator's thorough findings or careful analysis, but does argue generally that its offer was more reasonable and should have been awarded. It also contends that the arbitrator exceeded his authority by awarding a senior pay salary for non-grandfathered employees that neither party contemplated. We reject these arguments.

The salary guide for non-grandfathered employees in the predecessor contract had a senior pay salary step for 1993 through 1995. The City's final offer included a salary schedule for non-grandfathered employees that retained the senior step for 1996 - even though none of the non-grandfathered unit members employed at the time of the arbitration proceeding would be eligible for that salary until 2002 (Arbitrator's op., pp. 3, 23). The City proposed to eliminate senior pay for 1997 and future years, but the Association proposed that unit members become eligible for senior pay in their fourth year of service.<sup>6/</sup> In this posture, the arbitrator plainly stayed within the parameters of the parties' offers when, in fashioning a conventional award, he retained the existing senior pay step for non-grandfathered unit

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<sup>6/</sup> The City's final offer proposed that, beginning in 1997, there would be only one salary for all non-grandfathered deputy chiefs, regardless of their years of service. While the City characterized this at one point as "eliminating" senior pay, at other times it indicated that it was "granting" senior pay as of 1997, because it proposed that all non-grandfathered deputy chiefs would receive, in 1997, the 1996 senior pay salary it had proposed, plus a 3.75% increase (Arbitrator's op., pp. 3, 26).

members and provided that they would be eligible for that salary at the beginning of their fifth year of service. Compare Cherry Hill Tp. (arbitrator could freeze salary for new hires because issue of appropriate starting salary was subsumed within parties' proposals for salary increases; however, he could not change the biweekly pay date when neither party had so proposed and that issue could not be said to be reasonably subsumed within any proposal).

We also disagree that the arbitrator exceeded his authority by awarding a senior pay salary that will not affect any unit member until after the expiration of the agreement that he awarded. An arbitrator has the statutory authority to award a compensation and benefits package, and salary structure, for a negotiations unit. He does not exceed his authority because some elements of that package or salary structure may not apply to any individual employee during the term of the agreement. In our experience, negotiated settlements and interest arbitration awards often include such provisions. For example, an award granting a longevity benefit for 25 years of service may not affect any employee during the contract term if no employee attains the requisite years of service. Similarly, an award capping or eliminating longevity or terminal leave benefits for new hires may not affect any individual employee if no new employees are hired. Given that the parties to an interest arbitration proceeding have an ongoing relationship, we find no prohibition against such

provisions, which are part of the compensation and benefits structure that will govern the parties' future relationship absent subsequent agreements or awards. An interest arbitrator is not required to eliminate an existing employment condition or salary provision simply because current employees will not be affected by the provision within the life of the contract.<sup>7/</sup>

Similarly, we reject the City's position that the award is necessarily deficient because the arbitrator did not calculate the cost to the City of maintaining a senior pay system that, absent a new agreement or award, would result in individual employees obtaining senior pay salaries in 2001.

N.J.S.A. 34:13A-16d(2) directs that an arbitrator "shall separately determine whether the total net annual economic changes for each year of the agreement are reasonable" under the criteria in 16g (emphasis added). In Rutgers, the State Univ., P.E.R.C. No. 99-11, 24 NJPER 421, 424 (¶29195 1998), we held that an arbitrator satisfies N.J.S.A. 34:13A-16d(2) if he or she

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<sup>7/</sup> City Ass'n of Supervisors and Administrators v. State Operated School Dist. of Newark, 311 N.J. Super. 300 (App. Div. 1998), relied on by the City, is inapt. The Court there held that a grievance arbitration panel exceeded its authority when it ignored unambiguous contract language concerning the manner in which vacation days were earned, did not comply with the provisions of the agreement, and required the State-operated district to continue a past practice inconsistent with the public interest. The City does not state how Newark applies to this matter, where the interest arbitrator has the authority to fashion an award after considering all the statutory factors, including the public interest.

identifies what new costs will be generated in each year of the agreement and figures the change in costs from the prior year rather than from the beginning of the contract. Based on the underscored language, we rejected the employer's argument that 16d(2) required an arbitrator to calculate the "cumulative costs" of an award.<sup>8/</sup> A similar analysis pertains here.

Because 16d(2) directs an arbitrator to calculate the costs for each year "of the agreement," it does not automatically require the arbitrator to identify costs (or savings) that may flow from the existing salary structure after the agreement expires. Those costs can be taken into account by the parties in future negotiations and must be taken into account by an interest arbitrator in future interest arbitration proceedings. While the future costs of an existing salary system may sometimes be relevant to assessing the financial impact of an award, the City has not shown that the arbitrator's analysis of the financial impact criterion is flawed because he did not assess the potential future costs of the senior pay step. See Rutgers (cumulative costing may sometimes be relevant but employer did not show how the cumulative costs of the award undermined the arbitrator's financial impact analysis). We further note that the potential

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<sup>8/</sup> Under this method, the cost for, e.g., year three of an award, would be the cost attributable to that year, plus the repeating costs of the salaries and benefits awarded for years one and two.

costs arising from the difference between what employees will receive if the specified senior pay salary remains unchanged and what employees would otherwise receive cannot be quantified without speculation. Unit employees will not be entitled to the senior pay salary until May 2001, at which point a new contract addressing salaries for 2000 and 2001 may have increased the base salary for non-grandfathered deputy chiefs to a level equal or exceeding that of the senior pay salary included in this award. In that case, this senior pay salary will have no cost impact unless the new contract also adjusts the senior pay salary. Moreover, we note that the predecessor contract provided for senior pay after six years of service and that if the arbitrator had retained that structure and included a senior pay salary in his award, post-award costs could also have been incurred.

We emphasize that the senior pay step to which the City objects is only one part of an award that, while in between the parties' offers, was closer to the City's proposal than to the Association's (Arbitrator's op., p. 38). It affects only four non-grandfathered deputy chiefs (Arbitrator's op., p. 49) and its delayed effect minimizes rather than exacerbates the financial impact: the City can plan for it well in advance and develop its salary budget and future negotiations strategy in light of it.

Further, we are not persuaded that the arbitrator awarded the senior step without considering 16g(6), which requires an arbitrator to take into account, to the extent evidence is

introduced, the impact of an award on a governing body's ability to maintain, expand or initiate programs or services, the percentage of the budget required to fund the award as compared to the percentage required to fund the employees' contract in the preceding year, and the impact of the award on different income levels of taxpayers. By the plain terms of the statute, these items must be considered only to the extent evidence is presented. Middlesex Cty. While the City states that the senior step will require it to either reduce services or raise taxes, it makes no particularized showing as to how the senior step will affect its budget or its ability to carry out current or planned programs. We stress that the predecessor contract included senior pay for non-grandfathered deputy chiefs after six years of service and that the City does not point to any evidence that the arbitrator did not consider how retention of a senior pay step would affect the City's ability to carry out current or planned programs.

We appreciate the City's arguments that, under Hillsdale, an interest arbitration award must be based on more than a municipality's "ability to pay" and that, given the size of its budget and this unit, additional funds could always be identified to fund an award. But Hillsdale and related cases criticized arbitrators for awarding union offers in their entirety based on a determination that a municipality could raise money to pay a salary increase. Hillsdale, 137 N.J. at 86. That was not the

approach of this arbitrator. He considered all the statutory factors and fashioned a conventional award that was designed to recognize the City's fiscal constraints while also increasing the differential between the highest-paid battalion chiefs and lowest-paid deputy chiefs (Arbitrator's op., p. 49). Total payroll costs will decline over the term of the award and, in the context of a \$440 million budget, the first three years of the award exceed the City's three-year offer by \$29,606. Absent more specific arguments by the City, we find that the arbitrator's conclusion that the award will have a modest financial impact on residents and taxpayers is supported by substantial credible evidence in the record. That conclusion is not undermined by the fact that maintaining the senior pay step may entail some post-award costs unless the step is eliminated or changed in future negotiations.

Finally, the City argues that the arbitrator did not consider the continuity and stability of employment in awarding a senior pay step. It maintains that deputy chief is a desirable position, that there are 25 battalion chiefs who are available to fill the position should any of the seven unit members retire, and that deputy chiefs have historically remained with the department for many years. In these circumstances, it contends that the award of the City's offer and elimination of senior pay would not have jeopardized the continuity and stability of employment.

The arbitrator recognized that the City had been able to maintain a competent and professional cadre of deputy chiefs and had attracted replacements (Arbitrator's op., p. 48). He further stated that, based on the evidence, he was unable to find that the award of either party's offer would significantly affect the continuity and stability of employment (Arbitrator's op., p. 47). But he also concluded that there was an inadequate differential between the highest-paid battalion chiefs and the lowest paid deputy chiefs and that that deficiency was "harmful to the perseverance of an appropriate chain of command and an obvious irritant and cause for deterioration of morale among the non-grandfathered Deputy Fire Chiefs" (Arbitrator's op., p. 37). The arbitrator's award increased that differential by awarding higher percentage increases for non-grandfathered as opposed to grandfathered deputy chiefs, and by awarding a senior pay salary that took effect after five years of service in rank. Retaining a senior pay step will presumably help maintain a differential even if the battalion chiefs, whose agreement expires in 1998, receive additional increases for 1999, 2000 and 2001. In considering 16g(8), the arbitrator concluded that the improvement of the differential would enhance the continuity and stability of "the various negotiations units in the Fire Department" (Arbitrator's op., p. 48).

The City does not dispute the arbitrator's analysis of the differential issue, which we find to be logically related to the



continuation of senior pay for non-grandfathered deputy chiefs. We conclude that the arbitrator fully considered the continuity and stability of employment in arriving at his award. We stress that that is the test, not whether the continuity and stability would necessarily have been jeopardized by awarding the City's offer. See Allendale (arbitrator will rarely be able to demonstrate that an award is the only "correct" one).


Finally, we turn to the City's contention that, given the statutory criteria, its offer was more reasonable than the Association's and should have been awarded. While the City appears to argue that a remand is required because of the across-the-board increases awarded as well as because of the senior pay aspect of the award, we reject that argument.

In formulating an award, an arbitrator must 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 a final award. The arbitrator here fully complied with these requirements and, because he did, the City must offer a particularized challenge to his analysis and conclusions. Lodi; Cherry Hill. Aside from its objections to the senior pay aspect of the award, the City has not done so and the arbitrator's conclusions are supported by substantial credible evidence in the record. We therefore affirm the award.

ORDER

The arbitrator's award is affirmed.

BY ORDER OF THE COMMISSION

  
Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Boose, Buchanan, Finn and Ricci voted in favor of this decision. None opposed.

DATED: April 29, 1999  
Trenton, New Jersey  
ISSUED: April 30, 1999

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF DELRAN,

Appellant,

-and-

Docket No. IA-98-25

DELRAN TOWNSHIP SUPERIOR  
OFFICERS' ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission affirms an interest arbitration award issued to resolve the negotiations between the Township of Delran and the Delran Township Superior Officers' Association. The Township appeals contending that the award should be vacated as it pertains to holiday pay. It asserts that the arbitrator did not properly consider the lawful authority of the employer because the award cannot legally be implemented. The Township asserts that the Division of Pensions has advised it that holiday pay can only be included in base salary for pension purposes for the SOA if such benefit is also provided to other negotiations units whose members are in the Police and Firemen's Retirement System. The Commission agrees with the Township that the arbitrator could not order that holiday pay be included in base pay for pension purposes, but the arbitrator did have the authority to award the SOA proposal to the extent that it changed the method of payment for holiday pay and required that it be included in the base pay rate for purposes of overtime compensation. Those are mandatorily negotiable compensation issues. The Commission stresses that neither it nor the arbitrator have jurisdiction to determine what is included in base pay for pension purposes.

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. 99-86

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF DELRAN,

Appellant,

-and-

Docket No. IA-98-25

DELRAN TOWNSHIP SUPERIOR  
OFFICERS' ASSOCIATION,

Respondent.

Appearances:

For the Appellant, Parker, McCay & Criscuolo, P.A.,  
attorneys (Stephen J. Mushinski, of counsel)

For the Respondent, Lt. James Gilbert, President, Delran  
Township Superior Officers' Association

DECISION

Delran Township appeals from an interest arbitration  
award involving a negotiations unit of five police lieutenants.  
See N.J.S.A. 34:13A-16f(5)(a). It asks us to vacate the award as  
it pertains to holiday pay.

The Township and the Delran Township Superior Officers'  
Association agreed to 4% increases for 1996 through 1999, and the  
unsettled issues before the arbitrator were shift differential,  
accumulated sick leave, prescription co-pay and holiday pay. The  
arbitrator resolved these unsettled issues by conventional  
arbitration, as he was required to do absent the parties'  
agreement to use another terminal procedure. N.J.S.A.  
34:13A-16d(2).

The arbitrator awarded a five-year contract from January 1, 1996 through December 31, 2000 and, as the parties had agreed, awarded 4% increases for 1996 through 1999 (Arbitrator's opinion, p. 26). For 2000, the arbitrator awarded a 3.5% increase (Arbitrator's opinion, p. 26). The arbitrator awarded the Township's proposal to eliminate the "early retirement" option for payment for accumulated sick leave and increased the cap on lump sum payments for accumulated sick leave to \$25,000 (Arbitrator's opinion, p. 26). In addition, the arbitrator awarded the Township's shift differential proposal and, effective January 1, 1997, awarded the SOA proposal that holiday pay shall be included in base salary in the same manner as longevity, shift differential and college credit payments (Arbitrator's opinion, p. 26).

The Township appeals and contends that "the award should be vacated as it pertains to holiday pay." While the Township states that all other aspects of the award are acceptable, it argues that the arbitrator did not properly consider the "lawful authority of the employer," N.J.S.A. 34:13A-16g(5), because he issued an award that it cannot legally implement. It states that it has been advised in a letter from the State Division of Pensions that it can include holiday pay in base salary only if it does so for other negotiations units whose members are part of the Police and Firemen's Retirement System (PFRS). It notes that members of the Delran Patrolmen's Association (DPA) are also PFRS

members, that their contract provides for lump sum payments of holiday pay, and that it cannot unilaterally change that provision. The Township also argues that the award violates N.J.S.A. 2A:24-8d because it is not final and definite and cannot be implemented without negotiations with the DPA. It notes that the agreement between it and the DPA does not expire until December 31, 1999 and that the DPA might not agree to change the method of payment for holiday compensation. For all these reasons, the Township maintains that the arbitrator violated N.J.S.A. 2A:24-8a because he did not consider the ramifications of the award and mistakenly applied a legal rule of the Division of Pensions.

The SOA counters that we have held that proposals to include holiday pay in base pay are mandatorily negotiable. It argues that the Division of Pensions letter relied on by the Township is misguided, and that no pension statute prohibits the SOA from negotiating, or an interest arbitrator from awarding, a holiday pay provision that pertains to one unit. The SOA also notes that negotiations for the new DPA contract will begin in September 1999 and that the DPA would likely agree to include holiday pay in base pay. The SOA further maintains that the arbitrator properly applied 16g(5), which encompasses consideration of the Local Government Cap Law, N.J.S.A. 40A:4-45.1 et seq., which is in turn designed to control the costs of government. It notes that it proposed including holiday pay in

base pay in order to afford officers a higher salary, presumably for pension and overtime purposes, while minimizing the financial impact on the Township, which was already making lump sum holiday payments. Finally, it argues that the Fair Labor Standards Act, 29 U.S.C. §201 et seq. (FLSA), requires that holiday pay be included in base pay for the purpose of computing overtime.

The standard of review for considering interest arbitration appeals is well established. Consistent with pre-Reform Act case law, we will vacate an award if 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. Cherry Hill Tp., P.E.R.C. No. 97-119, 23 NJPER 287 (¶28131 1997); Middlesex Cty., P.E.R.C. No. 98-46, 23 NJPER 595 (¶28293 1997); Borough of Allendale, P.E.R.C. No. 98-123, 24 NJPER 216 (¶29103 1998); cf. PBA Local 207 v. Bor. of Hillsdale, 137 N.J. 71, 82 (1994); Division 540, Amalgamated Transit Union, AFL-CIO v. Mercer Cty. Improvement Auth., 76 N.J. 245, 253 (1978).

The Township's contention that the award contravenes pension requirements implicates the second component of the above-noted review standard. Under N.J.S.A. 2A:24-8, an award may be vacated where it was procured by, among other things, "undue

means," a term that, in the public sector, has been "greatly enlarged" to include conformance to statutes and regulations. Old Bridge Tp. Bd. of Ed. v. Old Bridge Ed. Ass'n, 98 N.J. 523, 527 (1985); see also Jersey City Ed. Ass'n v. Jersey City Bd. of Ed., 218 N.J. Super. 177, 188 (App. Div. 1987). Thus, we will vacate an interest arbitration award where an appellant demonstrates that the award violates statutes or regulations, including statutes and regulations that do not pertain to interest arbitration.

We begin with a discussion of the negotiations history of the SOA's holiday pay proposal. The parties' predecessor agreement expired on December 31, 1995 and, during 1996 and 1997, the parties met approximately ten times in an effort to negotiate a successor contract (Arbitrator's op., p. 2). During those sessions, the SOA took the position that the Township was in violation of the FLSA by refusing to include various non-discretionary payments in base salary for the purpose of computing overtime (Arbitrator's op., p. 9). The Township agreed, effective January 1, 1997, to include longevity, shift differential and college pay in base pay for the purpose of computing overtime (Arbitrator's op., p. 9). It did so because of a federal court decision holding that the FLSA required that an employer consider such payments in computing overtime compensation (Arbitrator's op., p. 9); see Featsent v. Youngstown, 70 F.3d 900, 906 (6th Cir. 1995). Featsent did not address holiday pay, and



therefore the Township would not agree to include this item in base pay (Arbitrator's op., p. 9).

On November 6, 1997, the SOA filed a petition for interest arbitration. It listed as one of the unresolved issues, its proposal to "include in the base salary and regular pay as per Fair Labor Standards Act the following lump sum payments beginning January 1, 1996 -- longevity, shift differential, college and holiday pays." In other words, it sought to add holiday pay to the list of payments that the Township had agreed to include in base pay and sought retroactive adjustments for the holiday and other payments to 1996.<sup>1/</sup> On November 13, the Township filed a response to the petition listing additional unresolved issues, see N.J.A.C. 19:16-5.5(a), but did not file a scope of negotiations petition asserting that any of the issues listed by the SOA were outside the required scope of negotiations. See N.J.A.C. 19:16-5.5(c). Arbitration hearings were held on July 20 and October 20, 1998 and the arbitrator issued his award on January 20, 1999 (Arbitrator's op., p. 1).

In his final opinion and award, the arbitrator rejected the Township's argument that he lacked authority to award the holiday pay proposal. He stated:

The Township raises a question of jurisdiction arguing that if holiday pay is included for SOA pension purposes, it must be included for all

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<sup>1/</sup> It appears, by referring to "base pay," that the SOA proposed that holiday pay would be creditable for pension as well as overtime purposes.

members of the retirement system who are employed by it. Hence, the township reasons that the arbitrator does not have the authority to award a benefit that will result in a change in the terms and condition of other employees. Yet it is not entirely clear why this should be so, given the fact that other items such as longevity and college credits and shift differentials have been folded into the base rate by the township. Besides, the only unit this change might impact upon is the Delran Patrolman's Association, the only other bargaining unit in the Police and Fireman's Pension System. All other township employees are members of the Public Employees Retirement system. Since PERC has ruled this is a negotiable term and condition of employment, it would follow that it is a proper subject for interest arbitration. [Arbitrator's op., pp. 22-23]

In light of this ruling, the arbitrator considered the holiday pay and other proposals in the context of all of the section 16(g) factors (Arbitrator's op., pp.10-22). We need not summarize the arbitrator's careful review and discussion of the statutory criteria, because the Township does not challenge either the arbitrator's factual findings or the analysis that led him to award the proposals that he did. We do note that the arbitrator concluded that N.J.S.A. 34:13A-16g(8) had "special relevance" to the dispute (Arbitrator's op. p. 21). While he found that there was no evidence that the "continuity and stability of employment" would be affected by the award of either party's proposal, he added that another factor encompassed by 16g(8) -- "seniority rights and such other factors ... which are ordinarily and traditionally considered in the determination of wages, hours and

conditions of employment" -- weighed in favor of awarding the holiday pay proposal (Arbitrator's op., pp. 21-22). He observed that one of the "traditional factors" referred to in g(8) is the concept that, in recognition of their greater responsibilities, high-level supervisors often receive not only higher salaries but better fringe benefits (Arbitrator's op., p. 22).

After reviewing all the criteria (Arbitrator's op., pp. 10-22), the arbitrator ordered that holiday pay be included in base pay effective January 1, 1997. He reasoned that SOA members' years of service at the top echelon entitled them to a benefit that would give them a bit more in overtime and a slightly higher pension and would be a reasonable way of bringing their salaries closer to that of their peers in other municipalities (Arbitrator's op., pp. 22, 24). Based on the Township's calculations, the arbitrator found that the additional overtime and pension contribution costs attributable to this benefit were \$5,700 per year for the unit (Arbitrator's op., p. 23).

The arbitrator also awarded the Township's shift differential, prescription co-pay and accumulated sick leave proposals, although he increased the cap on payments for accumulated sick leave from the \$22,500 proposed by the Township to \$25,000 (Arbitrator's op., pp. 24-25). He explained that his award of these proposals would help offset the costs of including holiday pay in base pay, although he also found that the

Township's proposals warranted approval on other grounds (Arbitrator's op., p. 24). In this vein, he explained that an increase in prescription co-pay "was virtually endemic in municipalities throughout the state as well as the county" (Arbitrator's op., p. 24). He noted that the Township's shift differential proposal was reasonable, that the Township had acceded to the SOA's demand for 1999, and that in the absence of evidence that a shift differential was common among supervisory personnel, he found little justification for higher payments than the Township had offered (Arbitrator's op., p. 24). Finally, he found that very few municipalities offered as generous a sick leave buyout as provided by the "early retirement" option that the Township sought to eliminate (Arbitrator's op., p. 24). The arbitrator reasoned that in an era of fiscal constraints, reduced state and federal aid, and taxpayer resistance to increased governmental expenditures, "paying an employee half his salary while he stays home awaiting retirement seems a touch out of whack" (Arbitrator's op., p. 25).

In arguing that the arbitrator lacked authority to award the holiday proposal because of its alleged impact on another negotiations unit, the Township relies on an August 11, 1998 letter from the Division of Pensions. That letter states, in part:

Administratively, it has been determined that holiday pay given in a lump sum is not subject to pension contributions. However, if holiday pay is included as part of the contractual base wage, paid in routine paychecks, and this is the only means by which the reporting entity

grants holiday pay to its members of a retirement system, then holiday pay is subject to pension and should be included as part of creditable base salary subject to contributions.

To determine creditable salary, N.J.A.C. 17:4-4.1(a) states, "Only a member's base salary shall be subject to pension contributions and creditable for retirement and death benefits in the system." The creditable salary must be uniformly applied on the basis of a retirement system, not on the basis of various bargaining units comprising the members of a retirement system within the reporting district.

Accordingly, if your township's methods for paying holiday pay corresponds with the above requirements, then it is includable in base pay for pension purposes. If it is paid in any other manner other than through routine paychecks, or if it is paid differently based on bargaining units, then it is not includable.

This letter does not refer to a statute or regulation that requires that creditable salary be determined uniformly on the basis of a retirement system. Compare N.J.S.A. 40A:10-23

(employer that elects to pay health benefit premiums for some retirees must do so uniformly for all eligible retirees).

However, we are satisfied that the Division of Pensions has so construed the statutes and regulations that it is charged with interpreting, and we will assume for the purpose of this analysis that the Township cannot include holiday pay in base pay for pension purposes for SOA members unless it does so for DPA members as well.

Before turning to the merits of the Township's appeal, we comment on the procedural context in which it arises. As noted,

the Township made the same arguments to the arbitrator that it does here. This type of threshold challenge to the arbitrator's jurisdiction and the legal arbitrability of a proposal, like a more typical scope of negotiations challenge, can affect the issues that will be considered in a proceeding and, therefore, should be made and decided before the arbitrator's final opinion and award. See N.J.A.C. 19:16-5.5(c) (where party does not file scope of negotiations petition within ten days of receiving interest arbitration petition, or within five days of receiving response to petition, it is deemed to agree to submit all unresolved issues to compulsory interest arbitration); compare Borough of Allendale, P.E.R.C. No. 98-27, 23 NJPER 508 (¶28248 1997) (arbitrator should have decided, prior to issuing his final opinion and award, whether he would consider issues not included in a timely response to a petition). Further, this type of challenge to the legal arbitrability of an interest arbitration proposal should be decided in the first instance by us, not the arbitrator. See, e.g., Verona Tp., P.E.R.C. No. 97-71, 23 NJPER 48 (¶28032 1996); Bernards Tp., P.E.R.C. No. 88-116, 14 NJPER 352 (¶19136 1988).

For these reasons, we hold that challenges to an arbitrator's jurisdiction or the legal arbitrability of a proposal should, in the future, be made in the time and manner prescribed by N.J.A.C. 19:16-5.5(c). Nevertheless, we consider the

Township's challenge at this stage. We note that the Division of Pensions letter was not received until August 11, 1998, well after the parties' initial interest arbitration filings, and that N.J.A.C. 19:16-5.5(c) may be relaxed in certain circumstances. See N.J.A.C. 19:10-3.1. In addition, the SOA does not object to our consideration of the issue.

We turn now to the Township's contention that the arbitrator did not have the authority to order that holiday pay be included in base pay. This issue implicates three principles, two of which relate to an interest arbitrator's authority.

The first principle is that an interest arbitrator may not rule on a proposal where, by operation of law, his ruling would affect employees over whom he has no jurisdiction. See Verona; Bernards Tp.; accord Borough of Oradell, P.E.R.C. No. 91-85, 17 NJPER 222 (¶22095 1991) (interest arbitrator could not consider proposal that employer pay cost of medical coverage for dependents where, by virtue of uniformity requirement in State Health Benefits Plan, an award granting the proposal would affect the rights of employees not participating in the proceeding).

The second principle is that an arbitrator may not issue any "finding, opinion or order regarding any aspect of the rights duties, obligations in or associated with ... any governmental retirement system or pension fund...." See N.J.S.A. 34:13A-18. Cf. City of Newark, P.E.R.C. No. 93-57, 19 NJPER 65 (¶24030 1992) (holding that contract provision requiring that holiday pay

be included in base pay for pension purposes was mandatorily negotiable but observing that because no modification of the provision had been proposed, we would not address whether N.J.S.A. 34:13A-18 would bar an interest arbitrator from awarding such a proposal in the first instance).

The third principle is that, while the subject of pensions is not mandatorily negotiable, see N.J.S.A. 34:13A-8.1 and State v. State Supervisory Employees' Ass'n, 78 N.J. 54, 83 (1978), pension statutes and regulations do not automatically preempt proposals relating to terminal leave, longevity or holiday pay, even though those proposals may trigger questions about how the compensation will be treated for pension purposes. For example, in Galloway Tp., P.E.R.C. No. 98-133, 24 NJPER 261 (¶29125 1998), we held that the pension statute defining base salary for pension purposes did not address, and did not preempt, negotiations over the separate issue of how base salary is defined for purposes of calculating terminal leave payments. We also found that pension statutes and regulations did not preempt negotiations over a provision requiring a 10% longevity payment, includable in base salary, for employees with 25 years of service who had announced an intent to retire. We reasoned that the employer could agree to provide that compensation but that whether it was creditable for pension purposes was within the jurisdiction of the Division of Pensions. See also Paramus Bor., P.E.R.C. No.



86-17, 11 NJPER 502, 506-507 (¶16178 1985) (pension regulation prohibiting certain pre-retirement increases in salary did not preempt negotiations over proposal to increase longevity payments during police officers' 23rd year of service; proposal did not on its face violate regulation and Division of Pensions could decide whether the payments were creditable for pension purposes);

Voorhees Tp., P.E.R.C. No. 96-77, 22 NJPER 198 (¶27105 1996).<sup>2/</sup>

Applying these principles, we agree with the Township that, by virtue of N.J.S.A. 34:13A-18 and the Verona, Voorhees, and Bernards line of cases, the arbitrator could not order that holiday pay be included in base pay for pension purposes. But the arbitrator did have the authority to award the SOA proposal to the extent that it changed the method of payment for holiday pay and required that it be included in the base pay rate for purposes of overtime compensation. Those are mandatorily negotiable compensation issues that are separate and apart from the issue of how the periodic holiday payments are treated for pension purposes, a question that is within the jurisdiction of the

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<sup>2/</sup> Newark held that a provision requiring that holiday pay be included in base pay for pension purposes was mandatorily negotiable, but did so because, in the circumstances of that case, the Division of Pensions had advised the employer that this treatment was consistent with the pension statutes and that pension contributions for other employees were already calculated with holiday pay included in base pay. Newark does not permit parties to negotiate over the pension implications of compensation payments in a manner inconsistent with pension regulations or where the Division has not determined the pension effect of a form of compensation.

Division of Pensions. Galloway; Paramus. Nothing in the Division of Pensions letter bars an employer from including holiday pay in base pay for non-pension purposes for some units while making lump sum holiday payments for other units.

The arbitrator's order does not specifically address the pension implications of the holiday pay award and states only that "effective January 1, 1997 holiday pay shall be included in the base salary in the same manner as longevity, shift differential and college credit payments." (Arbitrator's op., p. 26).<sup>3/</sup> The award can be legally implemented, consistent with the Division of Pension's advice, by including holiday pay in base pay for overtime purposes -- one of the SOA's original objectives. Therefore, we affirm the award.

We recognize that the arbitrator's opinion reflects his view that including holiday pay in base pay would result in a "slightly higher pension," although the award itself does not direct that holiday pay be included in base pay for pension purposes (Arbitrator's op., p. 24). We stress that neither we nor the arbitrator has jurisdiction to determine what is included in base pay for pension purposes. From this record, it appears that whether the holiday pay for this unit is creditable for pension purposes will depend on whether the Township and the DPA agree that that unit shall also receive holiday pay on a periodic rather

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<sup>3/</sup> The Township states that it includes these items in base pay only for the purpose of calculating overtime.

than lump sum basis. If they do, one effect of the arbitrator's ordering that holiday pay be included in base pay will be that the holiday pay for both units will, by virtue of the Division of Pensions letter summarized earlier, be creditable for pension purposes. But that result will flow not from an arbitrator's having impermissibly ruled on pension matters, N.J.S.A. 34:13A-18, but from the combined effect of the arbitrator's ruling on mandatorily negotiable compensation issues, an agreement between the Township and the DPA, and the Division of Pension's construction of its regulations. In view of our ruling, we need not address the SOA's contention that the FLSA requires that holiday pay be included in base pay for purposes of calculating overtime.

ORDER

The arbitrator's award is affirmed.

BY ORDER OF THE COMMISSION

  
Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Boose, Buchanan, Finn and Ricci voted in favor of this decision. None opposed.

DATED: March 25, 1999  
Trenton, New Jersey  
ISSUED: March 26, 1999

P.E.R.C. NO. 99-28

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF LODI,

Appellant,

-and-

Docket No. IA-97-1

PBA LOCAL 26,

Respondent.

SYNOPSIS

The Public Employment Relations Commission vacates an interest arbitration award issued to resolve negotiations between the Borough of Lodi and PBA Local 26. The Commission remands the matter to the arbitrator for reconsideration in accordance with its opinion. The Borough had appealed the interest arbitration award.

The Commission finds that although the arbitrator thoroughly reviewed the evidence on all the criteria and appears to have considered all that evidence in arriving at his award, the opinion does not explain what factors he found most important or indicate why he gave those factors more weight than others. The Commission remands so that the arbitrator can issue an award articulating what factors and evidence he considered most important and explain how he weighed and considered all the 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.

P.E.R.C. NO. 99-28

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF LODI,

Appellant,

-and-

Docket No. IA-97-1

PBA LOCAL 26,

Respondent.

Appearances:

For the Appellant, Paul S. Barbire, attorney

For the Respondent, Loccke & Correia, attorneys,  
(Leon B. Savetsky, of counsel)

DECISION

The Police and Fire Public Interest Arbitration Reform Act, P.L. 1995, c. 425, N.J.S.A. 34:13A-14 to -21, authorizes the Commission to decide appeals from interest arbitration awards. N.J.S.A. 34:13A-16f(5)(a). We exercise that authority in this case, where the Borough of Lodi appeals from an April 20, 1998 award involving the patrol officers, sergeants, lieutenants and captains in its police department.

The arbitrator resolved the unsettled issues in dispute by conventional arbitration, as he was required to do absent the parties' agreement to use another terminal procedure. N.J.S.A. 34:13A-16d(2). He fashioned a conventional award after reviewing the parties' final offers. Those offers were as follows.

The Borough proposed a four-year agreement from July 1, 1996 through June 30, 2000. For 1996-1997, the Borough proposed a wage freeze for all officers. For 1997-1998, 1998-1999, and 1999-2000, it offered 3% across-the-board increases for patrol officers, 2.5% across-the-board increases for sergeants and lieutenants, and 2% across-the-board increases for captains. It proposed that the increases not be retroactive. The Borough also proposed to replace the three-step salary guide with an eight-step guide, so that it would take patrol officers eight years to reach maximum salary. In addition, it proposed that current officers be frozen at their current longevity rate and that a new longevity program be implemented for new hires. It also sought to reduce, from 220 to 55 days, the maximum accumulated sick leave that an officer was entitled to be paid for upon retirement. Finally, the Borough sought a provision stating that it had the right to select an attorney for police officers when, under N.J.S.A. 40A:14-155, it is required to provide for an officer's defense.<sup>1/</sup>

The PBA proposed a four-year agreement from July 1, 1996 through June 30, 2000, with 6% increases in each year. It also proposed that officers be permitted to accumulate personal leave days from year to year and that officers be permitted to sell back accumulated personal days.

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<sup>1/</sup> N.J.S.A. 40A:14-155 requires a municipality to provide for an officer's defense when he or she is a defendant in an action arising out of the officer's lawful exercise of police powers in furtherance of his or her official duties.

The arbitrator fashioned a conventional arbitration award that established a four-year contract from July 1, 1996 through June 30, 2000, with 4% increases for all ranks for each year of the agreement (Arbitrator's opinion, p. 30). The increases for 1996-1997 and 1997-1998 were retroactive to July 1, 1996 and July 1, 1997, respectively (Arbitrator's opinion, p. 30). Effective July 1, 1998, the arbitrator awarded a six-step salary guide for patrol officers (entry level and five steps), so that patrol officers will reach maximum salary in six years (Arbitrator's opinion, p. 30). He denied the parties' other proposals (Arbitrator's opinion, p. 30).

In formulating his award, the arbitrator summarized the parties' arguments and evidence on each of the statutory criteria (Arbitrator's opinion, pp. 6-29). After this summary, the arbitrator concluded:

[I]t is my view that a four year contract should provide for a 4 percent annual increase across the board for each rank. These raises, to my mind, represent reasonable increases based on application of the relevant statutory standards. [Arbitrator's opinion, p. 29]

The Borough appeals. It contends that the salary increases awarded were too high and that the arbitrator placed too much weight on officers' community involvement and too little on the Borough's decision not to spend up to its Cap limit. It also maintains that the arbitrator disregarded the cost of living, and the wage increases received by state and federal workers, when he awarded 4% wage increases. It argues that the arbitrator's

findings on the financial impact criterion were "woefully deficient" and that the arbitrator noted the income generated by municipal court fines and a joint "911" service without taking into account associated costs and the net monies received from those sources. Finally, it maintains that the arbitrator misstated the number of officers in the unit and erred in finding that the continuity and stability of employment criterion had no application to the proceeding and in indicating that the Borough provides insurance to unit members at one-and-a-half rather than two times salary. It asks that we modify the award to more closely reflect its proposal or remand it to the arbitrator for reconsideration. The PBA counters that the arbitrator's opinion includes a comprehensive analysis of the evidence on all the statutory criteria and that the Borough does not offer a particularized challenge to that analysis.

In requiring that disputes be resolved by conventional arbitration unless the parties agree to another terminal procedure, the Reform Act entrusts the arbitrator with weighing the evidence and fashioning an award. An arbitrator must assess the evidence on individual statutory factors and then weigh and balance the relevant, sometimes competing, factors. In reviewing a challenge to an award, we will determine whether the arbitrator considered the criteria in N.J.S.A. 34:13A-16g and rendered a reasonable determination on the issues. Cherry Hill Tp., P.E.R.C. No. 97-119, 23 NJPER 287 (¶28131 1997); N.J.A.C. 19:16-5.9.



Consistent with pre-Reform Act case law, we will vacate an award if 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. Cherry Hill Tp.; cf. PBA Local 207 v. Bor. of Hillsdale, 137 N.J. 71, 82 (1994); Div. 540, Amalgamated Transit Union, AFL-CIO v. Mercer Cty. Improvement Auth., 76 N.J. 245, 253 (1978). We will also vacate an award where the arbitrator did not explain the reasons for an award in the context of the statutory criteria. Salem Cty., P.E.R.C. No. 98-107, 24 NJPER 162 (¶29079 1998).

Fashioning a conventional arbitration award is not a precise mathematical process, Allendale Bor., P.E.R.C. No. 98-123, 24 NJPER 216 (¶29016 1998). Given that the statute sets forth general criteria rather than a formula, the setting of wage figures necessarily involves judgment and discretion and an arbitrator will rarely be able to conclusively demonstrate that his or her award is the only "correct" one. Allendale Bor. 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. However, the arbitrator should state what statutory factors he or she considered most important in arriving at the award, explain why they were given

significant weight, and explain how other evidence or factors were weighed and considered in arriving at a final award. Once an arbitrator has provided such a reasoned explanation for an award, N.J.A.C. 19:16-5.9, a party appealing an award to us must offer a particularized challenge to the arbitrator's analysis and conclusions. Cherry Hill Tp.

The arbitrator's opinion thoroughly summarizes the evidence on all the criteria and he appears to have considered all of that evidence in arriving at his award. However, the opinion does not explain what factors he found most important or indicate why he gave those factors more weight than others. We also do not know how he weighed and considered those factors in relation to other evidence or factors in arriving at his final award. As in most arbitration proceedings, the evidence did not point ineluctably to a particular salary increase. The 4% wage increases awarded in each year are somewhat less than interest arbitration awards and settlements in 30 Bergen County municipalities and close to the 4.3% increase in average private sector wages for 1996 (Arbitrator's opinion, pp. 5, 10-11). However, we cannot assess the Borough's arguments that the wage increases were not justified given the Borough's financial condition without, for example, an explanation of how the arbitrator weighed evidence of what he found to be the Borough's severe short-term budgetary difficulties vis-a-vis that concerning the Borough's strong tax base and high tax collection rate

(Arbitrator's opinion, p. 27).<sup>2/</sup> Similarly, we do not know what, if any, weight the arbitrator gave to the cost of living or the Borough's decision not to spend up to its Cap limit or use its Cap bank. In this posture, a remand is required so that the arbitrator can issue an award and opinion that expressly articulates what factors and evidence he considered most important and explains how he weighed and considered all of the evidence.

The arbitrator must also separately determine whether the total net annual economic changes for each year of the agreement are reasonable under the eight statutory criteria, as required by N.J.S.A. 34:13A-16d(2); Cherry Hill Tp.; Rutgers, the State Univ., P.E.R.C. No. 99-11, 24 NJPER 421 (129195 1998). Finally, the arbitrator should explain the significance of the information presented concerning municipal court and "911" revenues and the potential, if any, for layoffs as well as resignations.

For these reasons, we vacate and remand this award to the arbitrator for reconsideration in accordance with this opinion. We direct that the arbitrator issue a new opinion and award no later than 45 days from the date of this decision.


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<sup>2/</sup> The Borough does not challenge these last two findings.

ORDER

The award is vacated and remanded for reconsideration in accordance with this opinion.

BY ORDER OF THE COMMISSION

  
Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Boose, Finn, Klagholz and Ricci voted in favor of this decision. Commissioner Buchanan voted against this decision. Commissioner Wenzler was not present.

DATED: September 24, 1998  
Trenton, New Jersey  
ISSUED: September 25, 1998

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF BOGOTA,

Appellant,

-and-

Docket No. IA-97-8

PBA LOCAL NO. 86,

Respondent.

SYNOPSIS

The Public Employment Relations Commission vacates an interest arbitration award issued to resolve negotiations between the Borough of Bogota and PBA Local No. 86. The Commission remands the matter to a new arbitrator to be consolidated with Docket No. IA-98-59, an interest arbitration petition which has been filed to resolve the 1998 negotiations.

The Commission had vacated and remanded a previous award holding that the arbitrator's consideration of the Borough of Bogota's evidence concerning private-sector wage increases did not comport with the Interest Arbitration Reform Act. The Commission also found that the arbitrator should not have stressed the small cost differential between the award and an "alternate" wage proposal that the Borough had intended to be considered only if it could arbitrate its civilian dispatcher proposal -- a proposal that the arbitrator had excluded from the proceeding.

The Commission concludes that the arbitrator, on remand, did not analyze all the information in the Commission's 1996 and 1997 wage reports and the Commission is not satisfied that he fully considered those reports in concluding that the evidence on private-sector wage increases supported the PBA's position "appreciably more" than the Borough's position.

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. 99-20

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF BOGOTA,

Appellant,

-and-

Docket No. IA-97-8

PBA LOCAL NO. 86,

Respondent.

Appearances:

For the Appellant, Murray, Murray & Corrigan, attorneys  
(Robert E. Murray, of counsel)

For the Respondent, Loccke & Correia, P.A., attorneys  
(Leon B. Savetsky, of counsel)

DECISION

The Police and Fire Public Interest Arbitration Reform Act, P.L. 1995, c. 425, N.J.S.A. 34:13A-14 to -21, authorizes the Commission to decide appeals from interest arbitration awards. N.J.S.A. 34:13A-16f(5)(a). We exercise that authority in this case, where the Borough of Bogota appeals from an April 29, 1998 interest arbitration award involving its police officers. The award was issued after a September 10, 1997 award was vacated. Borough of Bogota, P.E.R.C. No. 98-104, 24 NJPER 130 (¶29066 1998). Bogota held that the arbitrator's consideration of the Borough's evidence concerning private sector wage increases did not comport with the Reform Act. It also found that the arbitrator should not have stressed the small cost differential between the award and an "alternate" wage proposal that the

Borough had intended to be considered only if it could arbitrate its civilian dispatcher proposal -- a proposal that the arbitrator had excluded from the proceeding. While the Borough had also contended that the arbitrator had not properly considered the cost of living, N.J.S.A. 34:13A-16g(7), or analyzed its vacation and medical insurance proposals, we found no fundamental deficiencies in these aspects of the arbitrator's analysis. We remanded the matter to the arbitrator for reconsideration in accordance with our opinion.

The parties' final offers, submitted prior to the September 1997 award, were as follows.

The PBA proposed a four-year agreement from January 1, 1996 through December 31, 1999, with 5% across-the-board salary increases in each year. It also sought contract provisions: (1) permitting officers to accrue compensation time in lieu of overtime payments and (2) confirming the parties' "overlap" vacation practice. On remand, the PBA asked that "the original decision be confirmed and reissued."

The Borough proposed a two-year contract from January 1, 1996 through December 31, 1997, with 3% increases in both years. The Borough also sought to change the unit's medical plan and benefits; to freeze the starting salary for the term of the agreement and, effective July 1, 1997, to institute modified salary and vacation guides for new hires. The Borough did not object to the PBA's compensation time proposal, provided the

Borough retained the right to approve use of compensation time. On remand, the Borough did not press its medical, vacation and salary schedule proposals but urged that the arbitrator award lower across-the-board wage increases than before.

The arbitrator resolved the unsettled issues by conventional arbitration, as he was required to do absent the parties' agreement to use another terminal procedure. N.J.S.A. 34:13A-16d(2). He stated that, upon reconsideration, he saw no reason to modify the terms of the original award (Arbitrator's opinion (II), p. 19).<sup>1/</sup> He therefore awarded a two-year contract from January 1, 1996 through December 31, 1997, with 4.5% increases in each year. He denied the Borough's proposals for modified vacation and salary schedules for new hires, as well as its proposal to change the unit's medical plan and medical plan benefits (Arbitrator's opinion (II), p. 18). He granted the PBA's compensatory time proposal and denied its proposal concerning overlapping vacation (Arbitrator's opinion (I), pp. 35-36; Arbitrator's opinion (II), pp. 18-19).

The Borough asks us to modify the award. It contends that the wage increases awarded are excessive and that, contrary to our direction in Bogota, the arbitrator did not properly consider its evidence concerning private sector wage increases.

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<sup>1/</sup> "Arbitrator's opinion (I)" refers to the opinion issued on September 10, 1997. "Arbitrator's opinion (II)" refers to the opinion issued on April 29, 1998.



It also maintains that Bogota required the arbitrator to take a "fresh look" at the entire case and challenges the arbitrator's analysis of several of the statutory criteria. While the PBA counters that Bogota directed a limited remand, it maintains that the arbitrator fully assessed the evidence presented on "private employment in general," N.J.S.A. 34:13A-16g(2)(a), and the other statutory criteria.

In requiring that disputes be resolved by conventional arbitration unless the parties agree to another terminal procedure, the Reform Act entrusts the arbitrator with weighing the evidence and fashioning an award. An arbitrator must assess the evidence on individual statutory factors and then weigh and balance the relevant, sometimes competing, factors. In reviewing a challenge to an award, we will determine whether the arbitrator considered the criteria in N.J.S.A. 34:13A-16g and rendered a reasonable determination on the issues. Cherry Hill Tp., P.E.R.C. No. 97-119, 23 NJPER 287 (¶28131 1997); N.J.A.C. 19:16-5.9. Consistent with pre-Reform Act case law, we will vacate an award if 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. Cherry Hill Tp.; cf. PBA Local 207 v. Bor. of Hillsdale, 137 N.J. 71, 82 (1994); Div. 540, Amalgamated Transit

Union, AFL-CIO v. Mercer Cty. Improvement Auth., 76 N.J. 245, 253 (1978). In applying these standards to this appeal, we turn first to the nature and scope of the remand in Bogota.

Bogota held that the arbitrator should not have "seriously doubted" whether he should give "any real consideration" to the Commission's statutorily-mandated report showing private sector wage increases. 24 NJPER 132; see also Allendale Bor., P.E.R.C. No. 98-123, 24 NJPER 216 (¶29103 1998); N.J.S.A. 34:13A-16.6. Bogota explained that N.J.S.A. 34:13A-16g(2)(a) requires arbitrators to compare the employees involved in the proceeding with "employees generally" in "private employment in general." Bogota directed the arbitrator to consider the Borough's evidence on private sector wage increases "in conjunction with the parties' other evidence." 24 NJPER at 132. The quoted language recognized that the private sector evidence could not be considered in a vacuum: in formulating a new award, the arbitrator would have to evaluate it together with the evidence on the other statutory criteria. See Allendale Bor. (arbitrator must assess the evidence on individual statutory factors and then weigh and balance the relevant, sometimes competing, factors).<sup>2/</sup> However, Bogota did not mandate that the arbitrator hold a hearing or admit new evidence, although he had

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<sup>2/</sup> In arriving at a second award, the arbitrator also had to adhere to Bogota's direction that the Borough's alternate wage proposal not be considered.

the discretion to do either of these things. See N.J.A.C.

19:16-5.7(a) (conduct of the arbitration proceeding is under the exclusive control of the arbitrator).<sup>3/</sup>

Given these parameters, the PBA is correct that Bogota did not contemplate an entirely new proceeding. But we did anticipate that, in considering the Borough's private sector evidence, the arbitrator would again weigh and balance all of the other statutory factors in fashioning his second award. That re-weighing was necessary because the arbitrator could not consider the private sector evidence in isolation but had to consider how it related to the evidence on the other statutory factors. Therefore, the Borough may challenge whether, in arriving at his second award, the arbitrator analyzed the evidence on all the relevant statutory factors and set forth the reasons for the result reached. N.J.S.A. 34:13A-16g; N.J.A.C. 19:16-5.9; Allendale Bor.; Cherry Hill Tp.<sup>4/</sup>

Against this backdrop, we turn to the Borough's contention that the arbitrator did not comply with our directions in Bogota and did not properly analyze the statutory criteria.

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<sup>3/</sup> The arbitrator did hold a hearing and, over the PBA's objection, admitted additional evidence concerning economic trends and private and public-sector wage increases and salaries.

<sup>4/</sup> We need not decide whether the Borough could challenge factual findings that the arbitrator made in his first opinion that were not challenged in the first appeal. The Borough does not dispute any of those findings. In deciding this appeal, we have considered each of the arbitrator's opinions. The arbitrator's second opinion incorporates much of the analysis in his first opinion (Arbitrator's opinion (II), pp. 16-17).

The focus of the remand was the amount of across-the-board increases to be awarded for 1996 and 1997. In awarding 4.5% increases instead of the 3% increases proposed by the Borough or the 5% increases for 1996 through 1999 initially sought by the PBA, the arbitrator gave "considerable weight" and "heavy weight" to the comparability criterion, N.J.S.A. 34:13A-16g(2) (Arbitrator's opinion (I), p. 31; Arbitrator's opinion (II), p. 17). The arbitrator found that the evidence on police salaries in comparable jurisdictions, and the Commission's 1997 private sector wage report, supported the wage increases he awarded (Arbitrator's opinion (I), p. 31; Arbitrator's opinion (II), pp. 16, 17). The arbitrator concluded that evidence on public and private sector salaries, submitted by the Borough on remand, was entitled to "very little weight" (Arbitrator's opinion (II), p. 13).

The arbitrator also discussed, primarily in his first opinion, the lawful authority, financial impact, public interest and cost of living criteria. In discussing the lawful authority criterion, N.J.S.A. 34:13A-16g(5), the arbitrator noted that the Borough had not asserted that the Cap law, N.J.S.A. 40A:4-45.1 et seq., would prevent it from funding either the 5% increases originally sought by the PBA or the 4.5% increases awarded (Arbitrator's opinion (II), p. 16). He added that the Borough had budgeted under the Cap limit for 1995 and 1996 and that it had a Cap bank for 1997 and 1998 and "substantial flexibility" in its

budget (Arbitrator's opinion (I), p. 24; Arbitrator's opinion (II), p. 16).

In addressing the financial impact criterion, the arbitrator recognized that the Borough had the third highest equalized tax rate in the County; that the police force comprised 17% of its work force but accounted for 66.6% of its salary budget; and that, in January 1996, the Borough had been faced with financial difficulties caused by overexpenditures by prior administrations and reduced State aid (Arbitrator's opinion (I), p. 18, 32). However, the arbitrator found that the Borough's December 31, 1996 audited financial statement showed a healthy community with increasing tax collections and expenditures under control (Arbitrator's opinion, pp. 32-33). He therefore concluded that the award would not adversely affect the public interest or the Borough's financial status (Arbitrator's opinion (I), p. 33; Arbitrator's opinion (II), p. 16).

Finally, the arbitrator discussed the cost of living criterion, N.J.S.A. 34:13A-16g(7). In his first opinion the arbitrator stated that the fact that the cost of living had been "under control" for the past few years was "a strong argument on behalf of adoption of a more reasonable increase" (Arbitrator's opinion (I), p. 33). In his second opinion, the arbitrator stated that the "reasonably stable" cost of living should not have a major impact on wage increase deliberations (Arbitrator's opinion (II), p. 18).

We turn first to the Borough's contention that the arbitrator did not comply with Bogota's direction to give "real consideration" to the Borough's "Exhibit 14," the Commission's 1996 private sector wage report (Arbitrator's opinion (II), pp. 10-11). The arbitrator discussed the report and noted that it showed that, in Bergen County, average private sector wages increased by 3.6% between December 31, 1994 and December 31, 1995 (Arbitrator's opinion (II), p. 10). He also noted that the statewide increase in average private sector wages was 3.4% (Arbitrator's opinion (II), p. 10). He then wrote:

It is interesting to note that 11 of the 21 counties surveyed had wage changes in private sector jobs which exceeded 3.0 percent. (That, of course was the Boro's wage proposal for 1996).... The average increase of private sector wages in these 11 counties was 4.17 percent.

The inescapable conclusion is that the Boro's three (3%) proposal compares unfavorably with the results of the N.J.D.O.L. report. Bergen County private sector wage increases (3.6%) exceeded it by 20 percent. The state-wide private sector average increase (3.4%) exceeded it by 13.3 percent. And the average increase of the 11 counties which had increases of over 3.0 (4.17%) exceeded it by 39 percent.

Thus, it is apparent that a detailed analysis of the evidence submitted in the original proceeding simply did not lend real support to the Boro's position on this criterion. I am compelled to observe, then, that even if Boro Exhibit No. 14 had been given "real consideration" it would not have outweighed the other criteria on which I relied to make my award.  
[Arbitrator's opinion (II), pp. 10-11]

The arbitrator also analyzed the Commission's 1997 private sector wage report.<sup>5/</sup> The arbitrator stated that the 1997 report showed a 4.3% statewide increase in average private sector wages between 1995 and 1996 and he stated that that increase was significantly closer to the PBA's proposal than to the Borough's (Arbitrator's opinion (II), p. 16). The arbitrator also found that the 4.3% figure closely approximated the increases he had earlier awarded and commented that nine out of 21 counties had wage increases of more than 4% (Arbitrator's opinion (II), p. 15-16). The arbitrator reasoned that the report was entitled to considerable weight because it was specific to New Jersey and was prepared pursuant to legislative mandate (Arbitrator's opinion (II), p. 15).

We conclude that the arbitrator did not fully analyze either the 1996 private sector wage report that Bogota directed him to review or the 1997 report that he took notice of. With respect to the 1996 report, the arbitrator stated that the 3.6% Bergen County figure "does not support" the Borough's proposal. However, he did not explain how it or the statewide 3.4% figure supported the PBA's 5% proposal or the 4.5% increases awarded.

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<sup>5/</sup> The Borough did not submit this report and it objects to the arbitrator taking notice of it without giving the parties an opportunity to comment on it. While that course might have been preferable, the arbitrator did not err in taking notice of a document that the Legislature intended to be used in interest arbitration proceedings. Allendale Bor. This is particularly so where the report was the most recent version of the exhibit the Borough had submitted.

Similarly, by averaging the increases in the 11 out of 21 counties where average private sector wages had increased by between 3% and 6.6% (Arbitrator's opinion (II), p. 10), the arbitrator isolated a portion of the report and derived a percentage figure that was closer to the 4.5% increases awarded than either the statewide or Bergen County figures. But the arbitrator did not explain why Bergen County is appropriately compared just to the 11 counties where average private sector wages increased by more than 3%.

A similarly selective analysis is evident in the arbitrator's discussion of the 1997 report. The arbitrator accurately noted that average statewide private sector wages increased 4.3% during 1996. But he did not mention that average private sector wages in Bergen County increased 3.6% -- even though he had focused on the Bergen County figure in analyzing the earlier report and cited some county figures in the 1997 report when he noted that private sector wages increased by more than 4% in nine out of 21 counties.<sup>6/</sup> Similarly, while the arbitrator accorded significant weight to the 1997 report, he did not explain why he did not give significant weight to the 1996 report, which was also prepared pursuant to N.J.S.A. 34:13A-16.6.

For these reasons, we conclude that the arbitrator did not analyze all the information in the Commission's 1996 and 1997

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<sup>6/</sup> The report also showed 3% increases for local government workers, 3.3% increases for federal government workers in New Jersey and 2.1% increases for State workers.



wage reports and, therefore, we are not satisfied that he fully considered those reports in concluding that the evidence on private sector wage increases supported the PBA's position "appreciably more" than the Borough's (Arbitrator's opinion (II), p. 17). Cf. Cherry Hill Tp. (Commission vacated and remanded award where it was not satisfied that arbitrator fully considered Borough proposal and where he expressed improper presumption that it should not be awarded in interest arbitration).<sup>7/</sup>

We do not hold that the arbitrator was compelled to award different salary increases than he did. However, he was required to provide a reasoned explanation as to how he weighed all the statutory factors in arriving at his award and, given our remand in Bogota, to explain how the additional private sector employment evidence factored into his analysis. The arbitrator did not provide such an explanation because he focused on isolated portions of the reports and did not explain why he found some information -- e.g., the statewide wage increase for 1996 versus that for 1995 -- more probative than other information. We therefore vacate the award.

In view of our decision to vacate the award on this ground, we do not reach the Borough's arguments that the

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<sup>7/</sup> While the Borough challenges the arbitrator's analysis of the 1996 and 1997 reports, it does not challenge his decision to give greater weight to the 1997 report than to national data concerning private sector wage increases and contract settlements (Arbitrator's opinion (II), pp. 13-15).

arbitrator did not properly consider the public interest, the continuity and stability of employment, the cost of living, the financial impact of the award, or the Borough's evidence, submitted on remand, concerning public and private sector salaries in New Jersey. As discussed later, we are consolidating this matter with an interest arbitration petition initiated in 1998. The arbitrator appointed in that matter will have to consider and weigh all the statutory factors in arriving at his or her award.

We will, however, comment on the Borough's argument that the arbitrator erred when, in his second opinion, he stated that the "reasonably stable" cost of living "should not have a major impact on wage increase deliberations" (Arbitrator's opinion (II), p. 18). The comment appears to be inconsistent with the Legislature's direction that an arbitrator must consider cost of living evidence unless he or she explains why the factor was irrelevant to a proceeding. N.J.S.A. 34:13A-16g. But it may be that the arbitrator's comment instead reflects an assessment that the stable cost of living did not warrant significant increases, not a judgment that the factor was irrelevant. We need not resolve this point since we have already decided to vacate this award.

We turn now to the appropriate remedy. The Borough argues that we should modify the award "consistent with the record before the arbitrator." It emphasizes that the contract awarded has already expired and argues that another remand would be a waste of time.

While N.J.S.A. 34:13A-16f(5)(a) provides that the Commission "may" modify or correct an award, we decline to exercise that authority to change this award on the only disputed issue: the salary increases to be awarded. Determining salaries requires an analysis and weighing of all the evidence submitted on all the statutory factors and should be made in the first instance by an arbitrator.<sup>8/</sup>

We recognize that the parties do not have a contract for 1998 and that post-1997 contract terms cannot be resolved until those for 1996 and 1997 are settled.<sup>9/</sup> In this posture, and given the previous remand, the appropriate remedy is to vacate the award and consolidate this matter before the new arbitrator who will be appointed in IA-98-59. That arbitrator will have exclusive jurisdiction over the consolidated proceeding, N.J.A.C. 19:16-5.7(a), and shall resolve the unsettled issues for 1996,

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<sup>8/</sup> We need not decide whether the scope of our authority to modify awards under the Reform Act is the same as a court's authority under the Arbitration Act, N.J.S.A. 2A:24-1 et seq. Under N.J.S.A. 2A:24-9, a court may modify an award only where there is an arithmetical error or obvious mistake in identification, the arbitrator decided a matter not submitted, or the award is imperfect as to form. Tretina Printing, Inc. v. Fitzpatrick & Associates, Inc., 135 N.J. 349, 355, 359 (1994); see also City of Atlantic City v. Atlantic City Firefighters, Local 198, IAFF, 234 N.J. Super. 596, 602 (Ch. Div. 1989) (under N.J.S.A. 2A:24-9, court had no authority to modify interest arbitration award to state that language concerning staffing levels was a non-binding statement of purpose).

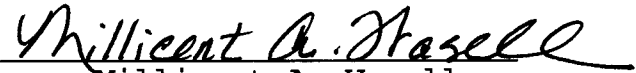
<sup>9/</sup> The PBA filed a petition for interest arbitration on February 2, 1998, IA-98-59, and noted that the parties' contract expired on December 31, 1997.

1997, 1998 and any other years he or she deems appropriate, consistent with the parties' final offers.

ORDER

The arbitrator's award is vacated and this matter is consolidated with IA-98-59. The Director of Arbitration shall appoint a new arbitrator with exclusive jurisdiction over the consolidated proceeding.

BY ORDER OF THE COMMISSION

  
Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Boose, Buchanan, Finn and Ricci voted in favor of this decision. None opposed. Commissioners Klagholz and Wenzler were not present.

DATED: August 20, 1998  
Trenton, New Jersey  
ISSUED: August 20, 1998

P.E.R.C. NO. 99-11

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RUTGERS, THE STATE UNIVERSITY  
OF NEW JERSEY,

Appellant,

-and-

Docket No. IA-97-41

FRATERNAL ORDER OF POLICE  
LODGE 62A, SUPERIOR OFFICERS,

Respondent.

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RUTGERS, THE STATE UNIVERSITY  
OF NEW JERSEY,

Appellant,

Docket No. IA-97-72

-and-

FRATERNAL ORDER OF POLICE  
LODGE 62, PRIMARY UNIT,

Respondent.

SYNOPSIS

The Public Employment Relations Commission affirms interest arbitration awards involving Rutgers, the State University and rank-and-file police officers represented by the Fraternal Order of Police Lodge 62, Primary Unit, and superior police officers represented by the Fraternal Order of Police Lodge 62A, Superior Officers. The Commission concludes that the arbitrator adequately analyzed the evidence presented on the relevant statutory factors and reached conclusions supported by substantial credible evidence in the record. The Commission further finds that he gave "due weight" to each of those factors; decided the dispute based on a reasonable determination of the issues; properly exercised his authority under N.J.S.A. 34:13A-16d(2) and 16g; and fully considered the requirements of the law.

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.

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FRATERNAL ORDER OF POLICE  
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Respondent.

Appearances:

For the Appellant, Carpenter, Bennett & Morrissey,  
attorneys (Irving L. Hurwitz, of counsel)

For the Respondents, Abramson & Liebeskind Associates  
(Arlyne K. Liebeskind, consultant)

DECISION

The Police and Fire Public Interest Arbitration Reform Act, P.L. 1995, c. 425, N.J.S.A. 34:13A-14 to -21, authorizes the Commission to decide appeals from interest arbitration awards. N.J.S.A. 34:13A-16f(5)(a). We exercise that authority in this case where Rutgers, the State University of New Jersey, appeals from interest arbitration awards involving its rank-and-file

police officers (primary unit) and superior police officers. Those officers work at its New Brunswick/Piscataway, Newark and Camden campuses.<sup>1/</sup>

The arbitrator resolved the unsettled issues by conventional arbitration, as he was required to do absent the parties' agreement to use another terminal procedure. N.J.S.A. 34:13A-16d(2). He fashioned a conventional award after analyzing the parties' final offers. Those offers were as follows.

For both the superior and primary unit officers, Rutgers proposed a four-year contract from July 1, 1995 through June 30, 1999. Rutgers proposed that eligible officers would receive normal increments on their anniversary dates. It also offered a \$250 bonus, not included in base pay, for officers who were on the payroll on July 1, 1996 and when the contract was ratified. For the third year Rutgers also proposed an \$840 across-the-board increase on July 1, 1997 and a \$420 across-the-board increase on January 1, 1998. For the fourth year, Rutgers also proposed an \$840 across-the-board increase on July 1, 1998 and a \$525 across-the-board increase on January 1, 1999. In addition, it proposed that on July 1, 1997, a \$525 uniform allowance be

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<sup>1/</sup> Separate petitions to initiate interest arbitration were filed for each unit. The parties selected the arbitrator to decide both cases and, while he issued separate awards, he conducted one hearing and issued one opinion covering both units. Rutgers has filed a single notice of appeal challenging both awards and we issue a single decision and order.

included in the officers' 1995 base salary and that no uniform allowance be paid in fiscal year 1997-1998 or following years.

Rutgers also proposed that both primary unit and superior officers pay health insurance premium or periodic charges on the same basis as State employees for whom there is no majority representative.<sup>2/</sup> In addition, it sought to add contract language: (1) specifying that absences charged to sick leave were not compensable for the purpose of calculating overtime and (2) requiring that an officer reimburse Rutgers for one-half the vehicle damage caused by an officer's carelessness, as determined by the Auto Accident Review Board, up to a maximum of \$500.

Finally, Rutgers sought to eliminate the contractual right of primary unit officers to bump junior officers at different campuses and proposed language that would allow a displaced officer to transfer to a different campus only if there were a vacancy at that campus and the officer was qualified for the position. For superior officers, Rutgers proposed contract language that would enable it to: (1) eliminate specific positions instead of laying off the junior officer; (2) limit the displaced

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<sup>2/</sup> Effective July 1, 1997, unrepresented employees with a base salary over \$40,000 pay the difference between the cost of the Traditional Plan and the average cost to the State for NJ PLUS and participating HMOs. N.J.A.C. 17:9-5.12. Employees with a base salary under \$40,000 pay, on a monthly basis, one percent of base salary but not less than \$20.00 per month. Ibid.



officer's bumping option to the least senior officer in his or her title in the seniority unit and (3) provide downward bumping procedures for laid off superior officers.

The FOP proposed three-year agreements from July 1, 1995 through June 30, 1998 for both superior and primary unit officers. It sought 4.25% across-the-board increases for both units for 1995-1996, 1996-1997, and 1997-1998. It also proposed that eligible officers receive automatic increments on their anniversary dates notwithstanding contract expiration.<sup>3/</sup> With respect to both units, the FOP sought "clarifying language" that all provisions in the negotiated agreement be carried over into the successor agreement unless modifications were required by the arbitrator's award, the parties' stipulations or, for the superior officers, the accretion of sergeants and detectives to that unit. Also for both units, the FOP sought a representation fee for non-union members; a "past practices" clause; and shift bidding by seniority for permanent shifts, except where special skills, qualifications or emergencies dictated a deviation from seniority. Finally, the FOP sought to codify, for both units, the current work schedule, subject to future negotiations or a substantial department policy goal.

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<sup>3/</sup> In the past, officers were not granted increments after a contract expired. When a new contract was ratified, officers were granted retroactive increments.

The FOP also made several proposals specific to each negotiations unit. With respect to the primary unit, the FOP proposed a thirty-minute lunch, subject to interruption in emergencies. It also proposed that officers earn two hours of compensatory time for any day when they are ordered into stand-by status. In addition, it sought language to "preserve the substantive status quo" concerning seniority bumping rights.

With respect to the superior officers, the FOP proposed a night shift differential of \$250 per quarter, a longevity program providing for a 1% increase in base pay after 15 years of service, an annual \$250 clothing allowance for detectives and, for sergeants and detectives, reduced years-of-service requirements for 15 and 20 days of vacation. In addition, the FOP sought to increase from 40 to 80 the compensatory time hours that a superior officer could accumulate. Finally, the FOP sought a clause providing that sergeants and detectives be laid off by seniority in title.

For the primary unit, the arbitrator awarded a four-year contract from July 1, 1995 through June 30, 1999 with 3.5% across-the-board increases in each year (Arbitrator's opinion, p. 96). As agreed to by the parties, he also awarded a \$25 increase in the clothing maintenance allowance for 1995-1996, 1996-1997 and 1997-1998 (Arbitrator's opinion, pp. 65-66, 98). He granted Rutgers' proposal concerning payment of health benefits premiums and periodic charges, effective "no sooner than" the close of the

first announced special enrollment period following execution of the agreement (Arbitrator's opinion, p. 97). He also awarded the FOP's proposals concerning seniority rights and automatic increments and, with some modification, its proposal for compensatory time for stand-by status (Arbitrator's opinion, pp. 90-91, 97-98). As proposed by the FOP, he awarded contract language stating that the provisions of the 1992-1995 agreement are carried over into the 1995-1999 contract unless modified by the award or any stipulations (Arbitrator's opinion, p. 97). He denied the parties' other proposals (Arbitrator's opinion, p. 94).

For the superior officers unit, the arbitrator also awarded a four-year contract from July 1, 1995 through June 30, 1999, with 3.5% across-the-board increases in each year (Arbitrator's opinion, p. 99). As agreed to by the parties, he awarded a \$25 increase in the clothing maintenance allowance for 1995-1996, 1996-1997, and 1997-1998 (Arbitrator's opinion, pp. 67-68, 198). He granted Rutgers' proposal concerning payment of health benefit premiums or periodic charges and the FOP's proposals concerning night shift differential, detectives' clothing allowance, and seniority rights (Arbitrator's opinion, pp. 100-101). As proposed by the FOP, he directed that the award include a clause stating that the provisions of the 1992-1995 contract were carried over into the 1995-1999 agreement unless modified by the award or any stipulations (Arbitrator's opinion,

p. 91). He denied the parties' other proposals (Arbitrator's opinion, pp. 94-95).

Rutgers appeals. It contends that the awards are null and void because they were issued after the arbitrator's authority expired. In addition, it asserts that the arbitrator incorrectly calculated the total net annual economic changes for each year of the agreements; did not properly apply the comparability criterion; and issued awards that are not supported by substantial credible evidence in the record.<sup>4/</sup>

We turn first to Rutgers' threshold argument that the awards are null and void because the arbitrator issued them three months after the last extension. This is the procedural background.

N.J.S.A. 34:13A-16f(5) requires that an arbitrator's decision be issued within 120 days after his or her appointment, but specifies that the parties may agree to an extension. The arbitrator was appointed in the superior officers matter on January 22, 1997 and was appointed in the primary unit proceeding on February 5. Without an extension, the awards for the superior and primary officer units would have been due on May 22 and June 5, 1997, respectively. The arbitrator conducted one mediation session in March and two in April. Hearings were held on August 21, 22, and 25. Sometime between August 21 and August 25, the

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<sup>4/</sup> Rutgers also requests oral argument. We deny that request.

parties signed an agreement extending until December 15, 1997 the deadline for the arbitrator to issue his award. Post-hearing briefs were filed on October 20, 1997.

On February 13 and April 17, 1998, the arbitrator requested additional extensions of time. Neither party agreed to the proposed extensions and "[e]ach preferred to review the Awards before deciding whether to exercise its potential timeliness objection" (Arbitrator's opinion, p. 84). On April 20, 1998, the arbitrator issued the awards.

In Cherry Hill Tp., P.E.R.C. No. 97-119, 23 NJPER 287 (¶28131 1997), we held that the statutory goal of providing for an expeditious, effective and binding procedure for the resolution of disputes, see N.J.S.A. 34:13A-14a, would not be served by vacating a late award and starting proceedings all over again. We concluded that lateness in filing an award is more appropriately addressed under N.J.A.C. 19:16-5.9 (providing that any arbitrator violating the timelines for filing awards may be subject to suspension, removal from the special panel of interest arbitrators, or other discipline under N.J.A.C. 19:16-5.6). We reiterate this holding and reject Rutgers' argument that vacation of the awards is required by the Reform Act and case law outside the interest arbitration context.

N.J.S.A. 34:13A-16f(5) establishes the 120-day timeline, states that the parties may agree to an extension, and then provides that "[a]ny arbitrator or panel of arbitrators violating

the provisions of this paragraph may be subject to the commission's powers under [N.J.S.A. 34:13A-16e(2)]."<sup>5/</sup> N.J.S.A. 34:13A-16e(2) in turn authorizes the Commission to suspend, remove or otherwise discipline an arbitrator for good cause or for a violation of the interest arbitration statute.

N.J.S.A. 34:13A-16f(5) plainly reflects the legislative objective that interest arbitration proceedings be completed promptly, subject to the parties' agreement to extend the statutory time period. But the statute does not provide that the arbitrator loses jurisdiction to issue an award after the statutory deadline or such extension of that period as the parties might agree to. If the Legislature had intended that result, we think it would have so stated. See, e.g., International Brotherhood of Teamsters v. Shapiro, 82 A.2d 345, 350 (Conn. 1951) (statutory time limit for issuing an award, while designed to encourage prompt dispatch of the arbitration, was directory rather than mandatory because it related to procedure and did not specify that arbitrator's jurisdiction terminated after statutory deadline); see also A. E. Korpela, Annotation, Construction and Effect of Contractual or Statutory Provisions Fixing Time Within Which Arbitration Award Must Be Made, 56 A.L.R.3d 815, 828-29 (1974) (collecting cases holding that where a time limit for

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<sup>5/</sup> N.J.S.A. 34:13A-16f(5) also allows an arbitrator to request, for good cause shown, a 60-day extension from the Commission.

issuing an award is set by statute or court rule rather than by the parties' agreement, the time limit is directory rather than mandatory and, unless otherwise specified, the arbitrator's authority does not automatically terminate upon the expiration of the time limit); compare City of Hartford v. Local 1716, 688 A.2d 882, 886 (Conn. Super. 1996), *aff'd* 685 A.2d 700 (Conn. App. 1996) (statutory requirement to render award 15 days after record closes is directory, but award issued seventeen months late was vacated, in part, because not issued within a reasonable time). By setting forth the period for issuing an award and then immediately specifying that the Commission may discipline an arbitrator for violating the time requirements of N.J.S.A. 34:13A-15f(5), we think the Legislature intended that the remedy for a violation would normally take that form.

We recognize that the common law rule is that an arbitration award is generally null and void if made after the time set by agreement. See Goerke Kirch Co. v. Goerke Kirch Holding Co., 118 N.J. Eq. 1, 4 (E. & A. 1935). But we find, based on the text of the Reform Act and the nature of interest arbitration, that the Legislature did not intend that rule to pertain to late interest arbitration awards in statutorily-mandated proceedings.

The traditional rule is based on the premise that an arbitrator's authority derives from the parties' agreement and, therefore, when the agreed-upon time for issuing the award

elapses, the arbitrator's authority expires. Ibid. Since N.J.S.A. 2A:24-8d allows a court to vacate an award where an arbitrator exceeds his or her authority, late awards have been vacated under this section. Public Utility Workers v. Public Service Co., 35 N.J. Super. 414, 417-418 (App. Div.), certif. denied, 19 N.J. 333 (1955) (approving trial court's vacation of late grievance arbitration award); contrast International Brotherhood of Teamsters v. Anchor Motor Freight, Inc., 415 F.2d 220, 223-226 (3d Cir. 1969) (if parties want late labor arbitration award to be automatically vacated they must say so unequivocally; common law view of commercial arbitration should not be imported into labor arbitration). N.J.S.A. 2A:24-8 codified the common law rule by specifying that a court may order a rehearing when an award is vacated if "the time within which the agreement required the award to be made has not expired." Goerke Kirch Co., 118 N.J. Eq. at 5; see also Tretina Printing, Inc. v. Fitzpatrick, 262 N.J. Super. 45, 53 (App. Div. 1993), rev'd on other grounds, 135 N.J. 349 (1994) (no authority to order rehearing after time for issuing award expired); cf. Public Utility Workers, 35 N.J. Super. at 421 (rehearing ordered after time expired; court construed agreement as intending that case be resubmitted).

The theory that an arbitrator's authority expires after the deadline in the parties' agreement does not pertain to compulsory interest arbitration where the arbitrator's authority



is derived from statute and any agreement to extend the deadline is made within a statutory framework mandating interest arbitration as the method for resolving the parties' impasse. See PBA Local 207 v. Bor. of Hillsdale, 137 N.J. 71, 80 (1994) (interest arbitration is a statutorily-mandated procedure which does not depend on a contract or the parties' agreement). And, unlike N.J.S.A. 2A:24-8, the Reform Act does not incorporate the common law rule. N.J.S.A. 34:13A-16f(5)(a) authorizes a remand -- to the same or a different arbitrator -- without the qualifying language in N.J.S.A. 2A:24-8. It delinks the arbitrator's authority from the time limit in the statute -- or the parties' agreement to extend that time period. The Legislature thus intended, in contrast to N.J.S.A. 2A:24-8, that interest arbitration be available to resolve a dispute even where an award is vacated after the time for the arbitrator issuing an award. Given that, we think that affirmance of a late award that otherwise comports with the Reform Act and the Arbitration Act is consonant with the purpose of the Reform Act and is preferable to vacating an award solely because of lateness. The former course of action provides the parties with a binding resolution of their dispute much more promptly than would a remand for new proceedings. See N.J.S.A. 34:13A-14a. We stress, however, that a failure to issue a timely award or observe proper extension procedures will be viewed seriously under N.J.S.A. 34:13A-16e(2) in view of the Legislature's goal of expediting the interest arbitration process.

For these reasons, we find that the awards are not per se void because they were issued after December 15, 1997.<sup>6/</sup>

We turn to Rutgers' contentions that the arbitrator did not properly calculate the total annual net economic changes resulting from his award, did not properly apply the comparability criterion and issued an award unsupported by substantial credible evidence in the record.

In requiring that disputes be resolved by conventional arbitration unless the parties agree to another terminal procedure, the Reform Act entrusts the arbitrator with weighing the evidence and fashioning an award. An arbitrator must assess the evidence on individual statutory factors and then weigh and balance the relevant, sometimes competing, factors. In reviewing a challenge to an award, we will determine whether the arbitrator considered the criteria in N.J.S.A. 34:13A-16g and rendered a reasonable determination on the issues. Cherry Hill Tp.; N.J.A.C. 19:16-5.9. Consistent with pre-Reform Act case law, we will

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<sup>6/</sup> Courts have held that late arbitration awards may be confirmed if a party has waived its right to object. See Zervos v. Freedman Properties, Ltd., 223 N.J. Super. 599, 605 (Ch. Div. 1987) (commercial arbitration award confirmed where party did not object until two and one-half months after deadline and after he had received award); see also Korpela, supra at 836-846 (courts typically reject timeliness challenges made after party has received award). Even if we were to hold that interest arbitration awards could be vacated on timeliness grounds, Rutgers did not object until after it received the award, three months after the parties' extension agreement had expired.

vacate an award if 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. Cherry Hill Tp.; cf. PBA Local 207 v. Bor. of Hillsdale, 137 N.J. at 82; Div. 540, Amalgamated Transit Union, AFL-CIO v. Mercer Cty. Improvement Auth., 76 N.J. 245, 253 (1978).

This proceeding required the arbitrator to assess numerous proposals by each party concerning compensation, benefits and contract language. But the primary issue was the amount, if any, of across-the-board increases to be awarded and that was the focus of the arbitrator's analysis of the statutory criteria (Arbitrator's opinion, pp. 70-96). In awarding 3.5% across-the-board salary increases for 1995-1996, 1996-1997, 1997-1998, and 1998-1999, the arbitrator declined to award either the 4.25% increases sought by the PBA or Rutgers' proposal for no across-the-board increases in the first two years of the agreement, followed by flat dollar amounts increases in the third and fourth years of the agreement.<sup>7/</sup> The arbitrator summarized

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<sup>7/</sup> The FOP estimated that the percentage equivalent of Rutgers' proposed dollar amount increase for 1997-1998 was 2.9% (Arbitrator's opinion, p. 19). Rutgers apparently did not dispute this estimate and the \$1260 rate increase proposed for 1997-1998 (\$840 in July 1997 and \$420 in January 1998)

his reasons for awarding the across-the-board increases that he did:

Taking that [the comparability criterion, N.J.S.A. 34:13A-16g(2)] and the other seven statutory criteria into account, I find those 3.5% increases reasonable and appropriate. Statewide, they are modest compared to negotiated increases and on a par with raises awarded in interest arbitrations. They will maintain Rutgers police within the range of comparable units -- albeit at the lowest end -- while Rutgers' proposals would have dropped them far below that range. As discussed elsewhere, they are consistent with the public interest and welfare and well within Rutgers' ability to pay. [Arbitrator's opinion. pp. 80-81]

The arbitrator also granted Rutgers' health benefits proposal, reasoning that it would mitigate the high cost of medical services, would encourage employees' responsible use of medical benefits, and would decrease the total costs of his awards (Arbitrator's opinion, p. 93). On the other hand, the arbitrator concluded that Rutgers had not presented enough evidence to justify award of its seniority, overtime calculation and vehicle damage proposals (Arbitrator's opinion, pp. 90-91, 94-95).

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7/ Footnote Continued From Previous Page

is approximately 2.98% of a top-step patrol officer's 1995 salary. The percentage equivalents would be less for higher-paid senior patrol officers and superior officers.

The arbitrator similarly awarded some and denied some of the FOP's proposals. With respect to both units, he awarded the FOP's proposals for automatic payment of increments, noting that Rutgers' practice of delaying payments until new contracts were effective contributed to dissatisfaction and high turnover and affected the continuity and stability of employment, N.J.S.A. 34:13A-16g(8) (Arbitrator's opinion, p. 92). Also with respect to both units, the arbitrator directed that the agreements include language, proposed by the FOP, stating that the provisions of the parties' 1992-1995 contract would be carried over into the 1995-1999 agreement (Arbitrator's opinion, p. 62). For primary unit officers, he granted compensatory time for officers who were ordered onto "standby status" more than once in a contract year, concluding that it was warranted by the intrusion on officers' off-duty time and the minimal cost (Arbitrator's opinion, pp. 92-93). For superior officers, the arbitrator augmented the salary increases awarded by granting the FOP's proposals for a detectives' clothing allowance and a night shift differential -- benefits which he found appropriate based, respectively, on the minimal cost and comparisons with benefits provided by municipal police departments (Arbitrator's opinion, pp. 93-94). He denied the FOP proposal for a longevity payment for superior officers, concluding that it would increase the costs of the award by too much (Arbitrator's opinion, p. 95). He also denied the remaining FOP proposals concerning vacation, shift-bidding, representation

fees, past practices clauses, work schedules, and uninterrupted lunch periods, concluding that the FOP had not demonstrated the need for them (Arbitrator's opinion, pp. 94-95).

In assessing the costs of the awards, the arbitrator calculated the total net annual economic changes for each year of the agreements, as required by N.J.S.A. 34:13A-16d(2) (Arbitrator's opinion, pp. 65-68). He did so by computing, for each year of each agreement, the combined cost of the across-the-board increases, increments for eligible officers, the increases in the uniform maintenance allowance and, for the superior officers unit, the clothing allowance awarded to detectives (Arbitrator's opinion, pp. 65-68).<sup>8/</sup> Using this method, he determined that his primary unit award resulted in increased costs to Rutgers of \$118,154 in 1995-1996; \$125,383 in 1996-1997; \$127,327 in 1997-1998 and \$128,139 in 1998-1999 (Arbitrator's opinion, pp. 65-66). The costs for the superior officers unit were \$65,893 in 1995-1996; \$59,543 in 1996-1997; \$68,008 in 1997-1998; and \$65,825 in 1998-1999 (Arbitrator's opinion, pp. 67-68). The arbitrator found that Rutgers had substantial expendable fund balances which would enable it to pay for these increases and he rejected its position that State appropriations and student tuition payments were Rutgers' only

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<sup>8/</sup> Both parties had included increments in their cost estimates. The across-the-board increase was computed by multiplying the total base salary for each unit by 3.5% (Arbitrator's opinion, pp. 65-68).

sources of funding (Arbitrator's opinion, p. 87-88). The arbitrator also noted that Rutgers would realize significant savings from the health benefits premium-sharing proposal that he awarded, which would reduce the net annual economic costs of his award (Arbitrator's opinion, p. 69). He did not estimate those savings because Rutgers did not provide any figures on the proposal (Arbitrator's opinion, p. 69).

Rutgers contends that the arbitrator improperly calculated the total net annual economic changes for each year of the awards -- and underestimated their costs -- because he considered only the "new money" costs for each year of the agreements rather than the cumulative costs of the awards. It maintains that in the second through fourth year of the agreements, N.J.S.A. 34:13A-16d(2) required the arbitrator to calculate and combine the increased costs attributable to that contract year plus the costs attributable to preceding years. It also maintains that the arbitrator's failure to do so affected his analysis of all the statutory criteria, particularly the financial impact criterion, N.J.S.A. 34:13A-16g(6), and requires that the awards be vacated.

We disagree. N.J.S.A. 34:13A-16d(2) requires that an arbitrator "separately determine" whether the total "net annual economic changes for each year of the agreement are reasonable under the statutory criteria." Given the underscored language, an arbitrator satisfies N.J.S.A. 34:13A-16d(2) if he or she

identifies what new costs will be generated in each year of the agreement and figures the change in costs from the prior year rather than from the beginning of the contract. If the Legislature had intended to require that arbitrators calculate each year's new costs, plus the repeating costs from prior years of the award, it would not have directed them to determine the "annual economic changes" for "each" year of the award.

Moreover, we disagree with Rutgers that the cumulative cost of the award must be calculated to assess the financial impact of the award. N.J.S.A. 34:13A-16g(6). Public employers have an annual budget. Salaries and other recurring expenses must be paid each year from available funds. If an arbitrator determines that the yearly costs of the agreement are reasonable for each budget year and may be funded out of the resources available in each of those years, an arbitrator is not necessarily required to determine the cumulative costs of the award. While that cumulative cost may sometimes be relevant to assessing an award's financial impact, Rutgers has not shown how the cumulative cost of the awards undermines the arbitrator's financial impact analysis. It does not challenge the arbitrator's findings that expendable fund balances are useful indicators of available funds for operations; that total expendable fund balances grew by \$48 million between 1994 and 1996; that Rutgers may often change "restricted" designations and remove self-imposed limitations on spending funds, and that it has sufficient revenues to fund the



awards in each contract year (Arbitrator's opinion, pp. 87-88). In this posture, and where calculation of cumulative cost is not statutorily required, we will not disturb the arbitrator's awards because he did not determine the cumulative cost of each award.<sup>9/</sup>

We are also satisfied that the arbitrator analyzed all the evidence on the relevant statutory factors and fashioned an award that is supported by substantial credible evidence in the record as a whole.

As required by N.J.S.A. 34:13A-16g(2), the arbitrator compared the hours, salaries and employment conditions of the employees involved in the proceeding with "employees generally" and employees "performing the same or similar services" in private employment in general, public employment in general, and public employment in the same or similar comparable jurisdictions. He found that the across-the-board increases he awarded were

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<sup>9/</sup> Rutgers also argues that, in determining the dollar amount of each year's across-the-board increase, the arbitrator should have adjusted each unit's total base salary for the second, third and fourth years of the agreement by the across-the-board increases and increments for prior years. If net annual economic changes are calculated using the arbitrator's methodology, but Rutgers' figures as to the amount of the across-the-board increases, the total costs increase approximately \$20,000 for the primary unit and approximately \$10,000 for the superior officers unit. Given these figures, and the offsetting health insurance savings that the arbitrator did not calculate, Rutgers was not prejudiced by any arbitral error.

consistent with both parties' data on private sector wages, N.J.S.A. 34:13A-16g(2)(a), which showed that, for the past three years, nationwide negotiated wage increases for all industries were 3% or more (Arbitrator's opinion, p. 72). Similarly, he noted that FOP data on "public employment in general," N.J.S.A. 34:13A-16g(2)(b), showed a 4.1% increase in local government wages between 1994 and 1995 and concluded that Rutgers' data -- showing lower rates for 1992 through 1994 -- was less persuasive because less current (Arbitrator's opinion, p. 73).

The arbitrator also compared the FOP units with employees performing the same or similar services in the same or similar jurisdictions. Before doing so, he decided that Rutgers police officers worked in circumstances "much more comparable" to municipal police than to those of police officers at other State colleges and universities (Arbitrator's opinion, p. 75). Further, he concluded that Middlesex County municipalities presented a range of policing conditions similar to those on the three Rutgers campuses (Arbitrator's opinion, p. 76). He therefore concluded that they provided the most relevant comparability data under this component of N.J.S.A. 34:13A-16g(2)(c) (Arbitrator's opinion, p. 76).

Within that framework, the arbitrator found that the top Rutgers patrol officer salary of \$42,193 was below the Middlesex County average of \$48,591, and that this gap would increase under Rutgers' offer, given average negotiated increases in the County

for 1996 of 4.41% (Arbitrator's opinion, pp. 76-77).<sup>10/</sup> He reached similar conclusions with respect to the superior officers, noting that the 1995 salaries of Rutgers sergeants and lieutenants were \$46,344 and \$53,792, respectively, compared to County averages of \$53,814 and \$58,430 (Arbitrator's opinion, p. 77). He reasoned that this gap would widen under Rutgers' proposal given average County increases of 4.66% for sergeants and 4.42% for lieutenants (Arbitrator's opinion, p. 77). The arbitrator also reviewed both units' non-salary compensation and concluded that the officers had the lowest uniform allowance in the County and were the only police officers who did not receive longevity compensation or increments after contract expiration (Arbitrator's opinion, p. 78).

In comparing the FOP units to "employees generally" in the same jurisdiction, N.J.S.A. 34:13A-16g(2)(c), the arbitrator concluded that the officers' compensation "marginally exceeded" that of Rutgers' clerical, maintenance, custodial, dining service, guard and craft employees (Arbitrator's opinion, pp. 42, 83). He noted that Rutgers' offer paralleled settlements reached with unions representing those employees and recognized that those settlements were, in turn, consistent with the "State settlement" -- agreements that the State of New Jersey had reached with unions representing the State's professional, supervisory, health care,

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<sup>10/</sup> Top step senior patrol officers earned \$44,301 in 1995 (Arbitrator's opinion, p. 39).

maintenance, service and craft employees (Arbitrator's opinion, pp. 42-43, 74).<sup>11/</sup> In evaluating all the comparability evidence and concluding that the 3.5% increases were appropriate, the arbitrator noted that statewide interest arbitration awards averaged 3.6%, 3.67% and 3.57% for 1996, 1997, and 1998 and that mediated interest arbitration settlements averaged 4.1%, 4.05% and 4.01% for 1996, 1997 and 1998 (Arbitrator's opinion, pp. 18, 80).

The arbitrator also discussed the lawful authority, financial impact and cost of living criteria. N.J.S.A. 34:13A-16(5), (6) and (7). He concluded that Rutgers' offer would decrease the officers' purchasing power (Arbitrator's opinion, p. 89) and noted that Rutgers had stipulated that it was not subject to the Cap law, N.J.S.A. 40A:4-45.1 et seq., a factor ordinarily required to be considered in connection with an employer's lawful authority (Arbitrator's opinion, p. 85). In assessing the financial impact of the award, N.J.S.A. 34:13A-16g(6), he found, as noted earlier, that expendable fund balances were a useful indicator of the resources available for operations; that Rutgers had substantial unrestricted fund balances; and that it could afford the increases required by his awards (Arbitrator's opinion, p. 88).

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<sup>11/</sup> Rutgers maintained that its proposal to include the \$525 uniform maintenance allowance in base pay was an enhancement to the package agreed to by other Rutgers units.

Finally, the arbitrator analyzed the public interest and welfare, N.J.S.A. 34:13A-16g(1), and concluded that it favored awards closer to the FOP's offers than Rutgers' offers (Arbitrator's opinion, p. 71). He stressed the importance of Rutgers having a competent police force, noting that Rutgers police were responsible for many more people per officer than the average municipal police officer in Middlesex County and that Rutgers' total crime index accounted for almost half of all recorded New Jersey University and College offense data (Arbitrator's opinion, p. 70). He concluded that the public was not served by compensating the FOP units at levels far below those prevailing in Middlesex County communities, while paying faculty units at the highest national levels (Arbitrator's opinion, pp. 15, 71).

Against this backdrop, we conclude that the arbitrator gave due weight to the statutory criteria and that the award is supported by substantial credible evidence in the record. Although we emphasize that we evaluate the entire award to determine whether it is supported by substantial credible evidence in the record as a whole, we will separately consider Rutgers' contentions that the arbitrator erred in comparing unit members to Middlesex County police officers rather than officers at other State colleges and universities; did not give sufficient weight to the agreements between Rutgers and its other employees; and did not adequately discuss the "State settlement."

We find that the arbitrator appropriately compared Rutgers officers to municipal police officers in Middlesex County. We reject Rutgers' contention that the Commission's comparability guidelines, N.J.A.C. 19:16-5.14, require that Rutgers police be compared only with those at other State colleges and universities. While comparison with other college and university police officers would also have been appropriate, the lack of specific discussion concerning those officers does not, on this record, undermine the arbitrator's award.

In describing the working conditions of officers in the FOP units and concluding that they were comparable to municipal police officers, the arbitrator noted that Rutgers was as large as a mid-sized American city and that its officers receive police training and perform traditional police functions (Arbitrator's opinion, p. 12). He found that the New Brunswick/Piscataway, Newark and Camden campuses were integrated into those cities; that city streets ran through the campuses; and that officers patrolled both city and campus sectors and dealt with members of the public and students (Arbitrator's opinion, p. 75). He added that the campuses in Newark and Camden "have higher crime rates than New Brunswick and present much more challenging policing issues on day-to-day operations" (Arbitrator's opinion, p. 75). Rutgers does not dispute any of these findings. They support the arbitrator's conclusions that Rutgers police have much in common with municipal police officers. See Rutgers, the State Univ.,

P.E.R.C. No. 94-45, 19 NJPER 579 (¶24275 1993), aff'd 21 NJPER 45 (¶26029 App. Div. 1994), certif. den. 140 N.J. 275 (1995)

(Appellate Division noted that responsibilities of the Rutgers police force were virtually indistinguishable, within its territorial jurisdiction, from responsibilities of any other local police force).

The comparability guidelines do not require that Rutgers police be compared only with those at other colleges and universities. The guidelines are instructive but not exhaustive. N.J.A.C. 19:16-5.14(b). They are intended to assist the parties and the arbitrator in focusing on the types of evidence that may support comparability arguments. Ibid. In any case, the factors highlighted by the arbitrator correspond to some of the "comparability considerations" for similar comparable jurisdictions -- geographic size, density, crime rate, workload, and "other conditions of employment." See N.J.A.C. 19:16-5.14(d)1, 2 and 4. Since the arbitrator was comparing the working conditions of municipal and Rutgers police, his analysis is not undermined by the fact that Rutgers cannot be compared with Middlesex County municipalities on such factors as average household income, tax revenues, or equalized tax rate.

As noted earlier, we agree that comparison with officers in the State Law Enforcement Conference (SLEC) and at the University of Medicine and Dentistry (UMDNJ) would also have been

appropriate.<sup>12/</sup> Indeed, the arbitrator may have given these comparisons some consideration: while he stated that Rutgers police were "much more comparable" to municipal police officers than to those at other State colleges, that statement also suggests that he may have found that other college police officers were also comparable, but to a lesser degree. In any case, Rutgers has not shown that the award is deficient because the arbitrator did not discuss the evidence concerning UMDNJ and SLEC officers in more detail. See Cherry Hill Tp. (appellant may not attack opinion in the abstract but must show how alleged analytical deficiencies resulted in those aspects of the award adverse to its position). For example, while Rutgers urges that the arbitrator should have considered information concerning UMDNJ police, the record includes only the 1995 minimum and maximum salaries of UMDNJ rank-and-file officers. Those salaries are slightly higher than the 1995 salaries for Rutgers primary unit officers and, absent information about UMDNJ agreements or awards for future years, we cannot speculate that the arbitrator's analysis or award would have been altered had he given greater weight to comparisons with UMDNJ police.<sup>13/</sup>

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<sup>12/</sup> Rutgers informs us that the SLEC represents police officers at five State colleges and universities.

<sup>13/</sup> For this reason, we need not address Rutgers' contention that the arbitrator erred in finding that UMDNJ campuses at Newark, Piscataway and New Brunswick were isolated from those cities.



Similarly, while the arbitrator could have discussed the 1995-1999 agreement between the State and the SLEC, the arbitrator would not have been required to give it dispositive weight in arriving at his award because comparisons with municipal police officers were also appropriate. In any case, the SLEC agreement does not alter our view that the arbitrator's award represents a reasonable determination of the dispute. The 1995-1999 contract for that unit included no across-the-board increases in 1995-1996 and 1996-1997 but, as here, 3.5% wage increases in 1997-1998 and 1998-1999. Moreover, the State's written contract with SLEC does not appear to include the health care premium sharing provisions awarded here and agreed to by other Rutgers and State employees -- provisions that offset the cost of the award to Rutgers.<sup>14/</sup> While the top step SLEC patrol officer's salary for 1998-1999 will be \$43,862 -- lower than the \$48,315 top patrol officer salary under the award -- that fact, considered along with all other comparability evidence, does not negate the reasonableness of the award. This is particularly so since the arbitrator's findings concerning Rutgers' size, its campus locations, and the fact that it accounts for almost one-half of all recorded New Jersey

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<sup>14/</sup> Under the award and current regulations, officers earning over \$40,000 per year who choose the traditional indemnity plan pay the difference between the cost of that plan and NJ PLUS and participating HMOs. According to the New Jersey State Health Benefit Program Statement for the 1998-1999 annual enrollment period, this difference is \$1937 per year for family coverage.

University and College offense data would support somewhat higher salaries for Rutgers police than for those at other State colleges.

We are also satisfied that the arbitrator considered the agreements with other Rutgers employees and the State settlement in comparing FOP members to "employees generally" in the same jurisdiction and to employees in "public employment in general." N.J.S.A. 34:13A-16g(2)(b) and (c).

The arbitrator noted that Rutgers' 1995-1999 agreements with its other non-faculty employees conformed to the State settlement (Arbitrator's opinion, pp. 43, 74). The arbitrator found that the FOP units were distinct from these employees because they were subject to greater safety risks and were entitled, through interest arbitration, "to compensation that is reasonable under the eight statutory criteria" (Arbitrator's opinion, p. 74).

Preliminarily, we agree with Rutgers that N.J.S.A. 34:13A-16g(2) requires an arbitrator to compare employees involved in the interest arbitration proceeding with a range of employees, including those not entitled to interest arbitration. However, we are satisfied that the arbitrator's comment was a preface to his discussion of all of the comparability evidence (Arbitrator's opinion, pp. 71-79) and that he was simply stating that an internal settlement pattern was not dispositive by itself and that he had to assess all relevant statutory criteria. We are also

satisfied that the arbitrator considered the internal agreements with Rutgers' other non-faculty employees.<sup>15/</sup>

The arbitrator awarded Rutgers' health benefits proposal -- even though only two Middlesex County jurisdictions require police officers to share payment of health insurance premiums -- because all other Rutgers employees are subject to the premium sharing it proposed (Arbitrator's opinion, p. 79). Similarly, he awarded the four-year contract that Rutgers had sought, which placed the FOP units on the same contract cycle as State employees and other Rutgers employees (Arbitrator's opinion, p. 91). However, the arbitrator was not required to give dispositive weight to the dollar amount increases included in agreements with non-faculty employees where, based on the evidence concerning higher private-sector wage increases, the cost of living, statewide interest arbitration awards and settlements, and the salaries of police officers in Middlesex County, he concluded that a higher award was appropriate. See Middlesex Cty., P.E.R.C. No. 98-46, 23 NJPER 595 (128293 1997). This is particularly so where it appears that Rutgers' agreement with the AAUP, although modeled on the State settlement, differs from its agreements with other non-police employees and gives some unit members higher dollar amount increases than were included in those agreements and in

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<sup>15/</sup> As discussed later, Rutgers' agreement with the AAUP, which represents its faculty members, was not identical to its agreement with its other non-police employees.

Rutgers' offer to the FOP.<sup>16/</sup> Moreover, even if the AAUP had agreed to a proposal identical to that offered the FOP units, the arbitrator noted that the FOP units were in a different position than the faculty unit. He observed that while faculty members were paid at the highest national levels vis-a-vis other state university professors, Rutgers police were paid less than their counterparts (Arbitrator's opinion, p. 71).

We also reject Rutgers' contention that the arbitrator did not appropriately consider the State settlement or "explain why it was not relevant." The arbitrator recognized that Rutgers' offer tracked that settlement; he granted the health benefits proposal included within it; and he awarded the four-year agreement that Rutgers had sought to place the FOP units on the same cycle as State employees. We thus infer that he found the settlement relevant. He did not commit reversible error by not referring to it in his discussion of "public employment in general" and Rutgers has not shown why the arbitrator should have given the settlement greater weight. Rutgers acknowledged at the

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<sup>16/</sup> The record includes a December 1997 factfinder's report and recommendation that, Rutgers informs us, the parties have agreed to. The factfinder recommended no across-the-board increases for 1995-1996 and 1996-1997. For 1997-1998, he recommended a 2.15% across-the-board increase for faculty members and, for 1998-1999, he recommended a 2.29% increase on July 1, 1998 and a .56% increase on January 1, 1999. For faculty members earning the average unit salary, these percentage increases yield higher dollar amounts than Rutgers' offer to the FOP. The report also recommended inclusion of the health benefit premium sharing awarded here and included in the State settlement.

interest arbitration hearing that FOP unit members were not State employees and it does not challenge the arbitrator's conclusion that Rutgers' fiscal situation was better than that of the State (Arbitrator's opinion, p. 75). We note that the across-the-board increases awarded, which may be offset for some employees by contributions to health care premiums, are close to the 3% increases received by local government employees between 1995 and 1996 and the 3.3% increases received by federal government workers in New Jersey between 1995 and 1996.<sup>17/</sup>

Finally, we reject Rutgers' argument that the arbitrator improperly relied on facts outside the record when he found, based on his observations as a student, parent and college professor, that campus police must often act with unusual restraint (Arbitrator's opinion, p. 13). That college police must act with restraint is a fact so universally known as to be deemed beyond reasonable dispute. See N.J.R.E. 201(b)(1). The arbitrator could therefore take notice of it. Ibid.

For all these reasons, we conclude that the arbitrator adequately analyzed the evidence presented on the relevant statutory factors and reached conclusions supported by substantial credible evidence in the record. We also find that he gave "due

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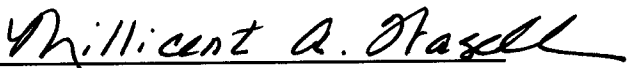
<sup>17/</sup> This information is included in the 1997 annual wage report, prepared for the Commission by the New Jersey Department of Labor pursuant to N.J.S.A. 34:13A-16.6. For the same period, average private sector wages in New Jersey increased 4.3% and State employee wages increased 2.1%.

weight" to each of those factors and decided the dispute based on a reasonable determination of the issues. N.J.S.A. 34:13A-16g; N.J. State PBA Local 29 v. Irvington, 80 N.J. 271, 295 (1979). He properly exercised his authority under N.J.S.A. 34:13A-16d(2) and 16g and fully considered the requirements of the law.

ORDER

The arbitrator's awards are affirmed.

BY ORDER OF THE COMMISSION

  
Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Buchanan, Klagholz and Ricci voted in favor of this decision. Commissioner Finn abstained from consideration. Commissioners Boose and Wenzler were not present.

DATED: July 30, 1998  
Trenton, New Jersey  
ISSUED: July 31, 1998

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF NEWARK,

Appellant,

-and-

Docket No. IA-97-82

NEWARK DEPUTY FIRE CHIEFS ASSOCIATION,

Respondent.

SYNOPSIS

The Chair of the Public Employment Relations Commission denies the request of the City of Trenton for special permission to appeal an interest arbitrator's interlocutory ruling. That ruling denied the City's request for an extension of time to respond to the Newark Deputy Fire Chiefs Association's interest petition or, in the alternative, authorization to include health benefits as part of its economic proposal. The Chair finds that the arbitrator did not abuse his discretion in denying the City's request for an extension of time to respond to the petition and in denying the City's request to submit health benefits proposals.

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 Chair.

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF NEWARK,

Appellant,

-and-

Docket No. IA-97-82

NEWARK DEPUTY FIRE CHIEFS ASSOCIATION,

Respondent.

Appearances:

For the Appellant, Michelle Hollar-Gregory, Corporation  
Counsel (JoAnne Y. Watson, on the brief)

For the Respondent, Zazzali, Zazzali, Fagella & Nowak,  
attorneys (Paul L. Kleinbaum, on the brief)

DECISION

During interest arbitration proceedings with the Newark Deputy Fire Chiefs Association, the City of Newark has requested special permission to appeal an arbitrator's interlocutory ruling. That ruling denied its request for an extension of time to respond to the Association's interest arbitration petition or, in the alternative, authorization to include health benefits as part of its economic proposal.

The parties have filed briefs and exhibits. These facts appear.

On February 14, 1997, the Association filed a petition to initiate interest arbitration. The City did not file a response within seven days of receiving the petition, as required by

N.J.A.C. 19:16-5.5(a).



On March 4, 1997, the City asked that the Director of Arbitration stay interest arbitration until the City's unit clarification petition was decided.<sup>1/</sup> The City also requested an extension of time to file a response to the Association's petition. It stated that the petition had been sent to the personnel director and had not been promptly forwarded to corporation counsel because the director had been out of the office for several days due to illness and involvement in a court proceeding. It maintained that, because of these circumstances, it did not file a timely response. In addition, it noted that due to the resignation of an assistant corporation counsel, there was no attorney assigned to the case when the petition was received.

The Association opposed both an extension of time and the request to stay interest arbitration proceedings. On April 24, 1997, the Director of Arbitration informed the parties that the interest arbitration petition would be processed. On May 9, the Commission appointed an arbitrator. The letter did not address the City's request for an extension of time.

The interest arbitrator held two or three mediation sessions in late 1997. On February 4, 1998, the Association advised the City that it would object to the City's raising any issues in its interest arbitration proposal that were not included in a timely response filed by the City. See N.J.A.C. 19:16-5.5(b)

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<sup>1/</sup> The petition contends that the deputy chiefs are managerial executives.

(where no response to petition is filed, respondent is deemed to have agreed to the initiation of interest arbitration as submitted by the filing party). On April 13, the City wrote to the Director of Arbitration stating that, after it learned that the case would be processed, it did not follow up on its request for an extension of time to respond to the Association's petition. It requested authorization either to file a late response or to include health benefits as part of its economic proposal. The Director referred the matter to the arbitrator. After arguments and submissions from the parties, the arbitrator denied the City's request in a May 15 telephone call.

The City requests special permission to appeal. It contends that its March 4, 1997 extension request established good cause to relax the time limit in N.J.A.C. 19:16-5.5 and, therefore, the arbitrator should have permitted it to file a response to the petition. In the alternative, it urges that it should be permitted to offer proposals consistent with issues identified prior to and during the arbitration proceedings.<sup>2/</sup>

N.J.A.C. 19:16-5.17 authorizes the Commission to review interim orders of interest arbitrators. The Commission exercises

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<sup>2/</sup> The parties agree that City proposals on health benefits were discussed during negotiations and mediation. The City does not indicate whether other issues were discussed. The Association states that, during the first day of the formal hearing on May 14, 1998, the City indicated that it intended to propose several non-economic issues that had never been discussed during negotiations.

that authority sparingly, in the interests of justice or for good cause shown. Middlesex Cty., P.E.R.C. No. 97-63, 23 NJPER 17 (¶28016 1996). N.J.A.C. 19:16-5.17(c) gives the Chair authority to grant or deny special permission to appeal.

An arbitrator has the authority to relax N.J.A.C. 19:16-5.5(a) and (b) to permit a respondent to submit proposals on issues not listed in the interest arbitration petition or in a timely response. See N.J.A.C. 19:10-3.1 (a) and (b); Middlesex Cty., P.E.R.C. No. 98-46, 23 NJPER 595 (¶28293 1997). The Commission defers to the arbitrator's decision to admit or exclude additional issues unless it finds an abuse of discretion. See Middlesex Cty., P.E.R.C. No. 98-46 (establishing this standard and affirming arbitral decision not to admit additional issues); see also Allendale Bor., P.E.R.C. No. 98-27, 23 NJPER 508 (¶28248 1997); Bogota Bor., P.E.R.C. No. 98-104, 24 NJPER 130 (¶29066 1998) (affirming arbitrator decisions not to admit additional issues).

I turn first to the City's contention that, in its March 4, 1997 letter, it established good cause for an extension of time to file a response. Assuming this to be true, I find that it has not explained why it could not or did not follow up on that request until one year after it learned that the petition would be processed. The City's April 1998 request was made nearly one year after the arbitrator had been assigned and after mediation sessions had been held and hearings had been scheduled. Cf.

Allendale Bor. (N.J.A.C. 19:16-5.5 ensures that parties and arbitrator know the nature and extent of the dispute at the outset). It was also made two months after the Association told it that it would object to the submission of additional issues. In these circumstances, the City has not demonstrated that the arbitrator abused his discretion in denying its request for an extension of time to file a response to the petition.

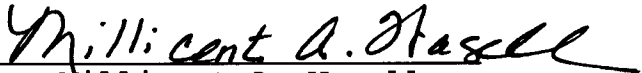
I am also satisfied that the arbitrator did not abuse his discretion in denying the City's request to submit to interest arbitration health benefits proposals discussed during negotiations and mediation. See Allendale Bor. (affirming arbitrator decision excluding proposals discussed during negotiations and mediation).

For these reasons, I deny special permission to appeal. See Middlesex Cty., P.E.R.C. No. 97-63 (no basis for granting special permission to appeal arbitrator's exclusion of additional issues).

ORDER

The request for special permission to appeal the arbitrator's interlocutory order is denied.

BY ORDER OF THE COMMISSION

  
Millicent A. Wasell  
Chair

DATED: June 30, 1998  
Trenton, New Jersey

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF TRENTON,

Appellant,

-and-

Docket No. IA-98-1

PBA LOCAL NO. 11,

Respondent.

SYNOPSIS

The Chair of the Public Employment Relations Commission denies the request of the City of Trenton for special permission to appeal an interest arbitrator's interlocutory order. That order granted PBA Local No. 11's motion to limit the arbitration proceeding to the issues listed in the PBA's petition to initiate interest arbitration, thus barring the City from submitting its work schedule proposal. The Chair is satisfied that, within the framework of the interest arbitration statute and regulations, the arbitrator carefully considered the City's arguments and did not abuse his discretion in rejecting those arguments.

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 Chair.

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF TRENTON,

Appellant,

-and-

Docket No. IA-98-1

PBA LOCAL NO. 11,

Respondent.

Appearances:

For the Appellant, Courter, Kobert, Laufer & Cohen, P.C.  
(Stephen E. Trimboli, of counsel)

For the Respondent, Loccke & Correia, P.A.  
(Leon B. Savetsky, of counsel)

DECISION

During interest arbitration proceedings with PBA Local No. 11, which represents the City's rank-and-file police officers, the City of Trenton has requested special permission to appeal an arbitrator's interlocutory ruling. That ruling granted the PBA's motion to limit the arbitration proceeding to the issues listed in the PBA's petition to initiate interest arbitration. The ruling therefore bars the City from submitting its work schedule proposal.

The parties have filed briefs, exhibits and certifications. These facts appear.

The parties' last contract expired on June 30, 1997. Before the contract expired, the PBA filed an unfair practice charge alleging that the City had refused to negotiate over a successor contract. A consent order was entered directing the City to negotiate with the PBA. Pursuant to that order,

negotiations sessions were held on May 24 and June 11. The parties also met on May 28, but they disagree as to whether this was a negotiations or grievance meeting.

On July 7, 1997, the PBA filed a petition to initiate interest arbitration. On July 10, the Director of Arbitration notified the City's attorney that the petition had been filed and that, pursuant to N.J.A.C. 19:16-5.5, the City had until July 21 to file a response. See N.J.A.C. 19:16-5.5(a) (response may include any additional unresolved issues to be submitted to arbitration). The Director's letter also stated that, under N.J.A.C. 19:16-5.5(b), a party that fails to submit a timely response, "shall be deemed to have agreed to the request for the initiation of compulsory interest arbitration as submitted by the filing party."

On July 21, 1997, the City informed the Director that it objected to the initiation of interest arbitration because the parties allegedly had not held three negotiations sessions, as required by N.J.S.A. 34:13A-16a(1). It contended that the petition was premature in light of a scheduled August meeting to discuss the "true cost" and "financial history" of the current contract.

The parties held a negotiations session on August 26, 1997 and, on the same date, advised the Director that they had mutually agreed on an arbitrator. The Director appointed that arbitrator on September 4.

On March 24, 1998, the parties met with the arbitrator for the first time.<sup>1/</sup> The PBA moved to limit the proceeding to the issues listed in its petition and objected to consideration of the City's work schedule proposal. After arguments and submissions from the parties, the arbitrator granted the PBA's motion in a May 28 letter and June 4 opinion.

The City requests special permission to appeal. It maintains that the arbitrator should have exercised his discretion to relax N.J.A.C. 19:16-5.5 because the PBA filed for interest arbitration before the City had an opportunity to present its proposals; the work schedule proposal was discussed at the August 26 negotiations session; and the parties agreed at that time to submit the proposal to mediation before an interest arbitrator. The City also urges reversal of the arbitrator's ruling on the grounds that the PBA did not object to its failure to file a response to the petition until the first day of hearing.

N.J.A.C. 19:16-5.17 authorizes the Commission to review interim orders of interest arbitrators. The Commission exercises that authority sparingly, in the interests of justice or for good cause shown. Middlesex Cty., P.E.R.C. No. 97-63, 23 NJPER 17(¶28016 1996). N.J.A.C. 19:16-5.17(c) gives the Chair authority to grant or deny special permission to appeal.

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<sup>1/</sup> The parties were unable to meet on several earlier dates suggested by the arbitrator. While the City initially expected that the March 24 meeting would be a mediation session, the PBA informed the City just prior to March 24 that it wanted to proceed to a hearing.



An arbitrator has the authority to relax N.J.A.C. 19:16-5.5(a) and (b) to permit a respondent to submit proposals on issues not listed in the interest arbitration petition or in a timely response. See N.J.A.C. 19:10-3.1 (a) and (b); Middlesex Cty., P.E.R.C. No. 98-46, 23 NJPER 595 (¶28293 1997). The Commission defers to the arbitrator's decision to admit or exclude additional issues unless it finds an abuse of discretion. See Middlesex Cty., P.E.R.C. No. 98-46 (establishing this standard and affirming arbitral decision to exclude additional issues); see also Allendale Bor., P.E.R.C. No. 98-27, 23 NJPER 508 (¶28248 1997); Bogota Bor., P.E.R.C. No. 98-104, 24 NJPER 130 (¶29066 1998) (affirming arbitrator decisions to exclude additional issues).

I turn first to the City's contention that because it objected to processing the interest arbitration petition, the arbitrator should have relaxed N.J.A.C. 19:16-5.5. Assuming the July 21 letter tolled the time for filing a response to the PBA petition, I note that the City did not identify additional issues after it agreed, on August 26, to proceed to interest arbitration -- despite the Director's July 10 letter stating the consequence of failing to do so.

The City also maintains that it complied with the spirit of Commission rules because, at the August 26 negotiations session, the parties discussed the proposal and allegedly agreed to submit it to mediation before an interest arbitrator. But

discussion of a proposal during negotiations does not constitute compliance with N.J.A.C. 19:16-5.5 or necessarily warrant relaxation of the rule. See Allendale Bor. (affirming arbitrator decision excluding proposals discussed during negotiations). Further, an agreement to submit the proposal to mediation before an interest arbitrator would not entitle the City to have the proposal considered at the formal arbitration hearing. See Allendale Bor. (mediation is distinct from the formal arbitration hearing and discussion of proposals during mediation cannot substitute for compliance with N.J.A.C. 19:16-5.5).<sup>2/</sup> Moreover, the arbitrator was not required to relax the rule because the PBA did not tell the City earlier that it reserved its right to invoke N.J.A.C. 19:16-5.5. See Allendale (filing party had no obligation to alert the respondent that it would rely on N.J.A.C. 19:16-5.5 until the respondent attempted to include the disputed proposals in its final offer).<sup>3/</sup>

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<sup>2/</sup> The parties disagree as to whether there was such an agreement. In view of Allendale, I need not resolve that dispute and therefore do not address the City's objections to the PBA's submissions on the point.

<sup>3/</sup> The City correctly notes that, prior to the formal arbitration hearing, the filing party in Allendale advised its adversary that it would rely on N.J.A.C. 19:16-5.5 and object to the submission of certain proposals. But that notice came after the parties had already discussed the disputed proposals in negotiations and mediation. Allendale rejected the argument that the proposals should be considered in the formal arbitration because of those discussions and held that, absent a response to a petition or a request for an extension of time, the filing party could assume that the disputed proposals would not be considered at the formal hearing.

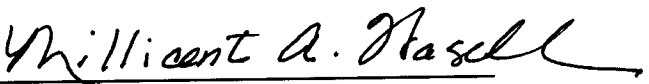
Finally, I am satisfied that, within the framework of the interest arbitration statute and regulations, the arbitrator carefully considered the City's arguments that the public interest warranted consideration of the work schedule proposal and did not abuse his discretion in rejecting those arguments. He also properly noted that the City could modify its final economic offer in light of his ruling. Cf. Allendale Bor. (Borough disadvantaged because arbitrator did not rule on union objection to submission of certain proposals until he issued his final award).

For these reasons, I deny special permission to appeal. See Middlesex Cty., P.E.R.C. No. 97-63 (no basis for granting special permission to appeal arbitrator's exclusion of additional issues).

ORDER

The request for special permission to appeal the arbitrator's interlocutory order is denied.

BY ORDER OF THE COMMISSION

  
Millicent A. Wasell  
Chair

DATED: June 30, 1998  
Trenton, New Jersey

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF EDISON,

Appellant,

-and-

Docket No. IA-97-88

IAFF, LOCAL 1197,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Township of Edison for special permission to appeal an arbitrator's interlocutory order during interest arbitration proceedings between the Township and IAFF, Local 1197. The arbitrator granted the IAFF's motion and directed the Township to produce budget worksheets prepared by its auditor in connection with the consideration and adoption of the Township budget. The Commission finds that the arbitrator correctly ruled that Local 1197 could have a right to the worksheets even if a member of the public might not be able to obtain them under statutes and case law governing access to public records. The Commission is also satisfied that the arbitrator's order was consistent with administrative and judicial rules concerning the production and admission of evidence. The Commission concludes that there are not sufficient extraordinary circumstances to grant special permission to 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.

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF EDISON,

Appellant,

-and-

Docket No. IA-97-88

IAFF, LOCAL 1197,

Respondent.

Appearances:

For the Appellant, Werner Lesniak, attorneys  
(Catherine M. Elston, of counsel)

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

DECISION

During interest arbitration proceedings with IAFF, Local 1197, the Township of Edison has requested special permission to appeal an arbitrator's interlocutory order. That order directs it to produce budget worksheets prepared by its auditor in connection with the consideration and adoption of the Township budget.

The parties have filed briefs and exhibits. These facts appear.

At a February 6, 1998 hearing, the Township called its auditor as a fact and expert witness. Although the Township asserts that the auditor's expert opinion as to revenues and expenditures was based on the final and adopted budget, the auditor referred to the budget worksheets during cross-

examination.<sup>1/</sup> The worksheets compile and analyze budget information from various sources to assist those individuals who are responsible for preparing the municipal budget. Local 1197 asked the Township to provide it with the worksheets, but the Township denied its request. Local 1197 then moved for an order requiring their production.

On February 18, 1998, the arbitrator granted the motion, finding that no evidentiary privilege attached to an auditor's worksheets (Arbitrator's opinion, p. 3). In response to the Township's argument that the worksheets were not public records, he wrote:

The Township suggests that the Union need establish a disclosure right under the Right to Know Law or under the Common Law Right of Access. Those positions are not persuasive. The Union is not in a position of a private citizen or the public, in general, with respect to the documents at issue. These documents are reasonably related to the opinion testimony offered by the Township's own expert witness in an arbitration in which the Township and the Union are both parties. The Township opened the door to the Union's access rights by using the Auditor as fact and expert witness. [Arbitrator's opinion, p. 3]

The Township requests special permission to appeal. It contends that the worksheets are privileged work products; that they are irrelevant; and that they need not be disclosed to the public or to Local 1197 under the Right-to-Know Law or the common law right of access to public records.

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<sup>1/</sup> We have not been provided with a transcript of the hearing.

N.J.A.C. 19:16-5.17 authorizes the Commission to review interim orders of interest arbitrators. We exercise that authority sparingly, in the interests of justice or for good cause shown. Middlesex Cty., P.E.R.C. No. 98-46, 23 NJPER 595 (128293 1997).

We turn first to the Township's position that the worksheets are not relevant to the cross-examination of the auditor. N.J.R.E. 705 states that, upon cross-examination, an expert may be required to disclose the facts and data underlying his or her opinion and case law establishes that an expert is subject to searching cross-examination as to the basis of his or her opinion. See State v. Martini, 131 N.J. 176, 259 (1993). We will assume that the auditor's expert opinion was based on the final budget. However, the arbitrator found that the worksheets are "reasonably related to the process by which the auditor formulated his expert opinion" and the auditor himself referred to those worksheets during cross-examination (Arbitrator's opinion, p. 2). The Township offers no basis to disturb the arbitrator's conclusion and we decline to do so. Cf. Gaido v. Weiser, 227 N.J. Super. 175, 189 (App. Div. 1988), aff'd o.b. 115 N.J. 310 (1989) (scope of cross-examination within trial judge's discretion).

We next consider the Township's claim that cases governing access to public records militate against the release of the worksheets. A public entity may be required to release information because of the Right to Know Act, N.J.S.A. 47:1A-1 et seq., the common law right of access to public records or, in the

case of litigation, the discovery rules pertaining to the proceeding. See Irval Realty Inc. v. Bd. of Pub. Util. Comm'rs, 61 N.J. 366, 372 (1972); accord Grodjesk v. Faghani, 104 N.J. 89, 96 (1986). Thus, the arbitrator correctly ruled that Local 1197 could have a right to the worksheets even if a member of the public might not be able to obtain them under statutes and case law governing access to public records. See, e.g., State v. Loftin, 146 N.J. 295, 390 (1996); Dixon v. Rutgers, 110 N.J. 432, 456-57, 465 (1988).

We are also satisfied that the arbitrator's order was consistent with administrative and judicial rules concerning the production and admission of evidence.

N.J.A.C. 19:16-5.7(d) permits an interest arbitrator to require the production of such documents as the arbitrator deems material to a just determination of the issues. See also R. 4:10-2(a) (parties may obtain discovery regarding any matter not privileged, which is relevant to the subject matter of a pending action); N.J.R.E. 402 and N.J.A.C. 1:1-15.1 (except as otherwise provided in the New Jersey Rules of Evidence, all relevant evidence is admissible).<sup>2/</sup>

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<sup>2/</sup> While interest arbitrators are not bound by all of the technicalities of the New Jersey Rules of Evidence, Fox v. Morris Cty., 266 N.J. Super. 501, 515 n.7 (App. Div. 1993), certif. denied, 137 N.J. 311 (1994), evidence and discovery rules provide guidance for an arbitration proceeding. The parties and the arbitrator viewed this dispute within the framework of these rules.



While the Township maintains that the worksheets are "privileged work product," it cites no basis for such a privilege. The work product privilege, which is closely allied to the attorney-client privilege, protects materials and mental impressions obtained by an attorney in preparation for trial. Hickman v. Taylor, 329 U.S. 495, 510-11 (1947); R. 4:10-2(c). There is no suggestion that the worksheets were prepared at counsel's request in preparation for trial.

The Township also asserts that the worksheets are privileged under N.J.R.E. 515, preventing disclosure of "official information of this State" if prohibited by statute or if disclosure is found to be harmful to the public interest. It asserts that disclosure would be harmful because the worksheets "contain analysis and evaluations about priorities and needs that ultimately resulted in the passage of the final budget." It relies on Home News v. Bd. of Ed., 286 N.J. Super. 380 (App. Div. 1996), which held that a newspaper was not entitled to a school board's preliminary budget workbook under common-law principles of public access to public records.

Preliminarily, it is not clear that "official information of this State" refers to information maintained by a municipality. See North Jersey Newspapers v. Passaic Cty., 127 N.J. 9, 17 (1992) (certain communications "at the state level" protected by predecessor rule); see also Biunno, Current N.J.

Rules of Evidence, Comment 1 to N.J.R.E. 515 (Gann) (rule contains no definition of "official information"; precise definition open to question). Assuming, however, that N.J.R.E. 515 could apply, we conclude that the Township has not demonstrated that disclosure would be harmful to the public interest or would outweigh Local 1197's need for the documents to cross-examine the auditor, especially since the auditor referred to the worksheets during cross-examination. See McCain v. College Hosp., 99 N.J. 346, 353 (1985) (Evid. R. 34, predecessor to N.J.R.E. 515, required balancing of litigant's interest in obtaining records against government's interest in confidentiality); see also Keddie v. Rutgers, 148 N.J. 36, 50 (1997) (similar balancing test used in assessing common-law right of access to public records) and Rutgers, the State Univ., P.E.R.C. No. 96-88, 22 NJPER 247 (¶27130 1996) (in assessing employer's right to union documents concerning grievance and unfair practice charge, Commission evaluated employer's ability to defend itself in unfair practice case against potential interference in union's internal affairs).

The arbitrator found that the worksheets were related to the auditor's formulation of his expert opinion. He concluded that Local 1197 was entitled to their production in connection with its cross-examination of the auditor. This specific, hearing-related need for the documents outweighs the Township's interest in not disclosing the worksheets, an interest which we

find to be less compelling than that of the school board in Home News. Because the auditor's worksheets relate to an adopted budget, disclosure of preliminary analyses of priorities and needs would not present an incomplete picture of the Township's financial situation or prematurely raise concerns or expectations about final budget decisions. Cf. Home News, 286 N.J. Super. at 388 (stating that preliminary budget figures should not be "bruited about in public" prior to budget adoption); Shuttleworth v. City of Camden, 258 N.J. Super. 573, 585 (App. Div. 1992), certif. denied, 133 N.J. 429 (1993) (State interest in maintaining confidentiality of internal investigative records is reduced once investigation is completed; disclosure ordered). Further, the Township has not made any particularized arguments as to why the worksheets should remain confidential. Cf. Home News, 286 N.J. Super. at 386 (school board asserted that budget workbook included information, required by federal law to be kept confidential, concerning special education pupils).


In declining this request for special permission to appeal, we need not decide whether disclosure of municipal budget worksheets would be required in all circumstances.

For all these reasons, we conclude that there are not sufficient extraordinary circumstances to grant special permission to appeal. See Middlesex Cty. (no basis for granting special permission to appeal).

ORDER

The request for special permission to appeal the arbitrator's interlocutory order is denied.

BY ORDER OF THE COMMISSION

  
Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Boose, Buchanan, Finn, Klagholz, Ricci and Wenzler voted in favor of this decision. None opposed.

DATED: March 26, 1998  
Trenton, New Jersey  
ISSUED: March 27, 1998

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF ALLENDALE,

Appellant,

-and-

Docket No. IA-95-071

ALLENDALE PBA LOCAL 217,

Respondent.

SYNOPSIS

The Public Employment Relations Commission affirms an interest arbitration award issued to resolve negotiations between the Borough of Allendale and PBA Local No. 217. The Commission remanded a previous award to permit the Borough to submit a new final offer and issue a new opinion based on the Borough's revised offer and the PBA's original offer. The Borough appealed the arbitrator's award on remand, contending that the arbitrator did not explain the basis for his award, did not apply the criteria in N.J.S.A. 34:13A-16g, and awarded excessive wage increases. The Borough also maintains that the arbitrator erred in taking arbitral notice of statistics showing changes in the average wages of private sector jobs in New Jersey during calendar year 1996. The Commission finds that the arbitrator's consideration of the Commission's annual report on private-sector wage increases was a proper subject of arbitral notice, the Legislature clearly intended the survey would be used in arbitration proceedings; and an arbitrator has discretion to rely on independent research. The Commission concludes, after consideration of each of the Borough's arguments, that the arbitrator adequately analyzed the evidence presented on the relevant statutory factors and reached conclusions 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. 98-123

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF ALLENDALE,

Appellant,

-and-

Docket No. IA-95-071

ALLENDALE PBA LOCAL 217,

Respondent.

Appearances:

For the Appellant, Murray, Murray & Corrigan, attorneys  
(Robert E. Murray and Valerie J. Dion, on the brief)

For the Respondent, Loccke & Correia, attorneys  
(Leon B. Savetsky, of counsel)

DECISION

The Police and Fire Public Interest Arbitration Reform Act, P.L. 1995, c. 425, N.J.S.A. 34:13A-14 to -21, authorizes the Commission to decide appeals from interest arbitration awards. N.J.S.A. 34:13A-16f(5)(a). We exercise that authority in this case, where the Borough of Allendale appeals from a December 5, 1997 interest arbitration award involving its police officers. The award was issued after a March 11, 1997 award was vacated on procedural grounds. Borough of Allendale, P.E.R.C. No. 98-27, 23 NJPER 508 (¶28248 1997). Allendale held that while the arbitrator correctly excluded, as untimely, certain proposals which the Borough had sought to arbitrate, he erred by not ruling on the issues to be included in the proceeding until he issued his final opinion and award. We remanded the matter to the arbitrator to

permit the Borough to submit a new final offer.<sup>1/</sup> We directed the arbitrator to issue a new opinion and award after reviewing the Borough's revised final offer and the PBA's original final offer.<sup>2/</sup>

On remand, the parties' offers were as follows.

The PBA proposed a four-year contract from January 1, 1995 through December 31, 1998 with 5.5% across-the-board wage increases for each year. It also sought to: (1) increase the clothing allowance by \$100 effective January 1, 1995 and (2) modify the contract bereavement clause by allowing three days off rather than one day off for the death of a grandparent.

The Borough proposed a four-year contract from January 1, 1995 to December 31, 1998 with no salary increases in 1995 and 1996. For 1997 and 1998, the Borough proposed a new maximum step for each rank, but no increases in salaries below the maximum. The new step for 1997 would be \$1500 above the 1996 maximum and the new step for 1998 would be \$1500 above the 1997 maximum.<sup>3/</sup>

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<sup>1/</sup> Unlike the Borough, the PBA had not argued that it was disadvantaged by the timing of the arbitrator's ruling and did not seek to submit a new offer.

<sup>2/</sup> We held that the new opinion and award should be based on the record already submitted unless the parties agreed otherwise or the arbitrator required additional submissions. On remand, the parties did not seek to supplement the record and the arbitrator did not request additional submissions.

<sup>3/</sup> The unit includes patrol officers and sergeants. A lieutenant slot is vacant.

In 1995 and 1996, all but two of the unit members were either patrol officers at the maximum step or sergeants, who were paid at a single salary rate under the expired contract. The Borough agreed to the PBA's proposal to increase the clothing allowance by \$100 per year, effective January 1, 1995.

The arbitrator resolved the unsettled issues by conventional arbitration, as he was required to do absent the parties' agreement to use another terminal procedure. N.J.S.A. 34:13A-16d(2). He fashioned a conventional award that established a four-year contract from January 1, 1995 through December 31, 1998, with the following across-the-board salary increases:

1995	4.25%
1996	4.00%
1997	3.75%
1998	3.50%

[Arbitrator's opinion (II), p. 30]<sup>4/</sup>

He awarded a \$100 increase in the clothing allowance but denied the PBA's proposal to modify the bereavement clause (Arbitrator's opinion (II), pp. 15, 30). The salary increases awarded were the same increases included in his March 1997 award.

The Borough asks us to modify the award. It contends that the arbitrator did not explain the basis for his award, did not properly apply the criteria in N.J.S.A. 34:13A-16g, and

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<sup>4/</sup> "Arbitrator's opinion (I)" refers to the opinion issued on March 11, 1997. "Arbitrator's opinion (II)" refers to the opinion issued on December 5, 1997.



awarded excessive wage increases. It also maintains that, on remand, the arbitrator erred in taking arbitral notice of statistics showing changes in the average wages of private sector jobs in New Jersey during calendar year 1996. We turn first to this procedural issue.

In discussing the comparability criterion, N.J.S.A.

34:13A-16g(2), the arbitrator stated:

[A]rbitral notice is taken here ... of recent statistics released by the New Jersey Department of Labor showing a percentage increase in wages of 3% in local government and 3.3% in federal government between 1995 and 1996....

\* \* \*

Note is also taken that the private sector figures taken from this same report by County shows a 3.6% increase in Bergen County in 1996 and a state-wide increase of 4.00% and 4.3% depending on the category. These figures, generated by a state agency and dealing with different sectors with specificity, clearly support the wage award issued herein. [Arbitrator's opinion (II), pp. 28-29] <sup>5/</sup>

The Borough argues that the statistics cited by the arbitrator are not a proper subject of arbitral notice because there is no indication of where the arbitrator found the statistical charts, where they were published, or who prepared them. It contends that the figures are not reliable and that it is not clear whether the average salaries include overtime,

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<sup>5/</sup> The 4% figure is the change in average wages for the public and private sector combined; 4.3% is the figure for the private sector.

clothing allowance or other benefits. It maintains that it was prejudiced because it did not have the opportunity to object to consideration of the figures or to offer its analysis of them.

We recognize that, in the judicial and administrative context, parties have a right to be heard both on the propriety of noticing a matter and the tenor of the matter noticed. See N.J.R.E. 201(e); N.J.A.C. 1:1-15.2. While it may have been preferable had the arbitrator given the parties an opportunity to be heard, the Borough's objections to the statistics are not persuasive.

The arbitrator cited the statistics contained in the Commission's annual report on private-sector wage increases. See N.J.S.A. 34:13A-16.6 (Commission required to perform or cause to be performed an annual survey of private-sector wage increases).<sup>6/</sup> The report is prepared for the Commission by the New Jersey Department of Labor, Division of Labor Market and Demographic Research (NJDOL). The 1997 report, which was given to all members of the Commission's special panel of interest arbitrators, shows average annual private-sector wages in New Jersey for 1995 and 1996, as well as the percentage change in those wages between calendar years 1995 and 1996.<sup>7/</sup> The same

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<sup>6/</sup> The report was attached to the arbitrator's decision on remand.

<sup>7/</sup> NJDOL defines "wages" as all compensation for personal services, including commissions, bonuses, and the cash value of compensation received in a medium other than cash.

information is provided for each county. The document also shows changes in average wages for such major industry groups as construction, manufacturing, transportation, wholesale and retail trade, services and finance, insurance and real estate. In addition, the survey shows wage changes for federal, state and local government workers in New Jersey.<sup>8/</sup> The statistics are based on the wage data required to be reported to NJDOL by the over 200,000 employers participating in the unemployment insurance system. It is thus a comprehensive report, as well as a well-established one: NJDOL has calculated average statewide private-sector wages since 1939 and published the figures since 1947. The county figures have been calculated for two years, as requested by the Commission and required by N.J.S.A. 34:13A-16.6.

In view of the foregoing, we are satisfied that the survey concerning average private sector wages and wage changes was a proper subject of arbitral notice. See N.J.R.E 201(b)(2); see also 5000 Park Assocs. v. Collado, 253 N.J. Super. 653, 656 (Law. Div. 1991) (court took notice of U.S. census data). Moreover, the Legislature clearly intended that the survey performed or caused to be performed by the Commission would be

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<sup>8/</sup> The Borough objects that the survey shows a 2.1% increase for State employees for 1996, despite the fact that the State's agreements with majority representatives of various units included no across-the-board wage increases for 1996. This figure reflects overtime, increment advancements or other payments which were not affected by the wage freeze. In any case, the arbitrator cited the survey primarily for its information on private-sector wage increases.

used in arbitration proceedings. See N.J.S.A. 34:13A-16.6 (survey is a public document that shall be used in public sector wage negotiations and made available to all interested parties).

We also reject the Borough's argument that it was unnecessary for the arbitrator to consider the report because the parties had submitted comprehensive evidence on private and public sector salaries. The Code of Professional Responsibility for Arbitrators of Labor-Management Disputes gives an arbitrator discretion to rely on independent research, consistent with his or her acceptance of full personal responsibility for the award. See Article 2G (so providing where the parties' mutual desires are not known or when the parties express differing opinions on reliance on independent research). Our interest arbitration rules state that arbitrators shall be guided by the Code's objectives and principles. N.J.A.C. 19:16-5.10. Thus, the arbitrator could consider the report even though other information had been submitted on private sector wage increases.

We turn to the Borough's contentions that the arbitrator did not set forth the rationale for the award, did not properly apply the statutory criteria, and awarded excessive wage increases.

In requiring that disputes be resolved by conventional arbitration unless the parties agree to another terminal procedure, the Reform Act entrusts the arbitrator with weighing the evidence and fashioning an award. An arbitrator must assess

the evidence on individual statutory factors and then weigh and balance the relevant, sometimes competing, factors. In reviewing a challenge to an award, we will determine whether the arbitrator considered the criteria in N.J.S.A. 34:13A-16g and rendered a reasonable determination on the issues. Cherry Hill Tp., P.E.R.C. No. 97-119, 23 NJPER 287 (¶28131 1997); N.J.A.C. 19:16-5.9. Consistent with pre-Reform Act case law, we will vacate an award if 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. Cherry Hill Tp.; cf. PBA Local 207 v. Bor. of Hillsdale, 137 N.J. 71, 82 (1994); Div. 540, Amalgamated Transit Union, AFL-CIO v. Mercer Cty. Improvement Auth., 76 N.J. 245, 253 (1978).

The primary issue in this proceeding was salary increases. The arbitrator awarded salary increases of 4.25%, 4%, 3.75% and 3.5% for 1995, 1996, 1997 and 1998. He declined to award either the PBA's proposal for 5.5% increases for each year or the Borough's proposal for no increases for 1995 and 1996 and a new \$1500 maximum step for each rank in 1997 and 1998.<sup>9/</sup>

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<sup>9/</sup> The percentage value of these steps for patrol officers would be 2.6% and 2.53% (Arbitrator's opinion (II), p. 14).

The arbitrator reviewed the evidence submitted on the statutory criteria, N.J.S.A. 34:13A-16g, and found that his award was the "most reasonable" resolution of the dispute (Arbitrator's opinion (I), p. 23; Arbitrator's opinion (II), p. 29).<sup>10/</sup>

Consistent with N.J.S.A. 34:13A-16g(2), the arbitrator compared the wages of the employees involved in the proceeding with those in private employment in general, in public employment in general, and with employees performing similar services in comparable jurisdictions. He found that Borough officers were well compensated compared to private and public employees in general (Arbitrator's opinion (I), p. 22). He also found that while Borough officers earned more than police officers in some northwest Bergen County towns, they were lower paid than officers in other towns (Arbitrator's opinion (I), pp. 21). Overall, he concluded that comparisons to other Bergen County police officers were more relevant and entitled to more weight than other comparisons and that his award would enable Borough officers to keep their salary position relative to such police officers (Arbitrator's opinion (I), p. 21; Arbitrator's opinion (II), p. 26).

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<sup>10/</sup> The arbitrator's second opinion incorporated the discussion in his first opinion, but supplemented his analysis concerning the public interest, comparability and financial impact criteria (Arbitrator's opinion (II), pp. 15-16, 29). We have considered both opinions in deciding this appeal.

The arbitrator also considered the parties' evidence as to the wage increases, if any, to be awarded. He reviewed the PBA's evidence concerning overall compensation and interest arbitration awards and settlements in 20 Bergen County police departments and found that its proposal for 5.5% increases was "excessive" and "out of line" (Arbitrator's opinion (I), p. 24).<sup>11/</sup>

On the other hand, the arbitrator rejected the Borough's position that the interest arbitration award in State of New Jersey and State Law Enforcement Conference, IA-96-013, justified a wage freeze for 1995 and 1996. The arbitrator declined to model his award on that case, stating that the arbitrator there had awarded a two-year wage freeze in large part because a wage freeze had been incorporated in previous agreements with 60,000 other State employees (Arbitrator's opinion (II), p. 20-21). As discussed later, he found that his award was supported by the Commission's report concerning statewide changes in average private-sector wages (Arbitrator's opinion (II), pp. 27-28). He also found that, under his award, Borough officers would continue to be well compensated compared to other Bergen County police officers (Arbitrator's opinion (I), p. 21).

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<sup>11/</sup> The PBA maintained that for 1995, 1996, and 1997, the average wage increases for Bergen County police units were 5.045%, 4.829% and 4.588% (Arbitrator's opinion (I), p. 12). The Borough acknowledged that several police units had received increases in the 3.75% to 5% range for 1995 through 1998, but maintained that the contracts included provisions increasing work hours, adding salary guide steps or reducing starting pay.

With respect to the financial impact of his award, N.J.S.A. 34:13A-16g(6), the arbitrator found that the Borough was a well-off community with above-average home values and per capita income, expanding tax ratables, significant budget surpluses, an exceptional tax collection rate and the ability to budget well within the annual CAP index rate (Arbitrator's opinion (I), p. 22; Arbitrator's opinion (II), p. 25-26). He acknowledged that the Borough had a high tax rate and had reduced appropriations to several programs, but noted that a large portion of the difference between the Borough's offer and his award could be funded from savings from police force attrition (Arbitrator's opinion (II), pp. 24-25). He found that his award was closer to the cost of living than either party's offer (Arbitrator's opinion (II), p. 22).

The Borough argues that the arbitrator did not comply with the Reform Act because he did not explain why he awarded the wage increases he did -- increases which the Borough contends are excessive because the officers were already well compensated.

Fashioning a conventional arbitration award is not a precise mathematical process. Given that the statute sets forth general criteria rather than a formula, the setting of wage figures necessarily involves judgment and discretion and an arbitrator will rarely be able to conclusively demonstrate that his award is the only "correct" one. We agree that the arbitrator could have more explicitly linked the statutory criteria, the



parties' evidence and arguments, and the award itself; however, we are satisfied from our review of the record and the arbitrator's opinions that he gave due weight to the statutory criteria and that the award is supported by substantial credible evidence in the record.

The arbitrator appropriately recognized that the statutory factors had to be weighed and considered together and "blended into" a reasonable award (Arbitrator's opinion (I), p. 23). He stated that the 1995-1998 agreement includes an average annual salary increase of 3.875% and found that Borough officers would maintain their position vis-a-vis other officers in comparable Bergen County municipalities (Arbitrator's opinion (I), p. 21; Arbitrator's opinion (II), p. 22). He also found that the salary increases awarded were supported by the statutory survey showing a 4.3% increase in private sector jobs in New Jersey during 1996 (3.6% in Bergen County) and a 3% increase in federal and local government (Arbitrator's opinion (II), pp. 27-28). We conclude that this award represents a reasonable resolution of the dispute. Although we emphasize that we evaluate the entire award to determine whether it is supported by substantial credible evidence in the record as a whole, we will now address the Borough's specific challenges to the arbitrator's findings and analysis.

The Borough argues that the arbitrator could not have correctly applied the comparability and overall compensation

criteria, N.J.S.A. 34:13A-16g(2) and (3), because, it asserts, the salaries awarded are excessive when compared with those of several high-level state officials.<sup>12/</sup> We disagree.

The arbitrator reviewed the Borough's submissions concerning public sector employees and agreed with the Borough that its officers were "well compensated" within that group (Arbitrator's opinion (I), p. 22). However, the Act does not mandate that a particular salary relationship be maintained between police officers and other employees. Therefore, the arbitrator was not required to award the Borough's offer because of the salaries of Borough officers vis-a-vis those of the noted state officials. The arbitrator appropriately exercised his discretion in awarding increases based on all the statutory criteria, including comparisons with private employees in general, public employees in general, and other police officers. We note as well that while the arbitrator found that comparisons with other Bergen County police officers were entitled to more weight than other comparisons (Arbitrator's opinion (II), p. 26), the increases he awarded appear to be less than those received by

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<sup>12/</sup> A patrol officer at maximum will, under the award, be paid \$67,135 in 1998 as compared to \$60,665 under the Borough's offer (Arbitrator's opinion (I), p. 27; Arbitrator's opinion (II), p. 14). Officers may also receive a longevity payment of 2% to 10% of base salary depending on years of service, with 20 years required for the highest payment. The Borough notes that New Jersey's chief administrative law judge, public defender, and director of criminal justice earned \$95,000 in 1997.

other municipal police officers in Bergen County for 1995 through 1997. He accepted the Borough's position that the officers were well compensated (Arbitrator's opinion (I), p. 21-22), and did not seek to enhance their salaries vis-a-vis those of other police officers or employees in general.

We also disagree that the arbitrator erred by not explaining why officers below the maximum step should receive increases of 16% -- i.e., the total of the across-the-board increases included in the award plus the increases received by moving to a higher salary guide step. In 1995 and 1996, only two unit members were eligible for a step increase.<sup>13/</sup> The other officers were at the maximum salary for their rank. Two new officers were hired in May and December 1997 and, after a year of service, will presumably move from step one to step two of the salary guide in the last months of the 1995-1998 agreement. In this posture, the arbitrator did not err in analyzing the parties' final offers in terms of how they would affect the substantial majority of the unit.

Nor did the arbitrator refuse to consider evidence of police officer salaries in New York, Philadelphia, Camden, Newark and Atlantic City. The arbitrator acknowledged the lower salaries of police officers in these cities, but observed that the Borough did not have the severe financial problems they did, a finding the

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<sup>13/</sup> There were fourteen members in January 1995 and eleven at the time of the July 1996 hearing.

Borough does not challenge (Arbitrator's opinion (II), pp. 26-27). He was not compelled to award the Borough's offer because of police officer salaries in urban areas when he found that those salaries were less relevant than salaries in other Bergen County towns and when he found, in effect, that the salaries of city officers were depressed by their employers' serious financial problems (Arbitrator's opinion (II), pp. 26-27).

Similarly, we are satisfied that the arbitrator considered the Borough's evidence concerning private-sector wage increases. The arbitrator reviewed exhibits, submitted by the Borough, showing average nationwide wage increases for 1993 and 1995 of 2.8% and 2.9% (Arbitrator's opinion (I), pp. 16-17). He noted that the Borough had also submitted individual contracts, from industries throughout the country, that reflected "little or no wage increases" (Arbitrator's opinion (I), p. 16). While he stated that data concerning wage increases in diverse industries throughout the country was "not dispositive," his language demonstrates that he gave the data some consideration (Arbitrator's opinion (II), p. 27). As noted earlier, he also cited the Commission's survey of private-sector wage increases, prepared by NJDOL at the Commission's request, and found that it "clearly supported" his award (Arbitrator's opinion, p. 28). We will not disturb his judgment that the NJDOL data on private-sector wage increases, which included information on different sectors of New Jersey's economy, was entitled to more

weight than the Borough's private-sector evidence (Arbitrator's opinion (II), p. 28).

We also reject the Borough's argument that the arbitrator could not rely on NJDOL data about average wage increases because, it asserts, the average New Jersey private-sector salary is lower than that of a Borough officer. The arbitrator could reasonably conclude that data concerning changes in average wages were pertinent to assessing the increases, if any, which would maintain the officers' comparative position vis-a-vis other workers.

We also disagree with the Borough that, contrary to the admonition in Hillsdale, the arbitrator relied too heavily on the Borough's ability to pay. Hillsdale and related cases criticized awards which had granted union offers in their entirety (under the final offer system), based on comparable police salaries and the employer's "ability to pay." The courts emphasized that "[s]ection 16g(6) does not require a municipality to prove its financial inability to meet the other party's final offer." Hillsdale, 137 N.J. at 86. The arbitrator recognized this principle when he stated that the fact that the Borough might have the financial ability to pay the PBA offer did not mean it should be awarded (Arbitrator's opinion (I), at p. 23).

While the arbitrator also stated that the Borough had not demonstrated the need for a wage freeze or a 1.28% average wage increase over four years (Arbitrator's opinion (II), p. 24), that language is not inconsistent with Hillsdale: the arbitrator in

effect stated that in order for him to award one or the other party's proposal in a conventional arbitration proceeding, he had to be convinced that it was the most reasonable resolution of the dispute. Nor did the arbitrator contravene Hillsdale by stating that the Borough was a wealthy community (Arbitrator's opinion (II), p. 27). While financial health is not a basis for awarding increases higher than are warranted under the statutory criteria, it is relevant to assessing whether an entity can fund an award that, based on all the criteria, the arbitrator finds to be reasonable. Thus, it was appropriate for the arbitrator to note that because three officers left the force in 1995 and had not been replaced at the time of his decision, the Borough had realized a savings in police salaries which could be a source for funding the difference between his award and the Borough's offer (Arbitrator's opinion (II), p. 25).

The Borough does not challenge the arbitrator's findings that it has an expanding tax base and has been able to budget well within the CAP index rate, but it contends that he disregarded other evidence of precarious finances. We disagree and conclude that substantial credible evidence in the record supports the arbitrator's determination that the Borough is a financially sound community.

The arbitrator recognized that the Borough had reduced or eliminated appropriations for its capital improvement fund and mental health, library and health care programs, but concluded

that the Borough had not substantiated its assertion that these cuts indicated fiscal distress (Arbitrator's opinion (II), p. 24). The arbitrator's conclusion is supported by the record, although we disagree with his suggestion that the Borough could not rely on exhibits to establish financial problems. The reduced appropriations were small in relation to the \$7 million budget (elimination of \$4000 and \$5000 donations to mental health centers; \$21,000 reduction in \$277,650 library budget) and the Borough has not shown how its failure to appropriate money to the capital improvement fund in 1996 will impair its capital program.

With respect to the Borough's near-loss of \$900,000 in State aid from the Gross Receipts and Franchise Tax in 1995, the arbitrator recognized that the Borough could lose State aid in the future (Arbitrator's opinion (I), pp. 22-23), but this recognition did not require him to award lower salary increases. The Borough acknowledges that its State aid increased from 1995 to 1996.<sup>14/</sup>

Similarly, the arbitrator did not err in finding that the Borough had a significant budget surplus. The Borough's 1996 budget shows a \$772,731 surplus balance on January 1, 1996 -- more

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<sup>14/</sup> The Borough states that it will plan future budgets without anticipating State aid. While we cannot predict what, if any, State aid the Borough will receive in the future, we note generally that the Energy Tax Receipts Property Tax Relief Act, P.L. 1997, c. 167, is designed to provide aid to municipalities from the State's taxation of energy and telecommunications. The Gross Receipts and Franchise Tax was repealed and replaced with a new system of taxation of energy and telecommunications. P.L. 1997, c. 162.

than 10% of total general appropriations. The surplus balance on January 1, 1995 was \$547,020 and \$781,390 on January 1, 1994.

Finally, the arbitrator's overall conclusion that the Borough is a fiscally healthy community is not undermined by his acknowledgment that the Borough has a high tax rate (Arbitrator's opinion (I), pp. 22-23). Moreover, it does not appear that the arbitrator erred in finding that the Borough had a tax collection rate of 98%: the 1996 appendix to the budget statement indicates a 97.86% collection rate in 1995 and a 98.58% rate in 1994.<sup>15/</sup> Similarly, we need not decide the relevance of Borough home values to formulating an award: the arbitrator simply referred to home values in presenting an overview of the community.

The arbitrator's other alleged errors do not warrant our vacating the award. The award is not deficient because the arbitrator found that the concept of adding salary guide steps was "not unreasonable" yet denied the Borough's proposal to add new maximum steps in 1997 and 1998 (Arbitrator's opinion (II), p. 29). He explained that the increases which the Borough had offered in conjunction with the steps -- and in lieu of other increases -- were not reasonable under all the statutory criteria. He was not required to separate out the proposal to lengthen the salary guide from the Borough's proposed salary increases.

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<sup>15/</sup> The Borough relies on an exhibit showing a 95.97% tax collection rate for 1991.



Similarly, the arbitrator was not required to award increases equal to what he found to be the cost of living where, based on all of the statutory factors, he concluded higher increases were appropriate.

The Borough also challenges the arbitrator's statement that the "substantial discrepancy" between its original and revised final offers was not accounted for by the exclusion of the proposals which the Borough had originally sought to arbitrate (Arbitrator's opinion (II), p. 28). We agree that the arbitrator's role was to analyze the PBA's final offer and the Borough's revised final offer in the context of the statutory criteria. However, we are satisfied that he did so and that the noted discussion did not undercut his analysis.

Similarly, a mathematical error in the arbitrator's description of the Borough's original final offer does not make the award deficient where he had accurately described it two pages earlier in the opinion and, in any case, the focus of the remand proceeding was the Borough's new final offer.

The Borough maintains that there is a divergence between the actual wage increases awarded and the arbitrator's statements, in his first opinion, that certain of the criteria strongly favored the Borough's original final offer. We need not address this point where the Borough's offer was revised and the arbitrator's second opinion includes additional analysis of some of these criteria.


The Borough states that the arbitrator should have included the PBA's bereavement leave proposal in the second award, even though the Borough did not reiterate its earlier agreement to that proposal in submitting its revised final offer. While the arbitrator was not required to award the proposal in these circumstances, the parties are free to agree to the proposal, as they appear to have done.

For all these reasons, we conclude that the arbitrator adequately analyzed the evidence presented on the relevant statutory factors and reached conclusions supported by substantial credible evidence in the record. We also find that he gave "due weight" to each of those factors and decided the dispute based on a reasonable determination of the issues. N.J.S.A. 34:13A-16g; N.J. State PBA Local 29 v. Irvington, 80 N.J. 271, 295 (1979). He properly exercised his authority under N.J.S.A. 34:13A-16d(2) and 16g and fully considered the requirements of the law.

ORDER

The arbitrator's award is affirmed.

BY ORDER OF THE COMMISSION

  
Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Boose, Buchanan, Finn, Klagholz, Ricci and Wenzler voted in favor of this decision. None opposed.

DATED: March 26, 1998  
Trenton, New Jersey  
ISSUED: March 27, 1998

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF SALEM,

Respondent,

-and-

Docket No. IA-97-121

SALEM COUNTY SHERIFF'S  
OFFICERS ASSOCIATION,

Appellant.

SYNOPSIS

The Public Employment Relations Commission vacates and remands an interest arbitration award issued to resolve negotiations between the County of Salem and the Salem County Sheriff's Officers Association. The Commission remands the matter to the arbitrator in accordance with its opinion. The Association had appealed the interest arbitration award.

The Commission finds that the arbitrator did not explain the reasons for his award in the context of the statutory criteria set forth in N.J.S.A. 34:13A-16g. The Commission remands the case for such an explanation but expresses no opinion on the merits of the parties' proposals.

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. 98-107

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF SALEM,

Respondent,

-and-

Docket No. IA-97-121

SALEM COUNTY SHERIFF'S  
OFFICERS ASSOCIATION,

Appellant.

Appearances:

For the Respondent, Homan & Mulligan, P.C., attorneys  
(Michael Morris Mulligan, of counsel)

For the Appellant, Mazzone, Marcolongo & Hughes P.A.,  
attorneys (Lee J. Hughes, of counsel)

DECISION

The Police and Fire Public Interest Arbitration Reform Act, P.L. 1995, c. 425, N.J.S.A. 34:13A-14 to -21, authorizes the Commission to decide appeals from interest arbitration awards. N.J.S.A. 34:13A-16f(5)(a). We exercise that authority in this case, where the Salem County Sheriffs' Association appeals from an October 11, 1997 award involving sheriff's officers employed by the County.

The arbitrator resolved the unsettled issues in dispute by conventional arbitration, as he was required to do absent the parties' agreement to use another terminal procedure. N.J.S.A. 34:13A-16d(2). He fashioned a conventional award after analyzing the parties' final offers. Those offers were as follows.

The County proposed a three and one-half year agreement from July 1, 1996 through December 31, 1999 with a 1.5% wage increase for July 1, 1996 through December 31, 1996 and 3% wage increases for 1997, 1998 and 1999. It stated that it did not oppose a "reasonable increase" in the longevity service provisions in the expired contract but did not propose specific changes. Finally, in response to a proposal by the Association, it stipulated that it would provide a health insurance package "constituting parity with employees in the county-wide unit" (Arbitrator's opinion, p. 3).

The Association proposed a five-step salary guide for sheriff's officers and also sought to increase sergeant and lieutenant salaries. The expired contract did not contain a step system and provided for two salary rates for sheriff's officers and sergeants and one salary rate for the one lieutenant in the unit. The Association also sought increases in the clothing allowance, shift differentials and the amount of bereavement leave and proposed a contract provision concerning call-in time/call duty.<sup>1/</sup>

The arbitrator awarded a three-year contract from July 1, 1996 through June 30, 1998 with 3 1/3% increases in each year. For officers with one through four years of service, who had received no longevity payments under the expired contract, he

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<sup>1/</sup> The record does not indicate the terms of the call-in time/call duty proposal; it also does not indicate the contract term sought by the Association.

awarded a longevity payment of 1% of base salary for each year of service (Arbitrator's opinion, p. 9). For officers with five through nine years of service, he increased the longevity payment from 1.75% to 6% of base salary and for officers with ten through 14 years of service the longevity payment was raised from 2.5% to 8% of base salary. For those officers with 15 or more years of service, the arbitrator increased the longevity payment from 4% to 10% of base salary (Arbitrator's opinion, p. 9). The arbitrator also increased shift differentials by ten cents an hour effective July 1, 1996 and an additional five cents per hour effective January 1, 1998. The arbitrator increased uniform allowances by \$50 per year, granted an additional day of bereavement leave effective July 1, 1998, and awarded the Association's call-in time/call duty proposal. As the County had agreed, the award directed it to provide a health insurance package equal to that received by employees in the county-wide unit.

The Association appeals. It contends, in part, that the arbitrator did not analyze the statutory criteria. See N.J.S.A. 34:13A-16g. It asserts that the evidence it presented outweighs that presented by the County and that the award does not contain sufficient reasoning to justify its result.

In requiring that disputes be resolved by conventional arbitration unless the parties agree to another terminal procedure, the Reform Act entrusts the arbitrator with weighing

the evidence and fashioning an award. An arbitrator must assess the evidence on individual statutory factors and then weigh and balance the relevant, sometimes competing, factors. In reviewing a challenge to an award, we will determine whether the arbitrator considered the criteria in N.J.S.A. 34:13A-16g and rendered a reasonable determination on the issues. Cherry Hill Tp., P.E.R.C. No. 97-119, 23 NJPER 287 (¶28131 1997); N.J.A.C. 19:16-5.9. Consistent with pre-Reform Act case law, we will vacate an award if 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. Cherry Hill Tp.; cf. PBA Local 207 v. Bor. of Hillsdale, 137 N.J. 71, 82 (1994); Div. 540, Amalgamated Transit Union, AFL-CIO v. Mercer Cty. Improvement Auth., 76 N.J. 245, 253 (1978).

The primary issue was salary increases -- both across-the-board increases and the Association's proposal for a step system. The arbitrator found that "the Association has made a compelling case for an award which addresses the relationship between compensation and length of service" and that "the record justifies adjustments in these relationships" (Arbitrator's award, p. 5). He concluded that the appropriate method of making such adjustments was to revise the existing longevity percentages

rather than institute a salary guide with steps (Arbitrator's opinion, p. 5). He incorporated his analysis in Salem Cty. and and Salem Cty. Corrections Officers Ass'n, IA-97-67, also issued on October 11, 1997, and stated that he had reached "identical conclusions" concerning that unit's step system proposal and had made "identical revisions" to that unit's existing longevity percentages (Arbitrator's opinion, p. 5). The corrections officers' award reviewed the parties' differing views as to the County's financial status and found that, while salary guides were the norm in law enforcement compensation, the proposal for a step system could not be awarded given the substantial amount of monies required to implement it (Arbitrator's opinion, IA-97-67, pp. 4-6, 9). The arbitrator explained that, depending on their years of service, some officers would receive increases of 25% or 50% in 1996, with additional increases in 1997 and 1998 (Arbitrator's opinion, IA-97-67, p. 10). An alternate step guide proposal by the Association would result in increases for most employees of 10% to 20% for 1996 (Arbitrator's opinion, IA-97-67, pp. 10-11).

Against this backdrop, the arbitrator concluded that revision of longevity percentages was compatible with the salary guide approach proposed by the Association but would not entail the "enormous cost impacts" of that proposal (Arbitrator's opinion, IA-97-67, p. 11). He found that the cost of the across-the-board increases and longevity adjustments awarded was "well beyond the compensation offered by the County, but within



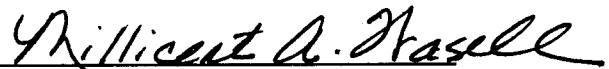
the financial impacts which the County budget can sustain"  
(Arbitrator's opinion, IA-97-67, p. 11).

The arbitrator did not explain the reasons for his award in the context of the statutory criteria set forth in N.J.S.A. 34:13A-16g. See N.J.A.C. 19:16-5.9; Cherry Hill Tp. We will therefore remand the case for such an explanation. We stress that we express no opinion on the merits of the parties' proposals. We direct that the arbitrator issue a new opinion and award in this matter no later than 60 days from the date of this decision.

ORDER

The award is vacated and remanded for reconsideration in accordance with this opinion.

BY ORDER OF THE COMMISSION

  
Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Buchanan, Finn, Klagholz, Ricci and Wenzler voted in favor of this decision. None opposed. Commissioner Boose was not present.

DATED: February 26, 1998  
Trenton, New Jersey  
ISSUED: February 27, 1998

P.E.R.C. NO. 98-104

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF BOGOTA,

Appellant,

-and-

Docket No. IA-97-8

PBA LOCAL NO. 86,

Respondent.

SYNOPSIS

The Public Employment Relations Commission vacates an interest arbitration award issued to resolve negotiations between the Borough of Bogota and PBA Local No. 86. The Commission remands the matter to the arbitrator in accordance with its opinion. The Borough had appealed the interest arbitration award.

The Commission finds that the arbitrator's consideration of evidence concerning private sector wage increases did not comport with N.J.S.A. 34:13A-16(g). The Commission remands and directs the arbitrator to consider the Borough's evidence on private sector wage increases. The Commission also remands because of the arbitrator's discussion of the Borough's alternate 4% wage increase proposal. Because the arbitrator did not consider a civilian dispatcher proposal, it was inappropriate for him to stress the small cost differential between his award and a 4% wage increase proposal or suggest that the Borough had agreed to a 4% increase that was contingent upon acceptance of the dispatcher proposal. The Commission orders that he may not do so.

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 BOGOTA,

Appellant,

-and-

Docket No. IA-97-8

PBA LOCAL NO. 86,

Respondent.

Appearances:

For the Appellant, Dorf & Dorf, attorneys,  
(Gerald L. Dorf and Perry L. Lattiboudere, on the brief)

For the Respondent, Loccke & Correia, attorneys (Leon B.  
Savetsky, of counsel)

DECISION

The Police and Fire Public Interest Arbitration Reform Act, P.L. 1995, c. 425, N.J.S.A. 34:13A-14 to -21, authorizes the Commission to decide appeals from interest arbitration awards. N.J.S.A. 34:13A-16f(5)(a). We exercise that authority in this case, where the Borough of Bogota appeals from a September 10, 1997 award involving its police officers.

The arbitrator resolved the unsettled issues in dispute by conventional arbitration, as he was required to do absent the parties' agreement to use another terminal procedure. N.J.S.A. 34:13A-16d(2). He fashioned a conventional award after analyzing the parties' final offers. Those offers were as follows. The PBA proposed a four-year agreement from January 1, 1996 through December 31, 1999, with 5% across-the-board salary increases in

each year. It also sought contract provisions: (1) permitting officers to accrue compensation time in lieu of overtime payments and (2) confirming the parties' "overlap" vacation practice.

The Borough proposed a two-year contract from January 1, 1996 through December 31, 1997. It proposed 4% across-the-board increases in each year if the arbitrator awarded a proposal concerning civilian dispatchers (discussed below) and 3% increases if he did not. It sought to freeze the starting salary for the term of the agreement and, effective July 1, 1997, to institute modified salary and vacation guides for new hires. The Borough did not object to the PBA's compensation time proposal, provided the Borough retained the right to approve use of compensation time.

The Borough also sought to arbitrate two issues not listed in the PBA's July 1996 petition to initiate interest arbitration. It proposed to change medical insurance plans and sought a contract provision authorizing it to use civilian employees to perform dispatch duties. The PBA objected to the submission of these issues. On May 13, 1997, the date of the formal hearing, the arbitrator ruled that he would consider the medical insurance proposal but not the civilian dispatcher proposal. The arbitrator therefore deemed the Borough's final offer to include 3% across-the-board wage increases for 1996 and 1997 (Arbitrator's opinion, p. 14).

The arbitrator awarded a two-year contract from January 1, 1996 through December 31, 1997, with 4.5% across-the-board

increases in each year (Arbitrator's opinion, pp. 33-34). He denied the Borough's medical insurance proposal, as well as its proposals for modified salary and vacation schedules for new hires (Arbitrator's opinion, pp. 34-35). He awarded the PBA's proposal concerning compensation time and denied its proposal relating to overlapping vacation (Arbitrator's opinion, pp. 35-36).

The Borough requests that we vacate the award and remand it to a new arbitrator. It contends that the arbitrator erred in excluding its civilian dispatcher proposal; it was prejudiced by the timing of the arbitrator's ruling on the issues to be included in the proceeding; and the arbitrator erred in finding that the PBA had submitted a final offer that satisfied N.J.A.C.

19:16-5.7(f). The Borough also maintains that the arbitrator did not properly apply the relevant statutory criteria, see N.J.S.A. 34:13A-16g, and did not consider all of its evidence.<sup>1/</sup>

We turn first to the Borough's procedural arguments.

The Borough first contends that the award should be vacated because it was prejudiced by the arbitrator's alleged failure to determine the issues to be included in the proceeding prior to the start of the formal hearing. We disagree. The arbitrator ruled expeditiously, within three weeks of the PBA's objecting to consideration of the civilian dispatcher proposal and before any evidence was presented or testimony taken. Therefore,

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<sup>1/</sup> The Borough also requests oral argument. We deny that request.

the Borough could have modified its final offer after the rulings. See N.J.A.C. 19:16-5.7(f) (arbitrator may accept a revision of a final offer at any time before the arbitrator takes testimony or evidence); cf. Allendale Bor., P.E.R.C. NO. 98-27, 23 NJPER 508 (¶28248 1997) (arbitrator committed reversible error by not ruling on objection to submission of additional issues until he issued his final opinion and award). Thus, we consider that the ruling was made before the start of the formal hearing, albeit on the same day of that hearing and the timing of the ruling did not prejudice the Borough.

We also reject the Borough's argument that the award should be vacated because in submitting its final offer, the PBA referenced its positions in mediation and did not restate those positions in a separate written document. The Borough cites Aberdeen Tp. v. PBA, 286 N.J. Super. 372 (App. Div. 1996), which stressed the importance of protecting the confidentiality of mediation and settlement discussions. That concern does not arise where a party adopts as its final offer a proposal put forward in mediation. Further, because the Borough does not dispute that the interest arbitration award addressed the unresolved issues between the parties, it was not prejudiced by the PBA's submission. Nevertheless, N.J.A.C. 19:16-5.7(f) is intended to identify the proposals to be considered by the arbitrator and that objective is best achieved if each party puts the specific terms of its final offer in writing.

We also conclude that the arbitrator did not abuse his discretion in excluding, as untimely, the civilian dispatcher proposal raised ten months after the interest arbitration petition was filed. We agree with the arbitrator's analysis of this issue. We add that no injustice resulted from excluding the proposal. The Borough is maintaining in a pending unfair practice proceeding that it has a prerogative to implement its dispatching proposal without negotiations. If it is successful in that proceeding, it will be able to implement its ordinance unilaterally. If it is not, it may press its concerns in negotiations, consider the employees' concerns in response, and maintain its position if it sees fit. We note that the arbitrator awarded a contract from January 1, 1996 through December 31, 1997. The Borough thus will have the opportunity, if it chooses, to raise this issue in the current round of negotiations.

We turn now to the Borough's contention that in awarding 4.5% wage increases and denying its vacation guide and medical insurance proposals, the arbitrator did not consider all of its evidence and did not properly apply the criteria in N.J.S.A. 34:13A-16g.

In requiring that disputes be resolved by conventional arbitration unless the parties agree to another terminal procedure, the Reform Act entrusts the arbitrator with weighing the evidence and fashioning an award. An arbitrator must assess the evidence on individual statutory factors and then weigh and

balance the relevant, sometimes competing, factors. In reviewing a challenge to an award, we will determine whether the arbitrator considered the criteria in N.J.S.A. 34:13A-16g and rendered a reasonable determination on the issues. Cherry Hill Tp., P.E.R.C. No. 97-119, 23 NJPER 287 (¶28131 1997); N.J.A.C. 19:16-5.9.

Consistent with pre-Reform Act case law, we will vacate an award if 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. Cherry Hill Tp.; cf. PBA Local 207 v. Bor. of Hillsdale, 137 N.J. 71, 82 (1994); Div. 540, Amalgamated Transit Union, AFL-CIO v. Mercer Cty. Improvement Auth., 76 N.J. 245, 253 (1978).

In awarding 4.5% across-the-board increases for 1996 and 1997, as opposed to the 3% increases proposed by the Borough and the 5% increases sought by the PBA, the arbitrator gave "considerable weight" to the "comparability" and "overall compensation" criteria, N.J.S.A. 34:13A-16g(2) and (3) (Arbitrator's opinion, p. 31). He also reviewed the evidence submitted on the lawful authority, financial impact, cost of living and other criteria, see N.J.S.A. 34:13A-16g(5), (6) and (7), in arriving at his award (Arbitrator's opinion, pp. 31-33).



The Borough does not dispute the arbitrator's findings concerning the financial condition of the Borough, the impact of the CAP law, the salaries received by police officers in comparable communities, or his finding that the police force had provided a high level of service despite a reduction in the number of officers (Arbitrator's opinion, pp. 29, 31-34). However, it contends that the award should be vacated because the arbitrator summarily dismissed its evidence on private sector wage increases, contrary to the Reform Act's intent to make comparison with private employment an important factor in interest arbitration awards. It also maintains that the arbitrator erroneously deemed its wage increase proposal to be 4%, awarded a wage increase inconsistent with his finding on the cost of living, and did not consider the evidence submitted on its medical insurance and vacation proposals.

The arbitrator's consideration of the Borough's evidence concerning private-sector wage increases did not comport with N.J.S.A. 34:13A-16g(2). The arbitrator wrote:

The Borough also looks to the level of increase in the private employment sector in support of its position. It bases its argument on a single document -- a report of private sector wage increases in Bergen County between 1994 and 1995. It showed a 3.6 percent increase. That hardly supports the Borough's 3 percent position. There is serious doubt in my mind that such general "shot gun" approach should be given any real consideration in making a determination. There was no evidence regarding "comparative private employment." There was no attempt to equate the work performed by the police officers with any other public or private employment. [Arbitrator's opinion, p. 31]

N.J.S.A. 34:13A-16g(2) calls for, among other things, a comparison of the wages, hours, and working conditions of the employees involved in the proceeding with employees "in private employment in general." See N.J.S.A. 34:13A-16g(2)(a); Town of Newton, P.E.R.C. No. 98-47, 23 NJPER 599 (128294 1997). By directing a comparison with private-sector employees "in general," N.J.S.A. 34:13A-16g(2)(a) deems that information concerning private-sector employees should be considered even though their work may not be similar to that of police or fire officers. Cf. Town of Newton (arbitrator did not err in considering Department of Labor statistics on average private-sector wage increases). N.J.S.A. 34:13A-16.6 also indicates a legislative intent for interest arbitrators to consider general information on private-sector wage increases: it requires the Commission to perform or cause to be performed a survey of private sector wage increases for use by all interested parties in public sector wage negotiations. In light of these provisions, an arbitrator must consider evidence pertaining to "private employment in general" regardless of whether the work of private sector employees is similar to that of police or fire officers. It was thus inappropriate for the arbitrator to seriously doubt that the survey of general private sector wage increases, prepared pursuant to N.J.S.A. 34:13A-16.6 and submitted by the Borough, should be given any "real consideration." A remand is therefore required.

On remand, we direct the arbitrator to consider the Borough's evidence on private-sector wage increases in conjunction with the parties' other evidence. The arbitrator may give that evidence the weight he deems appropriate, but may not decline to give it any real consideration because it reports wage increases received by employees whose work is not necessarily similar to that of police officers.

A remand is also required because of the arbitrator's discussion of the Borough's alternate 4% wage increase proposal. The arbitrator adverted to this proposal on several occasions. He calculated the difference between the PBA's proposal and both 3% and 4% across-the-board increases, stated that the Borough did not dispute that a 4% increase was within its budgetary limits and, in summarizing the rationale for his award, stressed that there was only a \$10,500 difference between his award and the 4% proposal (Arbitrator's opinion, pp. 27-28, 31, 34).

The Borough's offer of a 4% wage increase was contingent upon the arbitrator's awarding its civilian dispatcher proposal, thus permitting the Borough to achieve some cost savings and assign more officers to patrol duty. If, however, the arbitrator did not consider or award the Borough's dispatching proposal, the Borough's proposal was for a 3% wage increase for each year. Because the arbitrator did not consider the civilian dispatcher proposal, it was inappropriate for him to stress the small cost differential between his award and the 4% wage increase proposal.

or suggest that the Borough had agreed to a 4% increase. On remand he may not do so.

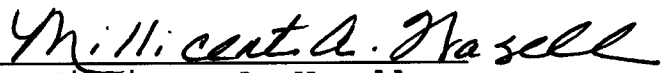
We perceive no fundamental deficiencies in the arbitrator's analysis of the Borough's cost of living evidence or its medical insurance and vacation proposals. It appears to us that the arbitrator considered the evidence submitted.

In remanding this matter, we are confident that the appointed arbitrator will reconsider the award in accordance with this opinion. See Fox v. Morris Cty., 266 N.J. Super. 501, 521-522 (App. Div. 1993), certif. denied, 137 N.J. 311 (1994) (court would presume, until shown to the contrary, that the original arbitrator would be able to take a fresh look at the case and reach a fair and impartial decision). We direct that the arbitrator complete his reconsideration of the award no later than 60 days from the date of this decision.

ORDER

The arbitration award is vacated and the matter remanded to the arbitrator for reconsideration in accordance with this opinion.

BY ORDER OF THE COMMISSION

  
Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Boose, Buchanan, Ricci and Wenzler voted in favor of this decision. None opposed. Commissioners Finn and Klagholz were not present.

DATED: January 29, 1998  
Trenton, New Jersey  
ISSUED: January 30, 1998

P.E.R.C. NO. 98-88

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HUDSON COUNTY PROSECUTOR,

Appellant-Respondent,

-and-

Docket No. IA-96-178

PBA LOCAL 232,

Appellant-Respondent.

SYNOPSIS

The Public Employment Relations Commission affirms the award of an interest arbitrator appointed to resolve unsettled negotiations issues between the Hudson County Prosecutor and PBA Local 232. The PBA requests that the award be vacated and the matter be remanded to a different arbitrator. The PBA contends that the arbitrator's analysis was flawed and that he deviated from accepted principles of conventional arbitration by awarding salary increases outside the boundaries of the parties' last offers. The Prosecutor asks that the Commission remand the award to the arbitrator because the Prosecutor believes the actual costs of the arbitrator's award for 1998 exceed the 5% to 5.5% cost calculated by the arbitrator. The Commission rejects the PBA's and the Prosecutor's challenges and concludes that the arbitrator analyzed the evidence presented on the relevant statutory factors and reached conclusions that are supported by substantial credible evidence in the record. The Commission finds that the arbitrator gave due weight to each of the statutory factors and decided the dispute based on a reasonable determination of the 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.

P.E.R.C. NO. 98-88

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HUDSON COUNTY PROSECUTOR,

Appellant-Respondent,

-and-

Docket No. IA-96-178

PBA LOCAL 232,

Appellant-Respondent.

Appearances:

For the Hudson County Prosecutor, Scarinci & Hollenbeck,  
attorneys (Sean D. Diaz, of counsel)

For the PBA, Loccke & Correia, attorneys (Leon B.  
Savetsky, of counsel)

DECISION

The Police and Fire Public Interest Arbitration Reform Act, P.L. 1995, c. 425, N.J.S.A. 34:13A-14 to -21, authorizes the Commission to decide appeals from interest arbitration awards. N.J.S.A. 34:13A-16f(5)(a). We exercise that authority in this case, where both the PBA and the Hudson County Prosecutor appeal from a July 23, 1997 award involving investigators in the Prosecutor's office.

The arbitrator resolved the unsettled issues in dispute by conventional arbitration, as he was required to do absent an agreement by the parties to use another terminal procedure. N.J.S.A. 34:13A-16d(2). He fashioned a conventional award after analyzing the parties' final offers. Those offers were as follows.

The Prosecutor proposed a two-year contract from January 1, 1996 through December 31, 1997, with 4% across-the-board increases on January 1 of each year. He also proposed to increase the overtime cap for each employee from \$3500 to \$5000 per year and to decrease from 30 to 21 days the required notice for vacations.

The PBA proposed a three-year contract from January 1, 1996 through December 31, 1998, with 6% across-the-board wage increases each year. It also proposed an automatic step system in which all employees below the maximum salary would move one step annually on the salary guide.<sup>1/</sup> The PBA agreed to the Prosecutor's overtime and vacation proposals.

The arbitrator awarded a three-year contract which provided salary increases as follows:

1996 -- 4% across-the-board salary increases for all unit members, applied to the 1995 salary guide

1997 -- 3% across-the-board salary increases for all unit members, applied to the 1996 salary guide

1998 -- Effective January 1, 1998, a one-step movement on the 1997 salary guide for investigators below the top step [Arbitrator's opinion, pp. 23; 25]

Investigators at the top step in 1997 will receive no salary increase for 1998 (Arbitrator's opinion, p. 23). In addition, the

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<sup>1/</sup> The parties' 1994-1995 agreement included a salary guide, but provided that there would be no step movement after the contract expired unless provided for in a successor agreement.

arbitrator awarded the Prosecutor's overtime and vacation proposals "to be effective January 1, 1997, where practicable in terms of implementation" (Arbitrator's opinion, p. 25).

The PBA requests that we vacate the award and remand the matter to a different arbitrator. It contends that the arbitrator's analysis was flawed and that he deviated from accepted principles of conventional arbitration by awarding salary increases outside the boundaries of the parties' last offers.<sup>2/</sup> The Prosecutor asks that we remand the award to the arbitrator because the Prosecutor believes the actual costs of the arbitrator's award for 1998 exceed the 5% to 5.5% costs calculated by the arbitrator.

In requiring that disputes be resolved by conventional arbitration unless the parties agree to another terminal procedure, the reform act entrusts the arbitrator with weighing the evidence and fashioning an award. Middlesex Cty., P.E.R.C. No. 98-46, 23 NJPER 595 (¶28293 1997); Cherry Hill Tp., P.E.R.C. No. 97-119, 23 NJPER 287 (¶28131 1997). An arbitrator must assess the evidence on individual statutory factors and then weigh and balance the relevant, sometimes competing, factors in arriving at his or her award. Middlesex Cty. In reviewing a challenge to an

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<sup>2/</sup> The PBA's briefs do not address two other issues listed in its notice of appeal. We will not consider those issues. Compare Town of Kearny, P.E.R.C. No. 82-12, 7 NJPER 456 (¶12202 1981) (issue raised in scope of negotiations petition, but not briefed, will not be considered). The PBA also requests oral argument. We deny that request.



award, we will vacate an award if 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 or -9; or (3) the award is not supported by substantial credible evidence in the record as a whole. Middlesex Cty.; Cherry Hill Tp.; cf. PBA Local 207 v. Bor. of Hillsdale, 137 N.J. 71, 82 (1994); Div. 540, Amalgamated Transit Union, AFL-CIO v. Mercer Cty. Improvement Auth., 76 N.J. 245, 253 (1978).

The focus of this proceeding was salary increases -- both across-the-board salary increases and the PBA proposal to implement an automatic step system, which it had identified as a high priority. The background to the latter issue is as follows. When the current Prosecutor took office in 1992, there were 20-30 salaries for 75-80 investigators. The contracts negotiated by the Prosecutor and the PBA for 1993-1994 and 1994-1995 replaced that system with an 11-step salary guide. The first nine steps of the salary guide in the 1994-1995 agreement remained the same for the contract term, although the last two steps were increased for 1995. Investigators below maximum step advanced one step on the guide in 1994 and in 1995. As noted, the contract specified that there would be no step movement after the contract expired unless provided in a successor agreement.

The arbitrator declined to award either the Prosecutor's proposal for a two-year contract with 4% across-the-board

increases or the PBA's proposals for a three-year contract with 6% across-the-board increases plus an automatic step system.

Instead, after analyzing the parties' evidence on the statutory criteria, N.J.S.A. 34:13A-16g, he fashioned an award providing for some across-the-board increases and some step advancement.

(Arbitrator's opinion, pp. 15, 23). He found that, while an automatic step system was desirable, the statutory criteria did not warrant the award of both the PBA's proposed across-the-board increases and a step system, which together would cost approximately 11% per year (Arbitrator's opinion, p. 21). He reasoned that award of the PBA proposal would result in investigators receiving increases far beyond what County employees -- including law enforcement employees -- had received, and could not be justified in view of the County's economic condition (Arbitrator's opinion, p. 21). In explaining his decision to award across-the-board increases (but no step movement) in 1996 and 1997, and step movement (but no across-the-board increases) for 1998, the arbitrator stated:

There is little question that external comparisons tend to favor the implementation of an automatic step system. Municipal law enforcement units universally have them, and, while only half the prosecutors' officers around the State have them, there have been several recent adoptions of automatic step systems. But, with the exception of the investigator's last agreement, no one else in Hudson County has automatic increments, and economic conditions in the County are not compatible with the high cost of setting up an automatic step system. In terms of salary maximums, despite the fact that maximums changed very little during the last agreement, the investigators are still paid more at maximum than law enforcement staff in most

surrounding municipalities, and relatively the same as prosecutor's investigators in two nearby counties facing similar urban economic ills, Passaic and Essex.

In terms of salary increases, the County's last offer reflects the going rate elsewhere for across-the-board increases, and thus would retain the relative position for the maximum salaries with external public jurisdictions, but this across-the-board compensation strategy does not reflect the fact that most other public jurisdictions also pay automatic increments. As a result, under the County's last offer, the junior employees who comprise two-thirds of the bargaining unit would receive substantially lower salary increases over the period of the agreement than in other public jurisdictions with step increases and make no relative progress towards the guide's maximum salary. On the other hand, if the alternative strategy of providing only step increases was followed, the senior employees comprising a third of the bargaining unit would continue to receive low annual increases as occurred under the last contract, and the salary maximums would deteriorate in relation to comparable external jurisdictions. But one thing [that] is clear, as the above analysis indicates, is that the financial impact of the PBA's last offer on the governing unit, its residents and taxpayers, the interests and welfare of the public, and the continuity and stability of employment [are] such that the County cannot afford to both give competitive across-the-board increases and fund automatic steps in a bargaining unit that has so many junior employees. [Arbitrator's opinion, pp. 22-23]

In arriving at his award, the arbitrator made various findings, not challenged by the PBA, concerning the County's financial circumstances and the relative position of unit members vis-a-vis other public and private sector employees. Thus, the arbitrator found that the employees constituting the one-third of the unit at maximum were paid \$50,954 in 1995, a salary that compared well

with municipal officer maximum salaries at the end of 1995 (Arbitrator's opinion, p. 18). The arbitrator also noted that the maximum salary was similar to the maximum investigator salary in the prosecutor's office in Passaic County (\$48,834) and in Essex County (\$52,053) -- two northern New Jersey counties that the arbitrator found were comparable to Hudson because they have similar urban problems (Arbitrator's opinion, p. 18).

The arbitrator concluded that the 2.9% increase in the cost of living during 1996, private-sector wage increase data, and interest arbitration awards averaging 4% for 1996 were all more consistent with the Prosecutor's 4% salary proposal than the 11% annual cost of the PBA's offer (Arbitrator's opinion, pp. 16, 19, 21). In addition, the arbitrator noted that the Prosecutor's proposal for 1996, together with the increases received by the investigators in 1994 and 1995, would result in investigators and their superior officers receiving the same increases for 1994-1996 (Arbitrator's opinion, p. 8).

While the arbitrator found that these factors weighed in favor of the Prosecutor's proposal, he also found that the lack of a step system was a factor to be considered in fashioning an award and in evaluating the significance of public-sector wage settlements and interest arbitration awards. He stated that the cost of increments was not included in reported settlements or interest arbitration awards involving municipal and county law enforcement officers, even though that cost could be substantial

for a unit with a large number of junior employees (Arbitrator's opinion, p. 19). He also concluded that the unit's "overall compensation" was below average when compared to other municipal and county law enforcement units (Arbitrator's opinion, p. 20), a finding that appears to have been based in part on the lack of an automatic step system since he concluded that the unit's maximum salary compared favorably with that in other local law enforcement agencies. On the other hand, he rejected the PBA's position that the absence of an automatic step system had caused high turnover, finding that turnover was unremarkable (Arbitrator's opinion, p. 21).

After weighing the evidence, the arbitrator concluded that a combination of step movement and across-the-board increases was warranted. In arriving at that mix, the arbitrator considered "the undisputed precarious financial condition of the county" as set forth in exhibits (Arbitrator's opinion, p. 16).<sup>3/</sup> Those exhibits indicated that the County has the third lowest per capita income in the state; the second highest number of persons living in poverty; the highest percentage of families, children and elderly persons living in poverty; and the sixth lowest net valuation per capita of any New Jersey county (Arbitrator's opinion, p. 13). It also has the second highest county property tax rate and the highest ratio of county property taxes to per

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<sup>3/</sup> The salaries of Prosecutor employees are paid by the County. See N.J.S.A. 2A:157-18; N.J.S.A. 2A:158-13.

capita income in the State (Arbitrator's opinion, p. 13). The County's 9.5% unemployment rate is far above the state average of 6.4%, and 11 of 12 County municipalities qualified in 1995 for state assistance as distressed cities (Arbitrator's opinion, p. 13). The County's "structural deficit" -- the inability to meet recurring expenses with recurring revenues -- had increased from \$15 to \$47 million from 1988 to 1997 (Arbitrator's opinion, p. 13). As a result, its tax rate tripled between 1995 and 1996, and the County laid off its entire police force and some crossing guards, parking violations officers, firefighters and other employees. The County experienced a decline in reserves and a 16% loss in its tax base (Arbitrator's opinion, p. 13). State aid was cut significantly between 1995 and 1996, and Moody's reduced the County's bond rating (Arbitrator's opinion, p. 14). Against this backdrop, the arbitrator stated that he had "never seen a situation where the negative financial impact of a settlement and its possible extension to other employees through pattern bargaining could have such negative consequences for a public agency, its employees, and its taxpayers" (Arbitrator's opinion, pp. 20-21).

We turn first to the PBA's contention that the arbitrator deviated from accepted principles of conventional arbitration by awarding an across-the-board increase for 1997 lower than that proposed by the County, and no such increase for 1998, even though each party had included an across-the-board increase for each year

included in its final offer. We conclude that the arbitrator's award represented an appropriate exercise of his conventional arbitration authority.

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. Cherry Hill; Middlesex. Where there are several points of disagreement between the parties -- in this case, for example, a dispute over the length of the contract, the amount of across-the-board increases, and the appropriateness of a step system -- an arbitrator may evaluate the relationship among, or the combined effect of, the different proposals in arriving at an award. See Cherry Hill Tp. (arbitrator could appropriately consider health benefits proposal in conjunction with parties' other proposals). The arbitrator may then fashion an award that represents a reasoned determination of all the issues in dispute. An award is not necessarily flawed because, in making this overall determination, the arbitrator goes outside the boundaries of the parties' positions on one of the issues in dispute.

The arbitrator evaluated all the proposals and evidence presented, considered the statutory criteria and arrived at a salary award that, while different from that proposed by either party, represents a reasoned determination of the parties' salary dispute. The arbitrator could consider the parties' proposals in conjunction with one another and, therefore, could decide to award

some step advancement and some across-the-board salary increases. In fixing those across-the-board increases, he could take into account the award of step advancement in the third year of the contract and arrive at an overall award that, in his judgment, comported with the statutory criteria.

We agree with the PBA that interest arbitration is an extension of the negotiations process and that, within the context of the statutory criteria, an interest arbitrator should fashion an award that the parties, as reasonable negotiators, might have agreed to. The arbitrator here did that: just as the parties had agreed to step movement instead of across-the-board increases in 1994 and 1995 (Arbitrator's opinion, p. 20), the arbitrator's award effects the same trade-off for 1998. In recognition of the parties' prior negotiations history and the desirability of maintaining comparability of maximum salaries with other jurisdictions, the arbitrator directed a different compromise for 1996 and 1997. We disagree with the PBA that the arbitrator took it upon himself to reduce the salary differences between junior and senior investigators, which neither party had requested. The arbitrator sought to recognize and balance the interests of junior employees in step advancement and the interests of senior employees in maintaining comparability of maximum salaries with other jurisdictions -- interests which the PBA had advanced by seeking both a step system and across-the-board increases.



We need not decide whether, if confronted only with competing proposals for across-the-board salary increases, an arbitrator would be prohibited from awarding increases lower (or higher) than proposed by either party.<sup>4/</sup> That is not the situation here. As noted, the arbitrator could set across-the-board salary increases which took into account the step movement in the third year of the contract. Moreover, the arbitrator awarded annual increases close to those proposed by the Prosecutor -- 4%, 3% and, as discussed later, an approximate 5% increase in overall salary costs for 1998. Thus, the average annual increase in salary costs for the three-year contract is 4% -- the percentage increase which the Prosecutor proposed for each year of a two-year contract. In addition, the PBA received the three-year contract term it had sought.<sup>5/</sup>

We also reject the PBA's more specific challenges to the arbitrator's analysis. The PBA objects to the arbitrator's conclusion that implementing an automatic step system would result

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<sup>4/</sup> Cherry Hill did not, as the PBA suggests, decide this issue. The statement that the arbitrator in that case issued a conventional award "in between the parties' offers" simply described the award in that case.

<sup>5/</sup> We recognize that the employees at maximum do not receive an increase in the third year and receive 3% in the second year of the contract. However, in considering whether the award is less than what the Prosecutor offered, we believe the focus should be on the overall cost to the County, not the effect on particular classes of employees. Some employees will receive step increases of more than 5% in the third year; by focusing on these employees the award would be higher than stated.

in unit employees receiving far greater increases than other County employees and that, if extended to other units, such an award would have major consequences for the County, given its precarious financial condition. The PBA argues that these statements are inconsistent with the arbitrator's finding that the award of an automatic step system for this unit would have little direct financial impact on the County. It maintains that the focus on the extension of step systems to other units "approaches an illegal parity argument" and that the arbitrator's analysis is undercut by the fact that the expired contract included a step system.

The PBA does not dispute that the possible extension of a step system to other County or Prosecutor units could have a negative financial impact on the County. Rather, it maintains that it was not appropriate for the arbitrator to consider this possibility. We disagree.

N.J.S.A. 34:13A-16g(6) requires the arbitrator to consider the impact of a proposal on the governing unit, its residents and taxpayers. The record established that no other negotiations unit in Hudson County has a step system (Arbitrator's opinion, p. 17). The arbitrator therefore reasonably concluded that, if he awarded the PBA proposal, other units would try to negotiate similar provisions which, if obtained, could hurt the County's finances (Arbitrator's opinion, pp. 20-21). Moreover, given the requirement to consider "internal comparability," see

N.J.S.A. 34:13A-16g(2)(c), interest arbitrators in other proceedings involving other County or Prosecutor law enforcement units would have to consider evidence concerning the award of a step system in this matter.

The arbitrator's analysis does not raise the concerns identified in our cases discussing parity clauses. Cf. Marlboro Tp., P.E.R.C. No. 97-102, 23 NJPER 174 (¶28087 1997) (illegal parity clauses automatically extend increases in salary or benefits to a unit of employees based upon future or as yet uncompleted negotiations between the same employer and other employee units; they interfere with an employee organization's right to negotiate over its own economic proposals because the public employer must inevitably consider that if it agreed to those proposals, it would be contractually required to extend the same economic benefits to all other employees protected by a parity clause). The arbitrator did not award or enforce a parity clause. As part of his overall consideration of all the statutory criteria, he made a reasoned determination that awarding the PBA proposal could affect negotiations or arbitral deliberations involving other units, which in turn could have an adverse financial impact on the County. The arbitrator did not deny the proposal based solely on the possibility that, if it were awarded, there could be an effect on negotiations or interest arbitration proceedings with other units. He cited other factors, including internal comparability, public and private-sector wage increases

and the cost of living, in denying the PBA proposal and fashioning his award (Arbitrator's opinion, pp. 16-19, 21). We will not disturb the arbitrator's exercise of discretion in giving some weight to the potential impact that awarding the PBA proposal would have on other units, particularly given the "undisputed precarious financial condition of the County."

The arbitrator did find that, if the PBA's proposal were awarded, the salary costs for this 68-employee unit would represent only \$1.80 of a \$3,000 annual property tax bill and would thus have little direct financial impact on the County (Arbitrator's opinion, pp. 20-21). However, the arbitrator was not required to give dispositive weight to this finding where other factors, including the raises received by other County and Prosecutor employees, pointed toward a different award. In this vein, the absence of step systems in other County units and the across-the-board salary increases received by those units were relevant to the arbitrator's consideration of the PBA's proposal, independent of any financial impact on the County. See N.J.S.A. 34:13A-16g(2)(c) and N.J.A.C. 19:16-5.14 (requiring an arbitrator to compare the wages, hours, and conditions of employment of employees involved in the proceeding with those in the same or similar comparable jurisdictions). Finally, the arbitrator reasonably concluded that the PBA's proposal would have a greater financial impact than the prior contract, which had provided for

step advancement only, with no across-the-board salary increases (Arbitrator's opinion, p. 20).

We also reject the PBA's argument that the arbitrator erred in commenting that "there is no proof that the Prosecutor's budget was not subject to the County's CAP as part of the County budget" (Arbitrator's opinion, p. 20). The arbitrator did not find that the County lacked the lawful authority to fund the PBA's proposal or otherwise cite CAP considerations in assessing the financial impact of the award. See N.J.S.A. 34:13A-16g(1) and (5). Therefore, the arbitrator's analysis of this factor cannot constitute reversible error. See Cherry Hill Tp.; Middlesex Cty. (appellant must identify deficiencies in interest arbitration award which led to those aspects of the award adverse to its position).

We turn now to the Prosecutor's contention that a remand is necessary to correct an alleged inconsistency between the arbitrator's statement that the cost of increments for 1998 was between 5% and 5.5% and the fact that the step movement directed by the arbitrator results in investigators below the 1997 maximum salary receiving increments in excess of that figure. We find no inconsistency.

The arbitrator did not state that each affected employee below the maximum step would receive a 5% to 5.5% increment in 1998; he found instead that the overall cost to the County, based on his own and the County's estimates, would be in this range (Arbitrator's opinion, p. 23). We have reviewed the record and

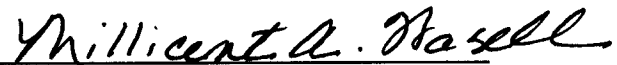
are satisfied that this conclusion is accurate. There is an approximate 5% increase in total salary costs for this unit from 1997 to 1998 when the step movement for all employees below maximum is considered together with the fact that the 23 investigators already at the top step will receive no increase in 1998.

For all these reasons, we reject the PBA's and the Prosecutor's challenges to the award. We conclude that the arbitrator analyzed the evidence presented on the relevant statutory factors and reached conclusions that are supported by substantial credible evidence in the record. We also find that he gave "due weight" to each of those factors and decided the dispute based on a reasonable determination of the issues. N.J.S.A. 34:13A-16g; N.J. State PBA Local 29 v. Irvington, 80 N.J. 271, 295 (1979). He properly exercised his authority under N.J.S.A. 34:13A-16d(2) and 16g and fully considered the requirements of the law.

ORDER

The arbitrator's award is affirmed.

BY ORDER OF THE COMMISSION



Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Buchanan, Finn, Klagholz, Ricci and Wenzler voted in favor of this decision. None opposed. Commissioner Boose was not present.

DATED: December 18, 1997  
Trenton, New Jersey  
ISSUED: December 19, 1997

P.E.R.C. NO. 98-71

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF CLIFFSIDE PARK,

Appellant,

-and-

Docket No. IA-96-138

P.B.A. LOCAL 96,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the Borough of Cliffside Park's motion to file a notice of appeal nunc pro tunc from an Interest Arbitrator's award resolving successor contract negotiations with P.B.A. Local 96. The Commission holds that in order to consider whether the 14-day period for filing an appeal should be tolled in a particular circumstance, a more particularized description of the reasons for the delay is needed than was presented here.

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. 98-71

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF CLIFFSIDE PARK,

Appellant,

-and-

Docket No. IA-96-138

P.B.A. LOCAL 96,

Respondent.

Appearances:

For the Appellant, Diktas Gillen, attorneys (Christos J. Diktas, of counsel)

For the Respondent, Loccke & Correia, attorneys (Leon B. Savetsky, of counsel)

DECISION

On October 27, 1997, the Borough of Cliffside Park filed a motion to appeal nunc pro tunc from a September 17, 1997 interest arbitration award. The motion was accompanied by a certification by the Borough's attorney and a notice of appeal. On October 30, the PBA opposed the motion.

N.J.S.A. 34:13A-16f(5) and N.J.S.A. 34:13A-16f(5)(a) state that an interest arbitration award shall be final, binding and irreversible except where, within 14 days of receiving an award, a party files a notice of appeal with the Commission. See also N.J.A.C. 19:16-8.1(a). The award was received by both parties' attorneys on September 25, 1997.

Pursuant to N.J.S.A. 34:13A-16f(5)(a) and N.J.A.C. 19:16-8.1(a), the notice of appeal was required to be filed by



October 9, 1997. The certification of the Borough's attorney states that, upon reviewing the award, the governing body decided to appeal. The certification does not state why the appeal was not timely filed.

The Borough urges that the brief delay and lack of prejudice to the PBA warrant our granting its motion. The PBA responds that the Borough has not shown good cause or unusual circumstances for extending the deadline for filing the appeal.

Statutory time limits for appeals to administrative agencies have been held to be mandatory, jurisdictional and not capable of enlargement by the agency or the courts. See Schaible Oil v. N.J. Dept. of Environmental Protection, 246 N.J. Super. 29, 31 (App. Div. 1991), certif. denied, 126 N.J. 387 (1991) (Department of Environmental Protection lacked jurisdiction to hear appeal filed 25 days after receipt of administrative order where statute and regulations set 20-day time period); Department of Community Affairs v. Wertheimer, 177 N.J. Super. 595, 599-600 (App. Div. 1980) (where statute required that appeals be filed within 15 days of receipt of administrative order, Department lacked authority to hear appeal filed after that date); Midland Glass Co. v. Dept. of Environmental Protection, 136 N.J. Super. 194, 197-98 (App. Div. 1975) (15-day time period for requesting hearing on administrative order could not be extended by agency or court); see also Borough of Park Ridge v. Salimone, 21 N.J. 28, 47 (1956); Hess Oil & Chem. Corp. v. Doremus Sport Club, 80 N.J. Super. 393, 396 (App. Div. 1963), certif. denied, 41 N.J. 308

(1964); Scrudato v. Mascot Sav. & Loan Ass'n v. Newark, 50 N.J. Super. 264, 269-71 (App. Div. 1958). Contrast Kaczmarek v. N.J. Turnpike Auth., 77 N.J. 329, 339-40 (1978) (six-month statute of limitations for filing unfair practice charges not jurisdictional because statute expressly tolls limitation period where charging party is prevented from timely filing charge).

While endorsing the results in Scrudato and Park Ridge, our Supreme Court has held that time restrictions on an administrative agency's authority to hear a claim may be tolled in particular circumstances, if consistent with the underlying legislative scheme. See White v. Violent Crimes Compensation Bd., 76 N.J. 368, 379, 387 (1978) (statutory limitation period for filing claims with Violent Crimes Compensation Board tolled during period where rape victim was incapacitated by her injuries and rape trauma syndrome).

We need not decide whether we could ever entertain an appeal from an interest arbitration award filed after the time period specified in N.J.S.A. 34:13A-16f(5)(a). The Police and Fire Public Interest Arbitration Reform Act, P.L. 1995, c. 425, was intended to afford an expeditious, effective and binding procedure for the resolution of disputes. N.J.S.A. 34:13A-14a. Consistent with that goal, the Reform Act significantly shortened the time period for challenging interest arbitration awards from that which pertained under the predecessor statute. See N.J.S.A. 34:13A-20 (repealed) (arbitrator's order reviewable by Superior

Court) and N.J.S.A. 2A:24-7 (action to vacate arbitrator's award must be filed in Superior Court within three months after an award is delivered). We are satisfied that in order to consider whether the 14-day period should be tolled in a particular circumstance, a more particularized description of the reasons for the delay is needed than was presented here. See Prospect Hill Apts. v. Flemington, 172 N.J. Super. 245, 248 (Tax Court 1979) (no circumstances presented to warrant consideration of tolling of statutory deadline for filing property tax appeals); cf. Schaible Oil, 246 N.J. Super. at 33 (no basis for applying White to corporation's failure to timely appeal administrative order).

For the foregoing reasons, we deny the Borough's motion.

ORDER

The motion to file a notice of appeal nunc pro tunc is denied.

BY ORDER OF THE COMMISSION



Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Buchanan, Finn, Ricci and Wenzler voted in favor of this decision. None opposed. Commissioners Boose and Klagholz were not present.

DATED: November 20, 1997  
Trenton, New Jersey  
ISSUED: November 21, 1997

P.E.R.C. NO. 98-47

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWN OF NEWTON,

Respondent,

-and-

PBA LOCAL 138 SOA,

Appellant.

Docket No. IA-96-113

SYNOPSIS

The Public Employment Relations Commission affirms an interest arbitration award issued to resolve contract negotiations between the Town of Newton and PBA Local 138 SOA. The SOA appealed the award contending that the arbitrator did not properly apply the statutory criteria and requesting that the award be vacated. The Commission concludes that the arbitrator analyzed the evidence presented on the relevant statutory factors and reached conclusions that are supported by substantial credible evidence in the record. The Commission also concludes that the arbitrator gave due weight to each of these factors and decided the dispute based on a reasonable determination of the 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.

P.E.R.C. NO. 98-47

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWN OF NEWTON,

Respondent,

-and-

Docket No. IA-96-113

PBA LOCAL 138, SUPERIOR  
OFFICERS ASSOCIATION,

Appellant.

Appearances:

For the Appellant, Morris & Hantman, attorneys (Allen  
Hantman, on the brief)

For the Respondent, Trapasso, Dolan & Hollander,  
attorneys (William E. Hinkes, on the brief)

DECISION AND ORDER

The Police and Fire Public Interest Arbitration Reform Act, P.L. 1995, c. 425, N.J.S.A. 34:13A-14 to -21, authorizes the Commission to decide appeals from interest arbitration awards. N.J.S.A. 34:13A-16f(5)(a). We exercise that authority in this case, where PBA Local 138, Superior Officers Association, appeals from a June 7, 1997 award involving six superior officers.

The arbitrator resolved the unsettled issues in dispute by conventional arbitration, as he was required to do absent the parties' agreement to use another terminal procedure. N.J.S.A. 34:13A-16d(2). He fashioned a conventional award after analyzing the parties' final offers. Those offers were as follows.

The SOA proposed a four-year contract from January 1, 1995 through December 31, 1998, with across-the-board salary

increases of 5% for each year. It also sought to: (1) increase the clothing allowance by \$50 for each of the last three years of the agreement; (2) eliminate step 2 of the sergeants' salary guide in 1997 and step 3 in 1998; and (3) set the salary for lieutenant at 8.5% above the sergeant's top pay rate, and the salary for captain at 8.5% above the lieutenant's top pay rate, beginning in 1996. In addition, it proposed, effective January 1, 1998, that all officers be permitted to purchase 50% of their accumulated sick leave on retirement and that detectives be entitled to receive a maximum \$2,500 annual payment for unused compensatory time.

The Town also proposed a four-year contract and agreed to a 5% across-the-board wage increase in 1995. For 1996, 1997 and 1998, it proposed 3% across-the-board increases. The Town also sought to eliminate medical and dental coverage for dependents and to limit such coverage to employees.

The arbitrator awarded a four-year contract with a 5% across-the-board increase for 1995 and 3.5% increases for 1996, 1997 and 1998 (Arbitrator's opinion, p. 17). In addition, he awarded the PBA proposal to eliminate two steps on the sergeants' salary guide and increased the uniform allowance to \$600 in 1996, \$650 in 1997, and \$700 in 1998 (Arbitrator's opinion, pp. 17-18). He rejected the PBA's remaining proposals, as well as the Township's proposal to end medical and dental benefits for employee dependents (Arbitrator's opinion, pp. 17-18).

The SOA requests that we vacate the award, contending that the arbitrator did not properly apply the criteria in N.J.S.A. 34:13A-16g.<sup>1/</sup>

The Town responds, preliminarily, that the SOA's appeal should be dismissed because its notice of appeal was defective. It also urges that the Commission should deny the SOA's motion to accept its brief as filed within time. With respect to the substantive grounds of the appeal, it maintains that the arbitrator thoroughly considered all statutory criteria and that the award should be affirmed.

We turn first to the Town's procedural arguments. A notice of appeal must be filed within 14 days after receiving an interest arbitration award. N.J.S.A. 34:13A-16f(5)(a); N.J.A.C. 19:16-8.1. N.J.A.C. 19:16-8.1(a)(1) requires that the notice "specify each alleged failure of the arbitrator to apply the criteria specified in N.J.S.A. 34:13A-16g and each alleged violation of the standards in N.J.S.A. 2A:24-8 and -9." The Town maintains that the notice was deficient because, by simply stating that the arbitrator did not apply the statutory standards to the facts presented at the hearing, the notice did not adequately advise the Town of the basis of the appeal.

We agree that the SOA's notice of appeal should have specified each alleged error in the arbitrator's analysis. While

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<sup>1/</sup> The SOA also requests oral argument. We deny that request.

we will not dismiss this appeal, in the future we will not process appeals unless the appellant promptly meets the specificity requirements of N.J.A.C. 19:16-8.1(a)(1).

We also grant the SOA's motion to accept its brief as filed within time. N.J.A.C. 19:10-2.1(c). In re Appeal of Syby, 66 N.J. Super. 460 (App. Div. 1961), cited by the Town, is inapt. Syby did not discuss extensions of time for filing briefs and does not militate against granting the Town's motion. Cf. R. 2:6-11(c) (notwithstanding rule's time provisions for filing briefs, court may enter a separate scheduling order in any case on appeal).

We turn now to the SOA's contentions that the arbitrator did not properly weigh and analyze the evidence under the statutory criteria, gave controlling weight to the Consumer Price Index (CPI), and erroneously cited Department of Labor statistics on private-sector wage increases. This proceeding focused on salary increases for 1996, 1997 and 1998. The parties agreed to, and the arbitrator awarded, a 5% increase for 1995 (Arbitrator's opinion, p. 17). In awarding 3.5% increases for 1996, 1997, and 1998, the arbitrator declined to award either the 3% increases proposed by the Town or the 5% increases sought by the SOA (Arbitrator's opinion, p. 17). The arbitrator also awarded the SOA's clothing allowance and salary guide proposals for sergeants (Arbitrator's opinion, pp. 17-18). He denied the SOA's sick leave and compensatory time proposals, along with its proposal for an 8.5% differential between ranks and the Town's proposal to



eliminate dependent medical coverage (Arbitrator's opinion, p. 17-18).

In exercising his authority to fashion a conventional arbitration award, the arbitrator concluded that it was appropriate to award salary increases for 1996, 1997 and 1998 which were closer to those proposed by the Town than the SOA and to deny the SOA's proposal for an 8.5% shift differential. We are satisfied that the arbitrator analyzed all the evidence on the relevant statutory factors and fashioned an award that is supported by substantial credible evidence in the record as a whole.

In awarding the salary increases he did, the arbitrator cited United States Department of Labor (Bureau of Labor Statistics) data showing that "working supervisory" level employees in the private sector received increases of less than 3% in the past year (Arbitrator's opinion, pp. 13-14). He also accorded weight to the fact that non-uniformed Town employees had received 3% increases for 1997 (Arbitrator's opinion, pp. 8, 14). The arbitrator also found that the Town's offer was "by far the more reasonable" in light of the fact that the CPI averaged 2.6% for 1993-96 (Arbitrator's opinion, p. 12).

The arbitrator considered the SOA's evidence that, of the four Sussex County municipalities with superior officers, the Town's superior officers had the second lowest salaries (Arbitrator's opinion, p. 14). He concluded that all three of the

other municipalities were better off economically than Newton and were thus better able to afford higher salaries (Arbitrator's opinion, p. 14). Similarly, the arbitrator evaluated the SOA's evidence concerning: (1) the top salary for teachers employed by the Newton Board of Education and (2) the compensation packages offered by two Sussex County employers, AT&T and Beneficial Technology, for their low and middle-level managers. He stated that the SOA had not indicated the annual wage increases received by the teachers and concluded that the "single citation of a gross wage rate" failed to support the SOA's salary proposal (Arbitrator's opinion, p. 14). He found that some of the AT&T information concerned a merit raise program irrelevant to the proceeding (Arbitrator's opinion, p. 13). While the arbitrator noted that Beneficial had granted a 4% across-the-board increase plus merit raises, he concluded that Department of Labor statistics were more indicative of wage increases received in private employment in general, see N.J.S.A. 34:13A-16g(2)(a), than were the two examples selected by the SOA (Arbitrator's opinion, pp. 13-14).

After reviewing the above evidence on the cost of living and comparability, see N.J.S.A. 34:13A-16g(2) and (7), the arbitrator analyzed the evidence presented on the lawful authority, financial impact and public interest criteria. He accorded weight to, and found persuasive, the Town Manager's testimony concerning the dollar cost analysis of the proposals and

the overall financial health of the Town (Arbitrator's opinion, p. 16). The arbitrator cited the Town's evidence that the Town had adopted ordinances to increase the annual CAP rate above the index rate in each of the last five years (Arbitrator's opinion, p. 11). He also noted that the Town had a low per capita income, had lost \$38 million in assessed valuation and, in 1996, had raised the local purpose portion of the municipal tax by 11% (Arbitrator's opinion, pp. 7, 9, 11, 12, and 18). The arbitrator also evaluated the SOA's evidence that: (1) taxes had not been raised between 1990 and 1995 and (2) the police salary appropriation had decreased by \$60,000 between 1995 and 1996 (Arbitrator's opinion, p. 16). While he found that this evidence "argued to some extent for an award nearer [the SOA's] 5% final offer," he concluded that, based on the weight of the evidence on the financial impact criterion, as well as the CPI and the average public and private sector wage increases, it was appropriate to award increases, for 1996, 1997 and 1998, closer to those proposed by the Town than the SOA (Arbitrator's opinion, pp. 13, 16).

The SOA does not challenge any of the arbitrator's findings but disagrees with his weighing and analysis of the evidence. We conclude that the arbitrator's award is supported by substantial credible evidence in the record. Based on the evidence summarized above, we conclude that the arbitrator appropriately exercised his discretion in finding that the record did not support the SOA's request for 5% increases in 1996, 1997

and 1998 and, instead, supported an award of 3.5% for those years, along with the clothing allowance increase and the elimination of certain salary guide steps. Although we emphasize that we evaluate the entire award to determine whether it is supported by substantial credible evidence in the record as a whole, we address the SOA's specific objections to the arbitrator's analysis and weighing of certain evidence.

We reject the SOA's contention that the arbitrator should not have relied on the Department of Labor statistics because they do not indicate what type of positions the employees had or whether they were responsible for 365-day, 24-hour coverage, as are the Town's superior officers. N.J.S.A. 34:13A-16g(2)(a) calls for, among other things, a comparison of the wages, hours, and working conditions of the employees involved in the proceeding with employees "in private employment in general." Therefore, the arbitrator did not err in considering the Department of Labor information on average wage increases.

We disagree with the SOA that the arbitrator gave controlling weight to the CPI. As the foregoing summary indicates, the arbitrator analyzed the comparability, public interest and welfare, lawful authority, cost of living and financial impact criteria.<sup>2/</sup> The SOA does not point to any criteria or evidence ignored by the arbitrator.

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<sup>2/</sup> He also discussed the overall compensation and continuity and stability of employment criteria, N.J.S.A. 34:13A-16g(3) and (8), and found that there were no stipulations. N.J.S.A. 34:13A-16g(4).

We reject the SOA's contention that the award should be vacated because the Town is fiscally healthy and did not demonstrate that it could not pay the SOA's offer. N.J.S.A. 34:13A-16g(6) does not require a municipality to prove its inability to meet the other party's offer. Hillsdale, 137 N.J. at 86. An interest arbitration award must be based on an analysis of all the relevant statutory factors. Ibid. The arbitrator considered all the evidence bearing on the Town's financial status and concluded that, overall, the evidence supported an award closer to the Town's offer than the SOA's offer. That decision is supported by the record. The arbitrator acknowledged a five-year period where there were no tax increases and noted that, between 1995 and 1996, the budget for police salaries had been reduced. However, those facts did not require him to award higher salary increases where, based on a weighing and analysis of all the evidence, he concluded that other financial factors, along with the comparability and cost of living evidence, supported his award.

The SOA also contends that the arbitrator did not recognize that, because only a few jurisdictions in rural Sussex County have superior officers, it was limited in the amount of comparability evidence it could submit. See N.J.S.A. 34:13A-16g(2)(c). The arbitrator did not evaluate the SOA's proposal based on the quantity of evidence it submitted. He found that the the jurisdictions cited by SOA were not comparable. In any case, geographic proximity is only one of the factors which

may be used to determine whether jurisdictions are comparable, so that the SOA was not limited to Sussex County in presenting its evidence on this factor. N.J.A.C. 19:16-5.14(d).

The Town was not required to submit, or the arbitrator to request, additional information concerning superior officer salaries in other jurisdictions. Cf. Hillsdale, 137 N.J. at 84; N.J.A.C. 19:16-5.7(d); N.J.A.C. 19:16-5.14(b)(2). The arbitrator considered all the comparability evidence presented by the parties. N.J.S.A. 34:13A-16g; N.J.A.C. 19:16-5.14(b). He did not consider that additional evidence on this factor was necessary for him to issue an award. The SOA has not demonstrated why we should disturb that judgment on appeal.

The SOA also maintains that the arbitrator erred in denying its proposal for 8.5% differentials between the ranks of sergeant and lieutenant and between the ranks of lieutenant and captain. It argues that the arbitrator did not explain his ruling on this issue and that he re-adopted a system where sergeants make more than the captain. We disagree. The Town explains that some sergeants made more than the captain because they received additional compensation in the form of overtime, seniority pay, and off-duty work at construction sites. The record indicates that the parties' prior contract included a \$2500, 4.9% differential between sergeant and lieutenant base salaries and a \$2500, 4.7% differential between lieutenant and captain base salaries. In view of these factors, the arbitrator's award is supported by substantial credible evidence in the record.

Finally, the SOA maintains that the Town's health benefits proposal should not have been submitted to interest arbitration because, as a member of the New Jersey State Health Benefits Program, the Town could not eliminate dependent coverage for only one group of employees. The arbitrator treated the Town's health benefit proposal as a discrete item and commented that "[a]bsent significant economic justification, such a proposal is unthinkable, and it is rejected" (Arbitrator's opinion, p. 18). Assuming for the purposes of analysis that the proposal should not have been submitted to interest arbitration, we do not believe that the arbitrator's consideration of the proposal affected his evaluation of the parties' other proposals.

We conclude that the arbitrator analyzed the evidence presented on the relevant statutory factors and reached conclusions that are supported by substantial credible evidence in the record. We also find that he gave "due weight" to each of those factors and decided the dispute based on a reasonable determination of the issues. N.J.S.A. 34:13A-16g; N.J. State PBA Local 29 v. Irvington, 80 N.J. 271, 295 (1979). He properly exercised his authority under N.J.S.A. 34:13A-16d(2) and 16g and fully considered the requirements of the law.

ORDER

The arbitrator's award is affirmed.

BY ORDER OF THE COMMISSION

A handwritten signature in cursive script, reading "Millicent A. Wasell".

Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Boose, Buchanan, Finn, Klagholz, Ricci  
and Wenzler voted in favor of this decision. None opposed.

DATED: October 30, 1997  
Trenton, New Jersey  
ISSUED: October 30, 1997



P.E.R.C. NO. 98-46

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF MIDDLESEX,

Appellant,

-and-

Docket No. IA-96-115

PBA LOCAL NO. 156,

Respondent.

SYNOPSIS

The Public Employment Relations Commission affirms an interest arbitration award issued to resolve negotiations between the County of Middlesex and PBA Local No. 156. The County appealed the award contending that the arbitrator did not properly apply the statutory criteria. The County requests that the Commission vacate the award and remand the matter to another arbitrator for a new hearing. The County also appeals an interlocutory ruling of the arbitrator denying the County's request to submit additional issues.

The Commission concludes that the County has not demonstrated why N.J.A.C. 19:16-5.5(a) should be relaxed and denies its appeal of the arbitrator's interlocutory ruling denying the County's request to submit additional issues. The Commission further concludes that the arbitrator analyzed the evidence presented on the relevant statutory factors and reached conclusions that are supported by substantial credible evidence in the record. The Commission also concludes that the arbitrator gave due weight to each of these factors and decided the dispute based on a reasonable determination of the issues.

The Commission does not consider the County's position that, if the arbitrator properly applied the Reform Act, that statute unconstitutionally delegates governmental powers. The Commission's jurisdiction is limited to reviewing the application of the criteria in N.J.S.A. 34:13A-16g and determining whether the arbitrator violated the standards in N.J.S.A. 2A:24-8 or N.J.S.A. 2A:24-9.

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. 98-46

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF MIDDLESEX,

Appellant,

-and-

Docket No. IA-96-115

PBA LOCAL NO. 156,

Respondent.

Appearances:

For the Appellant, Geneva, Burns & Vernioia, attorneys  
(James M. Burns, of counsel; James M. Burns and Lynn S.  
Degen, on the brief)

For the Respondent, Loccke & Correia, attorneys (Richard  
D. Loccke, of counsel; Joseph Licata, on the brief)

DECISION AND ORDER

The Police and Fire Public Interest Arbitration Reform Act, P.L. 1995, c. 425, N.J.S.A. 34:13A-14 to -21, authorizes the Commission to decide appeals from interest arbitration awards. N.J.S.A. 34:13A-16f(5)(a). We exercise that authority in this case, where the County of Middlesex appeals from a June 9, 1997 award involving its police officers.

The arbitrator resolved the unsettled issues in dispute by conventional arbitration, as he was required to do absent the parties' agreement to use another terminal procedure. N.J.S.A. 34:13A-16d(2). He fashioned a conventional award after analyzing the parties' final offers. Those offers were as follows.

The PBA proposed a three-year contract from January 1, 1996 through December 31, 1998 with 6.5% across-the-board salary increases for each year. In addition, it sought: (1) a change to a four days on, two days off work schedule; (2) a \$100 increase in the clothing allowance for each year of the contract; (3) 10 annual PBA business days; and (4) modification of overtime and vacation provisions. The PBA also proposed: (1) including a "preservation of rights" clause; (2) specifying longevity program terms in the contract instead of in sidebar documents and (3) prohibiting a full-time employee from being replaced by any "non-police officer or part time or other personnel."

The County also proposed a three-year contract from January 1, 1996 through December 31, 1998. It proposed to add the following dollar amounts to base pay at each step, on the dates indicated:

1/1/96	\$500
7/1/96	\$500
1/1/97	\$600
7/1/97	\$400
1/1/98	\$700
7/1/98	\$450

It also proposed that, beginning on January 1, 1997, each unit member would be eligible for a \$250 performance incentive bonus based on evaluations. It further sought to change the pay period from bi-weekly to semi-monthly and have overtime calculated on a weekly basis. In addition, on August 1, 1996, the County sought to submit to interest arbitration additional issues not listed in the PBA's March 1996 petition to initiate compulsory

interest arbitration. In response to the PBA's objection, the arbitrator limited the issues in the proceeding to those contained in the PBA's petition. On November 19, 1996, the Commission denied the County's motion for leave to appeal this interlocutory ruling. Middlesex Cty., P.E.R.C. No. 97-63, 23 NJPER 17 (¶28016 1996).

The arbitrator issued an award that established a three-year contract from January 1, 1996 through December 31, 1998 and awarded the following across-the-board wage increases:

1/1/96:	2%
7/1/96:	2%
1/1/97:	2.25%
7/1/97:	1.50%
1/1/98:	2.5%
7/1/98:	1.5%

The arbitrator denied each party's remaining proposals.

The County asks that we vacate the award and remand it to a different arbitrator for a new hearing, contending that the arbitrator did not properly apply the statutory criteria. It also appeals the arbitrator's interlocutory ruling. N.J.A.C. 19:16-5.17(a).

We turn first to the County's appeal of the arbitrator's ruling denying its request to submit additional issues to interest arbitration. We incorporate the procedural history and analysis in our decision denying leave to appeal the ruling. Middlesex Cty. We add the following.

In Middlesex, we assumed for purposes of analysis that N.J.A.C. 19:16-5.5 may be relaxed, or its time periods extended,

in accordance with N.J.A.C. 19:10-3.1(a) and (b). We so hold now. We will defer to an arbitrator's decision to admit or exclude additional issues unless we find an abuse of discretion. As discussed in Middlesex, the County has not demonstrated why N.J.A.C. 19:16-5.5(a) and (b) should be relaxed, and we affirm the arbitrator's ruling. The County had a statutory obligation, once the PBA filed its petition, to engage in interest arbitration with the PBA negotiations unit within the parameters of N.J.S.A. 34:13A-14 to -21 and Commission rules designed to accomplish the legislative goal of resolving disputes expeditiously. It was not entitled to delay its responses concerning the PBA unit until it determined its position with respect to all other units. We add that some of the issues submitted on August 1 appear to be PBA-specific. The County has not explained why it had to wait until it finalized its proposal for other units to submit these issues.

We next turn to the County's contentions that, in formulating his award, the arbitrator disregarded the public interest and improperly applied the criteria in the Reform Act. In requiring that disputes be resolved by conventional arbitration unless the parties agree to another terminal procedure, the Reform Act entrusts the arbitrator with weighing the evidence and fashioning an award. An arbitrator must assess the evidence on individual statutory factors and then weigh and balance the relevant, sometimes competing, factors. In reviewing a challenge to an award, we will determine whether the arbitrator considered

the criteria in N.J.S.A. 34:13A-16g and rendered a reasonable determination on the issues. Cherry Hill Tp., P.E.R.C. No. 97-119, 23 NJPER 287 (¶28131 1997); N.J.A.C. 19:16-5.9.

Consistent with pre-Reform Act case law, we will vacate an award if 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. Cherry Hill Tp.; cf. PBA Local 207 v. Bor. of Hillsdale, 137 N.J. 71, 82 (1994); Div. 540, Amalgamated Transit Union, AFL-CIO v. Mercer Cty. Improvement Auth., 76 N.J. 245, 253 (1978).

This proceeding focused on salary increases. The arbitrator awarded salary increases of 3.02%, 4.04% and 4.04% for 1996, 1997, and 1998.<sup>1/</sup> He declined to award either the 6.5% increases sought by the PBA or the flat dollar increases proposed by the County -- dollar amounts that would have resulted in percentage increases of 1.62%, 2.27% and 2.17% for the 70% of the unit earning the top salary (Arbitrator's opinion, pp. 29, 33-34). The arbitrator denied the parties' remaining proposals, including the PBA's requests for increases in the clothing allowance, additional PBA business days, modified vacation

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<sup>1/</sup> These figures reflect the split increases and the effect of compounding. There is a .79% carryover into 1999.

procedures, and reduced work hours. In exercising his authority to fix an award between the parties' offers, the arbitrator wrote:

The undersigned does not believe that either the PBA proposal or the County proposal reasonably addresses the diverse concerns which must be reconciled in the development of this decision in order to be consistent with the public interests and welfare. As shown later in this decision, the PBA proposal exceeds the rate of increase in the cost of living, exceeds the "going rate" of current wage increases, exceeds the rate of increase in the private sector and the rate of increase in a significant internal Middlesex County settlement. On the other hand, the County proposal would fail to match the rate of increase in the cost of living, would fall below the "going rate" of wage increases, [and] would be less than the rate of increase in the private sector and the percentage value of the significant internal Middlesex County settlement. Accordingly, the undersigned intends to develop an Award which is more consistent with the public interest and welfare than the competing final offers submitted by the parties. [Arbitrator's opinion at 19]

The County argues that because the award exceeds the amounts the County had budgeted for wage increases, it necessarily failed to give due consideration to the taxpayers' interests, as required by N.J.S.A. 34:13A-14(b). We disagree.

The Reform Act requires the arbitrator to indicate which of the statutory factors are deemed relevant, satisfactorily explain why the others are not relevant, and analyze each relevant factor. N.J.S.A. 34:13A-16g; see also N.J.A.C. 19:16-5.9. The arbitrator must weigh and balance all relevant factors in determining what award is reasonable. The Reform Act does not require that the arbitrator award the amount the employer has budgeted for wage increases, automatically equate the employer's

offer with the public interest, or specify a formula for arriving at an award. Therefore, the award is not automatically defective because it exceeded the employer's offer and the amount it had budgeted for wage increases.

We are also satisfied that the arbitrator analyzed all the evidence on the relevant statutory factors and fashioned an award that is supported by substantial credible evidence in the record as a whole. In awarding the salary increases he did, the arbitrator gave "considerable weight" to Bureau of Labor Statistics reports, submitted by the County, showing that the rate of wage increases in the private sector was "somewhat in excess" of 3% for 1994, 1995 and 1996 (Arbitrator's opinion, p. 21). He also found to be "significant" Bureau of Labor Statistics data, also submitted by the County, showing that, for public sector contracts replacing contracts expiring in 1995, annual changes over the contract term are averaging 3.3% (Arbitrator's opinion, pp. 21-22). He considered the County's evidence to the effect that the cost of living for the first eight months of 1996 had risen by 3.2% (Arbitrator's opinion, p. 30). The arbitrator also considered data showing that interest arbitration awards and settlements averaged 4%, 4.16% and 3.96% for 1996, 1997 and 1998 (Arbitrator's opinion, p. 27). In addition, he placed "significant weight" on the County's settlement with its largest negotiations unit, 760 non-uniformed employees represented by AFSCME (Arbitrator's opinion, pp. 27, 29). He noted that, when



the dollar increases were applied to the average salary for the AFSCME unit, they resulted in increases of 2.91%, 3.96%, 4.08% for 1996, 1997 and 1998 (Arbitrator's opinion, p. 28). In addition, he found that the AFSCME settlement was enhanced by provisions that could not be precisely quantified -- including a performance incentive, increased reimbursement of Child Care Assistance payments, and an increased uniform allowance (Arbitrator's opinion, pp. 28-29).

The arbitrator also found, based on the record evidence, that the PBA had shown that County police officers had a lower base pay rate than any municipal police force within Middlesex County; that the top-step base pay for County police officers was \$5000 below the County-wide average for municipal officers; and that county police officers in Union County, a jurisdiction identified by the employer as comparable, had a better overall compensation package than the officers in this proceeding (Arbitrator's opinion, pp. 12-13, 24). Finally, the arbitrator found that County police officers had maintained and in some areas exceeded productivity levels despite the fact that the unit had been reduced from 33 to 21 officers between 1993 and 1995 (Arbitrator's opinion, pp. 33, 41). With the exception of the arbitrator's finding concerning the Union County police force, the County does not dispute any of these findings.

After analyzing the above evidence on comparability, overall compensation and the cost of living, see N.J.S.A. 34:13A-16g(2), (3) and (7), the arbitrator considered the

financial impact of his award. The arbitrator calculated the cost, for each year of the agreement, of the employer's offer, the PBA's offer, and the salary increases awarded (Arbitrator's opinion, p. 34). He found that the difference between his award and the County's offer would be \$1,095, \$25,607 and \$41,197 for 1996, 1997, and 1998, or a total difference of \$67,899 over three years (Arbitrator's opinion, pp. 38-40). The opinion acknowledged the County's financial goals. The arbitrator noted that, since 1993, the County had reduced its tax levy and was committed to increasing its retained surplus by 1998 (Arbitrator's opinion pp. 12, 40). He concluded that his award would not materially jeopardize those goals (Arbitrator's opinion, p. 40).

Against this background, we conclude that the arbitrator's award is supported by substantial credible evidence in the record. The arbitrator appropriately exercised his discretion in concluding that the record did not support the PBA's request for 6.5% increases. He also appropriately exercised his discretion in concluding that the record supported increases above the dollar amounts proposed by the County. The County's evidence on the cost of living showed that it had risen by 3.2%. Its evidence on the rate of wage changes in the private and public sectors, submitted in percentage form, reflected wage increases in excess of 3%. When the settlement between the County and AFSCME was converted to a percentage of the average AFSCME salary, it reflected wage increases of 2.91%, 3.96% and 4.08% for 1996, 1997,

and 1998. The PBA's evidence on police salaries in surrounding jurisdictions indicated that County police officers were less well-paid than their municipal counterparts or members of the Union County police force. The arbitrator explained that he chose not to award the County offer because it would be lower than the cost of living and the increases received by public and private sector employees, would result in officers losing purchasing power, and would not be justified by financial or public interest considerations. The arbitrator considered the internal settlement. But he was not required to give dispositive weight to the fact that it was stated in dollar amounts rather than percentage increases where, based on his analysis and weighing of all the evidence, he concluded that a different award was warranted.

The record also supports the arbitrator's findings on the financial impact and lawful authority criteria. The arbitrator found that if the differences between his award and the County's proposal were funded from the 1996 retained surplus of \$6,785,273, it would reduce that surplus by no more than 1% and, therefore, would not "materially jeopardize" the County's goal of achieving a \$10 million retained surplus after adoption of the 1998 budget (Arbitrator's opinion, p. 40). This conclusion is consistent with the comptroller's certification that it was the County's goal to assume "very little, if any, Surplus in the 1997 and 1998 Operating Budgets," thus indicating that some surplus could be

assumed (Arbitrator's opinion, p. 39). In any case, the record also supports the arbitrator's conclusion that it was "quite likely" that the County could fund the award without recourse to surplus (Arbitrator's opinion, p. 40). The arbitrator noted that overtime costs might be reduced in 1997 and 1998 because the County had hired additional officers in 1996 and they could be employed at straight-time rates (Arbitrator's opinion, p. 40). He also commented that some of the seven employees eligible to retire in 1998 might do so, thereby producing savings since new recruits would be hired at lower salaries (Arbitrator's opinion, p. 40). The arbitrator did not definitively state that these savings would occur, but his statements were reasonable inferences from the record.<sup>2/</sup>

The arbitrator also considered the "lawful authority" criterion. He found that, in 1997, the County had a CAP bank of approximately \$14 million and had the lawful authority to fund the award (Arbitrator's opinion, p. 39). The County does not challenge this conclusion.

We disagree with the County that the award has the same defects as those considered in Hillsdale, Washington Tp. or Fox. In awarding increases in between those proposed by the parties,

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<sup>2/</sup> An award in excess of the amounts an employer has budgeted for wage increases does not inevitably force the employer to increase its overall expenditures. N.J. State PBA v. Town of Irvington, 80 N.J. 271, 288-89 (1979); PBA Local 207 v. Bor. of Hillsdale, 263 N.J. Super. 163, 194 (App. Div. 1993), aff'd in part, rev'd in part, 137 N.J. 71 (1994).

the arbitrator considered all relevant factors and did not rely solely on police salaries in surrounding jurisdictions. The parties presented, and the arbitrator analyzed, evidence on private sector wage increases and wage increases of non-uniformed public employees. The arbitrator also considered the financial impact of the award.

Although we emphasize that we evaluate the entire award to determine whether it is supported by substantial credible evidence in the record as a whole, we will address the County's more specific challenges to the arbitrator's findings or analysis concerning individual criteria. We find that the arbitrator appropriately considered the public interest in maintaining a high-productivity and high-morale police force (Arbitrator's opinion, p. 17). That is one component of the public interest and welfare criterion. The arbitrator's conclusion that Union County police officers were better compensated than the County officers is supported by his analysis of the salary guides of the two forces (Arbitrator's opinion, p. 24). The County's challenge to this finding is unparticularized. Similarly, the arbitrator's award is not undermined because, in discussing the continuity and stability of employment criterion, he did not analyze the County's evidence concerning public and private-sector positions that had been privatized or "downsized." The arbitrator accepted the County's position that this unit had stable employment and rejected PBA arguments to the contrary. The County's challenge to

the award based on the analysis of this criterion is without merit. Cherry Hill Tp. Finally, the arbitrator did not err in referring to the County's CAP bank in concluding that the County could fund the award for 1996 and 1997. The County argues that, because the tax levies for those years have already been struck, the County's CAP bank is pertinent only to 1998. However, if the award for 1996 and 1997 cannot be funded out of reserves for those years, the availability of a CAP bank for 1998 is relevant to assessing whether the County can fund the award in 1998. See N.J.S.A. 40A:4-45.41.

The County argues that the arbitrator was required to consider the impact of the award on existing or planned programs or services, the county tax rate, and property taxpayers of different income levels. The plain language of section 16g(6) requires an analysis of these factors "to the extent that evidence is introduced." Neither the County's post-hearing brief nor its brief on appeal points to any such evidence.

We also reject the County's argument that the award must be vacated because the arbitrator did not consider the financial impact which would result if the County's other law enforcement units received similar awards. Before the arbitrator, the County argued generally that his award could set a precedent for eight other units eligible for interest arbitration, but it offered the arbitrator no particularized analysis or projections of how various levels of potential awards, if applied to other units,

would affect the County financially. In this posture, the arbitrator was not required to address this issue.<sup>3/</sup>

We are not persuaded that the arbitrator violated N.J.S.A. 34:13A-16d(2) because: (1) his award exceeded the amount the County had budgeted for wage increases for this unit, or (2) he did not consider that his award might result in increased salary expenses for other County law enforcement units. N.J.S.A. 34:13A-16d(2) requires the arbitrator to determine the reasonableness of "the total net annual economic changes for each year of the agreement." Whether the total net economic changes for any year are reasonable depends on the arbitrator's assessing, weighing and balancing the relevant statutory factors, not on any independent requirement imposed by 16d(2).

We conclude that the arbitrator analyzed the evidence presented on the relevant statutory factors and reached conclusions that are supported by substantial credible evidence in the record. We also find that he gave "due weight" to each of those factors and decided the dispute based on a reasonable determination of the issues. N.J.S.A. 34:13A-16g; N.J. State PBA Local 29 v. Irvington, 80 N.J. 271, 295 (1979). He properly exercised his authority under N.J.S.A. 34:13A-16d(2) and 16g and

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<sup>3/</sup> On appeal, the County submits an exhibit from its comptroller estimating the expenditures that could result for 1996 and 1997 if the arbitrator's award were applied to other County law enforcement units. Given the absence of any particularized submission below, we decline to consider this supplemental material now.

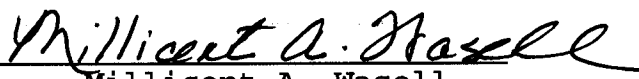
fully considered the requirements of the law. For these reasons, we also reject the argument that the award was procured by undue means, contrary to N.J.S.A. 2A:24-8.

We do not consider the County's position that, if the arbitrator properly applied the Reform Act, that statute unconstitutionally delegates governmental powers. Under N.J.S.A. 34:13A-16f(5)(a), our jurisdiction is limited to reviewing the application of the criteria in subsection 16g and determining whether the arbitrator violated the standards in N.J.S.A. 2A:24-8 or N.J.S.A. 2A:24-9.

ORDER

The arbitrator's award is affirmed.

BY ORDER OF THE COMMISSION



Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Boose, Buchanan, Finn, Klagholz, Ricci and Wenzler voted in favor of this decision. None opposed.

DATED: October 30, 1997  
Trenton, New Jersey  
ISSUED: October 30, 1997



STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF ALLENDALE,

Appellant,

-and-

Docket No. IA-95-71

PBA LOCAL NO. 217,

Respondent.

SYNOPSIS

The Public Employment Relations Commission vacates an interest arbitration award issued to resolve negotiations between the Borough of Allendale and PBA Local No. 217. The Commission remands the matter to the arbitrator for reconsideration. The Borough appealed the interest arbitration award, maintaining that the arbitrator should not have excluded its vacation, eye examination, red dot days, and vacation proposals under N.J.A.C. 19:16-5.5(b). The Borough also asserts that the arbitrator's ruling on the PBA's objection to consideration of these proposals was untimely. The Borough also requests modification of the award consistent with the criteria in N.J.S.A. 34:13A-16g.

The Commission affirms the arbitrator's ruling limiting the arbitration proceeding to the issues raised in the PBA's petition. However, the Commission finds that the Borough was disadvantaged by the arbitrator's not ruling on the PBA's objection to the submission of these issues until after he issued his final award. The Borough's salary proposal included these issues being considered by the arbitrator and the Borough might have submitted a different proposal to the arbitrator had it known these proposals would be excluded. Accordingly, the Commission remands the matter to the arbitrator and allows the Borough to submit a new final offer. In light of the remand, the Commission does not decide the remaining issues in this 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. 98-27

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF ALLENDALE,

Appellant,

-and-

Docket No. IA-95-71

PBA LOCAL NO. 217,

Respondent.

Appearances:

For the Appellant, Murray, Murray & Corrigan, attorneys  
(Robert E. Murray, of counsel; Robert E. Murray and  
Valerie J. Dion, on the brief)

For the Respondent, Loccke & Correia, attorneys  
(Richard D. Loccke, of counsel; Richard D. Loccke and  
Leon B. Savetsky, on the brief)

DECISION AND ORDER

The Police and Fire Public Interest Arbitration Reform Act, P.L. 1995, c. 425, N.J.S.A. 34:13A-14 to -21, authorizes the Commission to decide appeals from interest arbitration awards. N.J.S.A. 34:13A-16f(5)(a). We exercise that authority in this case, where the Borough of Allendale appeals from a March 11, 1997 award.

The arbitrator resolved the unsettled issues in dispute by conventional arbitration, as he was required to do absent the parties' agreement to use another terminal procedure. N.J.S.A. 34:13A-16d(2). He fashioned a conventional award after analyzing the parties' final offers. Those offers were as follows.

The PBA proposed a four-year contract from January 1, 1995 through December 31, 1998 with 5.5% across-the-board wage increases for each year. It also sought to: (1) increase the clothing allowance by \$100 effective January 1, 1995 and (2) modify the contract bereavement clause by allowing three days off rather than one day off for the death of a grandparent.

The Borough proposed a five-year contract from January 1, 1995 through December 31, 1999 that would include, for each contract year, a new maximum step for each rank. The new step for each year would be \$1500 above the prior year's maximum. The Borough also proposed to: (1) reduce vacation time; (2) lower the starting salary for an officer in the academy; (3) eliminate an annual eye examination benefit; and (4) eliminate "red dot" days, whereby an officer may earn up to six additional days off ("red dot" days) in exchange for working a scheduled holiday. The Borough agreed to the PBA's clothing allowance and bereavement proposals.

On July 22, 1996, the first of two days of hearing, the PBA objected to the Borough's inclusion of the vacation, "red dot" day, and eye examination proposals in its final offer. It argued that, because these issues had not been listed in an answer to the PBA's petition to initiate interest arbitration, the Borough was, under N.J.A.C 19:16-5.5(b), deemed to have agreed to the request for interest arbitration as submitted by the PBA. The arbitrator directed the parties to address this issue in their post-hearing briefs.

At the outset of his opinion accompanying his final award, the arbitrator determined that the proceeding "shall be limited to the three issues the Association listed in its petition, viz. wages, clothing allowance and bereavement leave and the Borough's counter positions on each of these issues" (Arbitrator's opinion, p. 9). In evaluating the parties' proposals on these issues, the arbitrator was required to 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." N.J.S.A. 34:13A-16g.

The arbitrator issued an award that: (1) established a four-year agreement from January 1, 1995 through December 31, 1998; (2) awarded across-the-board wage increases of 4.25%, 4.00%, 3.75% and 3.50% for 1995, 1996, 1997 and 1998, respectively; (3) included the agreed-upon clothing allowance and bereavement leave provisions; (4) increased the clothing allowance by an additional \$100 for the fourth year of the contract and (5) modified the present academy step and created a new first step.

The Borough maintains that the arbitrator should not have excluded its vacation, eye examination and red dot day proposals under N.J.A.C. 19:16-5.5(b). It also asserts that the arbitrator did not timely rule on the PBA's objection to considering these proposals, thereby preventing it from submitting an offer consistent with the issues that would be considered in the

proceeding. The Borough also requests that we modify the award consistent with the criteria in N.J.S.A. 34:13A-16g or, in the alternative, remand the matter to a new arbitrator. It maintains that the award is fundamentally flawed because, contrary to the reform act and PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71 (1994), it is not supported by findings of fact or an analysis of the criteria in N.J.S.A. 34:13A-16g. The Borough specifically alleges that the arbitrator: (1) did not consider the extensive evidence it presented on the financial impact criterion; (2) awarded excessive wage increases inconsistent with his finding that Borough officers are well paid compared to other public and private-sector employees; (3) did not make findings of fact concerning the "interest and welfare of the public" criterion or discuss that criterion in his analysis; (4) rendered an award inconsistent with his findings concerning the cost of living; and (5) erred in refusing to award a five-year contract and in adding \$100 to the clothing allowance for the fourth year of the contract.

The PBA maintains that the arbitrator properly excluded the Borough's vacation, eye examination, and red dot day proposals pursuant to the plain language of N.J.A.C. 19:16-5.5(b). The PBA also urges us to affirm the award, countering that the arbitrator analyzed all of the facts and arguments in accordance with the statutory criteria.<sup>1/</sup>

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<sup>1/</sup> The PBA also requested oral argument. We deny that request.

We turn to the Borough's argument that the arbitrator should have considered its proposals concerning red dot days, vacation time, and the annual eye examination. The chronology is as follows.

In November 1994, one month before the parties' contract was to expire at the end of the year, the Borough submitted successor contract proposals to the PBA which included the proposals at issue here. On January 9, 1995, the PBA filed a petition to initiate interest arbitration listing the issues in dispute as wages, clothing allowance and bereavement leave. The Borough did not file a response. On February 7, 1995, an arbitrator was appointed. The parties had a series of mediation sessions with this arbitrator, who subsequently withdrew from the proceeding in November 1995. On November 22, 1995, a second arbitrator was appointed. That arbitrator scheduled a meeting on April 1, 1996 and, when the parties were unable to resolve the matter on that date, he scheduled a formal hearing for July 22, 1996. The Borough's disputed proposals were discussed during the mediation sessions with both arbitrators.

At the July 22, 1996 hearing, when the parties were placing their final offers on the record, the PBA attorney objected to consideration of the Borough's vacation, red dot day, and eye examination proposals. He also stated that he had indicated on April 1 that he would raise this objection if the matter proceeded to a formal hearing.

As noted, the arbitrator advised counsel that they could address the issue in their post-hearing briefs. A second day of hearing was held on October 25, 1996. The parties submitted post-hearing briefs addressing the PBA objection, as well as urging adoption of their respective offers.

The arbitrator concluded that the proposals could not be considered because the Borough had not complied with N.J.A.C. 19:16-5.5. He found that the rule did not provide for alternate compliance through discussion of the disputed topics in negotiations or mediation (Arbitrator's opinion, p. 9).

N.J.A.C. 19:16-5.5(a) and (b) provide:

(a) In the absence of a joint petition requesting the initiation of compulsory interest arbitration, the non-petitioning party shall file within seven days of receipt of a petition, a statement of response setting forth the following:

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

(b) Proof of service on the petition of the respondent's statement shall be supplied to the Director of Arbitration. If a party has not submitted a response within the time specified, it shall be deemed to have agreed to the request for the initiation of compulsory interest

arbitration as submitted by the filing party.  
The substance of this response shall not provide  
the basis for any delay in effectuating the  
provisions of this chapter. [Emphasis supplied]

This rule establishes the framework for an interest arbitration proceeding and is intended to provide for an expeditious, effective and binding procedure for the resolution of disputes between law enforcement officers and firefighters and their public employers. N.J.S.A. 34:13A-14. That goal could not be accomplished if a party could freely submit additional issues at any time. Middlesex Cty., P.E.R.C. No. 97-63, 23 NJPER 17 (¶28016 1996).

N.J.A.C. 19:16-5.5 also structures the interest arbitration process and ensures that the parties and the arbitrator know the nature and extent of the controversy at the outset. Within that broad framework, the parties more precisely define their positions when, at least ten days prior to the hearing, they submit their "final offers to the arbitrator on each economic and non-economic issue in dispute." N.J.A.C.

19:16-5.7(f) (Emphasis supplied). When N.J.A.C. 19:16-5.5 and N.J.A.C. 19:16-5.7(f) are read together, the quoted language in N.J.A.C. 19:16-5.7(f) plainly refers to issues identified in the petition. Of course, the parties do not have to submit final offers on all issues identified in the petition and response. They may resolve or narrow their differences with the assistance of the arbitrator acting as mediator. See N.J.S.A. 34:13A-16f(3); Newark FMBA v. Newark, 90 N.J. 44, 54-55 (1982).



In light of this framework, discussion of the Borough's proposals during mediation cannot substitute for compliance with N.J.A.C. 19:16-5.5. Mediation is distinct from the formal arbitration hearing, as evidenced by the fact that an interest arbitrator may not penalize a party for conduct during mediation or rely on information not presented at the formal hearings. Aberdeen Tp. v. PBA, 286 N.J. Super. 372, 377 (App. Div. 1996); see also N.J.A.C. 19:16-5.7(c). Given these principles, discussion of a topic in mediation would not put an adversary on notice that the matter would be addressed in the formal arbitration proceeding. Thus, absent an answer to its petition or a request for an extension of time to file such, the PBA could assume that the vacation, red dot day and eye examination proposals would not be in the Borough's formal, pre-hearing final offer. Moreover, the Borough has identified no unusual circumstances or good cause for not including its proposals in an answer to the PBA petition -- proposals which the Borough acknowledges had been a part of its negotiations strategy since November 1994. See Middlesex Cty.<sup>2/</sup>

Similarly, we reject the Borough's argument that the arbitrator disregarded the statutory directive to consider the "interest and welfare of the public" when he excluded the

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<sup>2/</sup> We would have reached the same result in this case even if Middlesex had not been decided and need not address the Borough's argument that that case should be applied prospectively.

Borough's proposals. N.J.S.A. 34:13A-16g lists the criteria to be used by an arbitrator in resolving a dispute -- as that dispute has been framed by Commission rules. Given its statutory goal of resolving disputes expeditiously, the Legislature presumably anticipated that we would adopt rules requiring parties to identify issues in a timely manner.

The Borough suggests that the PBA misled it by discussing the proposals in mediation and then, at the start of the hearing, objecting to their inclusion in the Borough's final offer. However, as discussed above, the fact that an item is discussed in mediation does not mean that it is automatically an issue at the formal hearing. The PBA had no obligation to alert the Borough that it was relying on the rule until the Borough attempted to include the disputed proposals in its final offer.

Nor was the PBA obligated to include the disputed proposals in its own petition to initiate interest arbitration. Given the expectation that the non-filing party will submit a response, N.J.A.C. 19:16-5.4 does not require a party to identify proposals raised by its adversary during negotiations -- especially since the petitioning party cannot be certain that its adversary will want to pursue those issues through interest arbitration.

For all these reasons, we affirm the arbitrator's ruling limiting the arbitration proceeding to the issues raised in the PBA's petition. However, while the arbitrator correctly applied

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

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

In view of our decision to remand this matter and allow the Borough to submit a new final offer, we need not decide the remaining issues in this appeal. However, in fashioning an opinion and award on remand, the arbitrator may of course consider the parties' submissions in this appeal concerning whether the

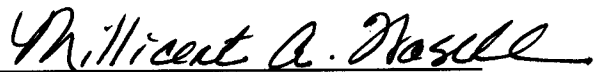
opinion provided an adequate explanation on certain issues -- for example, the twelve-step salary schedule, the "public interest and welfare" criterion, and the annual wage increases awarded.

We direct that the arbitrator complete his reconsideration of the award no later than 90 days from the date of this decision.

ORDER

The arbitration award is vacated and the matter remanded to the arbitrator for reconsideration in accordance with this opinion. The Borough shall be permitted to submit a new final offer.

BY ORDER OF THE COMMISSION



Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Buchanan, Finn, Klagholz, Ricci and Wenzler voted in favor of this decision. None opposed. Commissioner Boose was not present.

DATED: August 28, 1997  
Trenton, New Jersey  
ISSUED: August 29, 1997

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CHERRY HILL TOWNSHIP,

Appellant/Cross-Respondent,

-and-

Docket No. IA-95-110

FOP LODGE 28,

Respondent/Cross-Appellant.

SYNOPSIS

The Public Employment Relations Commission vacates an interest arbitration award issued to resolve negotiations between the Township of Cherry Hill and FOP Lodge 28. The Commission remands the matter to the arbitrator for reconsideration in accordance with its opinion. The Township had appealed the interest arbitration award and the FOP had cross-appealed.

With respect to the Township's allegation that the award was issued 20 days late, the Commission finds that this issue is more appropriately addressed under N.J.A.C. 19:16-5.9.

With respect to the Township's allegation that the arbitrator relied on evidence gained in mediation sessions, the Commission was not persuaded that the arbitrator improperly relied on such information.

With respect to the Township's allegation concerning health benefits, the Commission finds that a remand is necessary because the arbitrator expressed an improper presumption and did not analyze all the arguments and evidence presented concerning the proposal.

With respect to the FOP's argument that the arbitrator had no authority to freeze starting salaries, the Commission finds that the arbitrator could conclude that the issue of the appropriate starting salary was subsumed within the larger issue of across-the-board salary amounts. The Commission rules that the arbitrator may keep this provision in the award, if he chooses.

With respect to the FOP's argument that the arbitrator had no authority to change the biweekly pay date, the Commission agrees and finds that the issue was not presented by either party. A new award may not contain this provision.

With respect to the Township's argument that the arbitrator's analysis of salary, clothing and maintenance allowance issues was cursory and focused too heavily on the Township's "ability to pay" and police salaries in surrounding communities, the Commission finds no fundamental deficiencies in the arbitrator's consideration of the statutory criteria with respect to these issues. The Commission will not disturb the portions of the award concerning salary increases and clothing and maintenance allowances absent an independent reason for a remand but holds that the arbitrator may, however, choose whether or not to re-evaluate these portions of the award in connection with his evaluation of the evidence and arguments concerning the Township's health benefits proposal.

With respect to the Township's argument that the arbitrator did not "separately determine whether the total net annual economic changes for each year of the agreement are reasonable under the eight statutory criteria set forth in subsection g. of this section," the Commission finds that the arbitrator must comply with this statutory directive.

The Commission finds an inconsistency in the arbitration award concerning the date on which the cash-in option for the clothing allowance becomes effective. If this provision is retained, the arbitrator should clarify this apparent inconsistency.

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

CHERRY HILL TOWNSHIP,

Appellant/Cross-Respondent,

-and-

Docket No. IA-95-110

FOP LODGE 28,

Respondent/Cross-Appellant.

Appearances:

For the Appellant/Cross-Respondent, Susan Jacobucci,  
Township attorney

For the Respondent/Cross-Appellant, Markowitz & Richman,  
attorneys (Stephen C. Richman, of counsel)

DECISION AND ORDER

The Police and Fire Public Interest Arbitration Reform Act, P.L. 1995, c. 425, N.J.S.A. 34:13A-14 to -21, authorizes the Commission to decide appeals from interest arbitration awards. N.J.S.A. 34:13A-16f(5)(a). We exercise that authority in this case, where Cherry Hill Township appeals and FOP Lodge 28 cross-appeals from a December 9, 1996 award.

The arbitrator resolved the unsettled issues in dispute by conventional arbitration, as he was required to do absent the parties' agreement to use another terminal procedure. N.J.S.A. 34:13A-16d(2). He fashioned a conventional award after analyzing the parties' final offers. Those offers were as follows.

The Township proposed a three-year contract with across-the-board wage increases of 3%, 3%, and 3.5% for calendar

years 1995, 1996, and 1997 respectively. It also proposed that employees enrolling in an indemnity health care plan pay the difference between the annual premium for that plan and the premium for the managed health care ("HMO") plan offered by the Township. Under the 1992-1994 agreement, the Township paid the full premiums for both HMO and indemnity plans.<sup>1/</sup> The Township also offered to supply each officer with a new bullet-proof vest once every five years, in addition to the existing annual clothing allowance.

The FOP sought across-the-board wage increases of: 2% effective 1/1/95; 2% effective 7/1/95; 2% effective 1/1/96; 2% effective 7/1/96 and 4% effective 1/1/97. In addition, it sought a uniform maintenance allowance of \$260 per year and proposed that effective January 1, 1995, employees could convert \$150 of their annual clothing allowance to a cash payment to be used for uniform cleaning and maintenance.

In evaluating these proposals, the arbitrator was required to 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." N.J.S.A. 34:13A-16g. Those factors are:

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<sup>1/</sup> In an interim relief decision, a Commission designee restrained the Township from unilaterally imposing a premium co-pay on indemnity plan members. The restraints were imposed pending the implementation of a successor agreement and/or a final Commission decision. Special permission to appeal the decision was denied. Cherry Hill Tp., P.E.R.C. No. 97-36, 22 NJPER 378 (¶27199 1996).



(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 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.

After discussing each factor, the arbitrator issued an award which: (1) denied the Township's health benefits proposal; (2) granted the FOP's uniform and maintenance allowance proposals and (3) awarded salary increases of 3%, 3.5% and 3.5% for 1995, 1996 and 1997 respectively. The wage increases thus matched those proposed by the Township, except that 3.5% was awarded in 1996 instead of the 3% offered by the Township. In addition, the

arbitrator's award: (1) established January 1, 1995 through December 31, 1997 as the term of the agreement; (2) accepted the Township's offer to supply each unit member with a bullet-proof vest every five years; (3) froze the starting salary for police officers at its 1994 level; and (4) stated that, effective January 1, 1997, the Township could pay unit members every other Thursday.

The final paragraphs of the arbitrator's opinion summarize his conclusions:

In summary, the Township's offer is not unreasonable. However, the Township's offer will slightly diminish the standing of the bargaining unit compared to similarly situated police jurisdictions in comparable communities. Therefore, some augmentation of the Township's offer is appropriate.

The addition of an additional .5% in the second year and an enhancement of the clothing allowance, a benefit unique to the Police Department, will permit this bargaining unit to continue receiving comparable wages and benefits to their colleagues situated nearby without unduly straining the Township's resources. No further amelioration of the Township's medical insurance situation can be justified without substantial additional wage or benefit inducements, which should not be imposed by an Interest Arbitrator, but should be negotiated directly by the parties. Absent such other inducement, the wage pattern offered by the Township, minimally enhanced, satisfies the applicable statutory criteria for determining [the] appropriate package of salary and benefits for this contract term. [Arbitrator's opinion, p. 22-23].

The Township requests that we vacate the award and remand the matter to a new arbitrator because: (1) the arbitrator allegedly did not apply the statutory criteria in N.J.S.A.

34:13A-16g; and (2) contrary to PBA Local 207 v. Bor. of Hillsdale, 137 N.J. 71 (1994), the arbitrator allegedly relied primarily on the Township's "ability to pay" and police officer salaries in surrounding communities. The Township also argues that the award should be vacated because the arbitrator allegedly: (1) did not rule on its health benefit proposal; (2) filed his award 20 days late; (3) relied on evidence gained in mediation sessions; and (4) issued an internally inconsistent ruling on the FOP's proposal to allow unit members to convert \$150 of their current clothing allowance to a cash payment to be used for uniform cleaning and maintenance.<sup>2/</sup>

The FOP's cross-appeal asserts that the arbitrator exceeded his authority in freezing starting salaries and changing the biweekly pay date. The FOP asks that the Commission excise these provisions and affirm the award in all other respects.

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 Tp. v. New Jersey PBA Local 206, 137 N.J. 88 (1994); and Fox v. Morris Cty., 266 N.J. Super. 501 (App. Div. 1993), certif. denied, 137 N.J. 311 (1994).

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<sup>2/</sup> The Township also requested oral argument. We deny that request.

In Washington Tp., Hillsdale, and Morris Cty., the courts underscored that arbitrators should focus on the full range of statutory factors and not just police salaries in surrounding jurisdictions or the governing body's "ability to pay" the other party's offer. Hillsdale, 137 N.J. at 85-86; Washington Tp., 137 N.J. at 92; Morris Cty., 266 N.J. Super. at 516-517.

The reform statute reflected this concern by requiring the arbitrator to indicate which of the statutory factors are deemed relevant, satisfactorily explain why the others are not relevant, and analyze each relevant factor. N.J.S.A. 34:13A-16g. It also changed some of the section 16g factors. N.J.S.A. 34:13A-16g(1) now expressly requires the arbitrator to consider the CAP Law, N.J.S.A. 40A:4-45.1 et seq., in evaluating the public interest and welfare. And N.J.S.A. 34:13A-16g(6) requires consideration, to the extent evidence is presented, of the effect of an award on county and municipal tax rates, the impact of an award on each income sector of a local unit's property taxpayers, and its impact on a governing body's ability to maintain, expand, or initiate local programs and services. These changes are consistent with the courts' concern that all statutory factors be properly considered.

The threshold issue is the standard of review the Commission should apply in considering an appeal from an interest arbitration award. N.J.S.A. 34:13A-16f(5)(a) states that an arbitrator's award "shall be binding and irreversible" except that

a party may file an appeal with the Commission alleging a violation of the Arbitration Act, N.J.S.A. 2A:24-8 and -9, or a failure to apply one or more of the criteria in N.J.S.A.

34:13A-16. The Commission may affirm, modify, correct or vacate an award or remand a case to the same or a different arbitrator.

The grounds for appeal are the same as under the predecessor statute, except the Commission is the initial review authority and the statute explicitly states that failure to give due weight to the section 16g factors may be grounds for an appeal. N.J.S.A. 34:13A-16f(5) (a). The latter point had long been established in case law. See N.J. State PBA v. Irvington, 80 N.J. 271, 295 (1979). Accord Hillsdale, 137 N.J. at 82.

Before the reform statute, the courts had held that, because interest arbitration is a statutorily-mandated procedure in which public funds are at stake, judicial review of such awards must be more stringent than of grievance arbitration awards. Hillsdale, 137 N.J. at 82; Div. 540, Amalgamated Transit Union, AFL-CIO v. Mercer Cty. Improvement Auth., 76 N.J. 245, 253 (1978). Therefore, a reviewing court could vacate an award if it failed to give "due weight" to the section 16g factors or if it violated the standards in N.J.S.A. 2A:24-8 and -9. In general, the courts reviewed an interest arbitration award to determine whether it was supported by substantial credible evidence in the record as a whole. Hillsdale, 137 N.J. at 82.

We will apply these standards of review. We discern no legislative intent to create a different standard. The "substantial credible evidence" standard is required by a well-established body of case law and P.L. 1995, c. 425 changed the forum, rather than the standards, for reviewing interest arbitration awards.

We also note that, in requiring that disputes be resolved by conventional arbitration unless the parties agree to another terminal procedure, the reform statute vests the arbitrator with the responsibility to weigh the evidence and fashion 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 standards in the reform statute or the Arbitration Act or shows that the award is not supported by substantial credible evidence in the record as a whole. Cf. Kearny PBA Local #21 v. Town of Kearny, 81 N.J. 208, 221 (1979) (arbitrator's grievance award is not to be cast aside lightly).

Within this framework, we first address the Township's arguments that the award should be vacated because: (1) it was allegedly filed 20 days too late and (2) the arbitrator allegedly relied on information learned in mediation sessions.

N.J.S.A. 34:13A-16f(5) requires that an award be rendered within 120 days of the appointment of an arbitrator, but allows the Commission to grant, or the parties to agree to, extensions of

time. N.J.S.A. 34:13A-16f(5). We will assume, as the employer alleges, that the arbitrator was 20 days late in issuing his award.<sup>3/</sup>

The statutory goal of providing for an expeditious, effective and binding procedure for the resolution of disputes would not be served by vacating an award filed 20 days late and having to start proceedings all over again. Lateness in filing an award is more appropriately addressed under N.J.A.C. 19:16-5.9 (providing that any arbitrator violating the timelines for filing awards may be subject to suspension, removal or discipline under N.J.A.C. 19:16-5.6). The cases cited by the Township are distinguishable because they did not involve mandatory arbitration, where the process would have to be undertaken anew if an award were vacated.

We are not persuaded that the arbitrator improperly relied on information discussed in mediation sessions. The Township objects to the arbitrator's statement that the superior officers had agreed to salary increases commensurate with those granted non-police negotiations units "in order to achieve an amendment to their pension contribution rates which would inure to

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<sup>3/</sup> The FOP argues that the award was not late because the parties orally gave the arbitrator an open-ended extension. It also states that it never received a copy of a November 13, 1996 letter to the arbitrator in which the Township consented to an extension of time until November 18. We emphasize that an oral extension does not satisfy N.J.A.C. 19:16-5.9. That regulation requires that an agreement for an extension be in writing, and that it include the date on which the extension expires. The agreement must be filed with the arbitrator and the Director of Arbitration.



the benefit of retirees" (Arbitrator's opinion, p. 17). Both parties indicate that this statement refers to a sick day "buy back" provision available to superior officers in their twenty-second, twenty-third and twenty-fourth years of service.

The arbitrator's reference to this item does not implicate the concerns discussed in Aberdeen Tp. v. PBA, 286 N.J. Super. 372 (App. Div. 1996). Aberdeen emphasized the importance of "protecting the confidentiality of negotiations during mediation so as to ensure the parties to the dispute will feel free to adopt and modify their positions as necessary to reach an agreeable settlement." Id. at 379. This concern is not present in this case, where the arbitrator did not penalize the Township for changing positions. While Aberdeen also referred to the inappropriateness of relying on information obtained in mediation sessions, id. at 376, 379-80, that problem is not present in this case, where the Township's own exhibits referred to the sick day "buy back" provision.

We consider next the Township's argument that the arbitrator committed a fundamental error in analyzing its health benefits proposal by refusing to decide it. While we do not agree entirely with this position, we are not satisfied that the arbitrator fully analyzed this proposal.

The arbitrator gave considerable weight to the fact that the Township's health benefits proposal sought to alter existing contract language. He wrote:

This co-payment represents a major alteration in the terms and conditions of employment. Such a major change in an important benefit, which affects an employee's ability to select a physician or to change physicians, should be effectuated through negotiation. Impasse on an issue which affects the right to choose one's physician should not be resolved by the fiat of an Arbitrator.

The parties' inability to negotiate voluntary abandonment of the contractual right to an indemnity plan without substantial consideration supports this conclusion. Were an arbitrator to order such a result, the level of wages should be augmented on the order of an additional .7% for each of three years to compensate for the increased costs incurred by the significant minority of the bargaining unit who continue to elect the indemnity plan coverage option, as averaged over the entire bargaining unit. [Arbitrator's opinion, p. 18.]

At the conclusion of his opinion, the arbitrator again stated that "[n]o further amelioration of the Township's medical insurance situation can be justified without substantial additional wage or benefit inducements, which should not be imposed by an Interest Arbitrator, but should be negotiated directly by the parties" (Arbitrator's opinion, p. 23).

While it is appropriate for an arbitrator to require that a party requesting a contract change explain the need for it, the language in this award about not deciding a matter "by fiat," is inconsistent with an interest arbitrator's obligation to resolve the unsettled issues. When an unsettled issue is submitted to interest arbitration, the arbitrator cannot start the analysis with a presumption that interest arbitration is an inappropriate forum for granting, modifying or denying a benefit.

We recognize that the arbitrator went on to rule on the Township's proposal: he declined to award it because the co-payment would impose increased costs on a significant number of unit members which could not be justified without an additional wage increase. While it was appropriate for the arbitrator to consider the health benefits proposal in conjunction with the parties' other proposals, we are not satisfied that he fully considered it, given the quoted language about his disinclination to award the proposal in interest arbitration. Moreover, he did not address the Township's argument that the FOP negotiations unit should receive the same health benefits as other Township employees.

We stress that we express no opinion as to the merits of the Township's health care proposal. However, a remand is necessary because the arbitrator expressed an improper presumption and did not analyze all the arguments and evidence presented concerning the proposal.

We address the parties' remaining arguments in order to provide guidance to them and the arbitrator on remand.

We reject the FOP's argument that the arbitrator had no authority to freeze starting salaries. N.J.S.A. 34:13A-16c, in listing terminal procedure options, refers to conventional arbitration "of all unsettled items." N.J.S.A. 34:13A-16d(2) mandates that, in the absence of an agreement to use another terminal procedure, conventional arbitration shall be used to determine "the award on all unsettled issues." These statutory

provisions contemplate that an arbitrator, even one with conventional authority, will not reach out to decide issues not raised by the parties. However, in this case, there was a dispute over salary increases. The arbitrator could conclude that the issue of the appropriate starting salary was subsumed within the larger issue of across-the-board salary amounts. This is particularly so since the Township presented evidence that there were many applicants for police officer positions and that police officers usually stayed with the Township until retirement. This evidence provided a basis for the arbitrator's conclusion that there was no need to raise the starting wage rate for police officers (Arbitrator's opinion, p. 22). Therefore, the arbitrator may keep this provision in the award, if he chooses.

We agree with the FOP that the arbitrator had no authority to change the biweekly pay date. That issue was not presented by either party. Unlike the starting salary, the biweekly pay date could not reasonably be said to have been subsumed within any proposal. A new award may not contain this provision.

We turn now to the Township's argument that the arbitrator's analysis of salary, clothing and maintenance allowance issues was cursory and, contrary to Hillsdale and Washington Tp., focused too heavily on the Township's "ability to pay" and police salaries in surrounding communities. We perceive no fundamental deficiencies in the arbitrator's consideration of the statutory criteria with respect to these issues.

The arbitrator awarded an additional .5% to the Township's proposal in the second year of the contract -- along with the FOP's uniform and maintenance allowance proposals -- and concluded that the award would enable the negotiations unit to maintain its approximate ranking vis-a-vis police officers in comparable jurisdictions (Arbitrator's opinion, p. 22-23). We note that the Township is in a different posture from the employers in Hillsdale and Washington Tp. In those cases, the arbitrator, under the final offer system, had awarded the union's offer in its entirety whereas here the arbitrator fashioned a conventional award in between the parties' salary positions. An appellant in such a posture should identify the analytical deficiencies which resulted in those aspects of the award adverse to its position. While arbitrators must write reasoned opinions, an appellant cannot attack an opinion in the abstract. Cf. Heffner v. Jacobson, 100 N.J. 550, 553 (1985) (appeals are from judgments, not opinions). Accord Mills v. J. Daunoras Constr., Inc., 278 N.J. Super. 373, 379 (App. Div. 1995).

The Township offers no particularized challenge to the arbitrator's analysis or conclusions. For example, the arbitrator concluded that the Township's proposal would slightly diminish the standing of the Township's police officers, as compared to police officers in comparable communities (Arbitrator's opinion, p. 22). He found that some augmentation of the offer was appropriate and concluded that the unit would maintain its approximate ranking

under the award when the 1995 and 1996 figures for other communities were considered (Arbitrator's opinion, pp. 14, 22).

The Township does not identify any errors in these conclusions and there is substantial credible evidence in the record to support the arbitrator's conclusion that, under the award, the Township's police officers would receive a compensation package not significantly different from that received by officers in comparable communities (Arbitrator's opinion at p. 14, 22).

While the Township contends that the arbitrator inadequately analyzed the public interest and welfare, the financial impact of an award on the governing body and its residents and taxpayers, and the cost of living, it does not point to any evidence the arbitrator failed to consider. The salient point is that, despite extensive and undisputed findings as to the Township's vigorous fiscal health, the arbitrator did not award the FOP proposal but granted annual salary increases closer to those proposed by the Township. He fashioned an award which took into account the Township's interest in maintaining a low tax rate and a zero-based budget.

Similarly, the arbitrator compared the wages, salaries hours and conditions of employment of unit members with those of other public employees, as required by N.J.S.A. 34:13A-16g(2). He also considered the Township's argument that there is a public interest in maintaining consistency in the terms of employment among Township employees. While the arbitrator wrote that this

factor was not dispositive (Arbitrator's opinion at p. 17), that language also implies that he gave it some weight. Moreover, the salary increases awarded are close to those granted other Township employees.

Further, while the Township asserts that the arbitrator ignored evidence concerning the salaries of private-sector employees, it does not inform us what evidence it presented and no information concerning private-sector employees' salaries or wage increases is included in the record submitted to us on appeal. While the Township cites its appendix, the referenced pages contain only compensation information for protective service occupations in state and local governments in New Jersey and Pennsylvania.<sup>4/</sup>

Finally, we reject the Township's argument that the arbitrator was compelled to analyze the clothing and maintenance allowance proposals separately under the eight section 16g criteria. While that approach might also have been appropriate, the arbitrator could properly consider these items in the course of determining the appropriate salary increases for unit members.

An arbitrator is not required to apply every statutory criterion to every facet of every proposal. N.J.S.A. 34:13A-16g requires an arbitrator to "decide the dispute based on a reasonable determination of the issues, giving due weight to

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<sup>4/</sup> Pursuant to N.J.S.A. 34:13A-16.6, the Commission prepared an annual survey on private-sector wage increases. That report indicates that the statewide average private-sector wage increase from 1994 to 1995 was 3.4%.

those factors listed below that are judged relevant for the resolution of the specific dispute." This language gives an arbitrator discretion to decide that a particular dispute is best analyzed by applying the relevant statutory factors to a cluster of related issues. Of course, an arbitrator must consider all of the evidence and arguments presented, regardless of what method is chosen to analyze a proposal.

For these reasons, we would not be inclined to disturb the portions of the award concerning salary increases and clothing and maintenance allowances absent an independent reason for a remand. The arbitrator may, however, choose whether or not to re-evaluate these portions of the award in connection with his evaluation of the evidence and arguments concerning the Township's health benefits proposal.

The Township observes that the arbitrator did not "separately determine whether the total net annual economic changes for each year of the agreement are reasonable under the eight statutory criteria set forth in subsection g. of this section." N.J.S.A. 34:13A-16d(2). The arbitrator must comply with this statutory directive. The arbitrator may refer to his analysis of the parties' proposals in determining whether the changes for each year are reasonable.

There is an inconsistency in the award concerning the date on which the cash-in option for the clothing allowance becomes effective. The award now states that unit members may



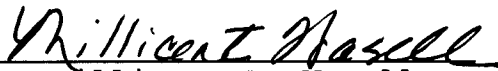
elect that \$150 of their clothing allowance be paid as a cash payment with the first payroll after July 1st of each year. It then states that the payment shall be paid with the first payroll after January 1st of each year. If this provision is retained, the arbitrator should clarify this apparent inconsistency.

In remanding this matter, we are confident that the appointed arbitrator may reconsider the award in accordance with this opinion. See Fox v. Morris Cty., 266 N.J. Super. at 521-522 (court would presume, until shown to the contrary, that the original arbitrator would be able to take a fresh look at the case and reach a fair and impartial decision). We direct that the arbitrator complete his reconsideration of the award no later than 60 days from the date of this decision.

ORDER

The arbitration award is vacated and the matter remanded to the arbitrator for reconsideration in accordance with this opinion.

BY ORDER OF THE COMMISSION

  
Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Buchanan, Klagholz and Ricci voted in favor of this decision. None opposed. Commissioner Finn abstained from consideration. Commissioners Boose and Wenzler were not present.

DATED: April 24, 1997  
Trenton, New Jersey  
ISSUED: April 25, 1997

P.E.R.C. NO. 97-97

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF STANHOPE,

Respondent,

-and-

Docket No. IA-96-102

PBA LOCAL 138,

Appellant.

SYNOPSIS

The Public Employment Relations Commission vacates an interest arbitration award, remands it to the arbitrator, and directs him to apply the Police and Fire Public Interest Arbitration Reform Act, P.L. 1995, c. 425, with disputed issues to be resolved by conventional arbitration.

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 STANHOPE,

Respondent,

-and-

Docket No. IA-96-102

PBA LOCAL 138,

Appellant.

Appearances:

For the Appellant, Morris & Hantman, attorneys  
(Allen Hantman, of counsel)

For the Respondent, David A. Wallace, attorney

DECISION AND ORDER

On December 6, 1996, PBA Local 138 filed a notice of appeal from an interest arbitration award issued on November 17, 1996. The notice alleges that the arbitrator erred in concluding that the Police and Fire Public Interest Arbitration Reform Act, P.L. 1995, c. 425, did not govern the parties' interest arbitration. The PBA asks us to remand the case to the arbitrator and direct that it be reconsidered under the reform statute, with disputed issues to be resolved by conventional arbitration. The PBA also requests oral argument, which we deny.<sup>1/</sup>

On January 13, 1997, the Borough of Stanhope filed a letter brief in response to the appeal. It maintains that we lack

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<sup>1/</sup> The PBA did not file a brief. We will consider the appeal based on its December 6 submission.

jurisdiction to consider the appeal because, contrary to the requirements in N.J.S.A. 34:13A-16(f)(5)(a), the notice of appeal did not allege a violation of N.J.S.A. 2A:24-8 or -9 or a failure to apply the statutory criteria in N.J.S.A. 34:13A-16(g).

These facts appear. The parties entered into a collective negotiations agreement effective from January 1, 1994 through December 31, 1995. On January 29, 1996, the PBA filed a petition to initiate interest arbitration. On May 23, the Acting Director of Arbitration appointed an arbitrator mutually selected by the parties and advised the parties and the arbitrator that the proceedings were governed by P.L. 1995, c. 425.

The arbitrator held hearings on July 2 and August 1, 1996. On November 17, he issued a final opinion and award. At the outset of the opinion, the arbitrator commented that:

In view of the fact that these proceedings were commenced prior to the enactment of the revised Statute, this impasse did not fall thereunder procedurally. The undersigned will, however, carefully consider the criteria and cautions espoused under both the old and new Statutes. [Arbitrator's opinion, p. 3.]

The arbitrator also wrote that:

The parties, at the inception of the hearings, were not able to agree upon any means for rendering an Award herein except for that mandated by Statute where agreement could not be reached, namely the Last Offer-Best Offer of one side or the other, as a single economic package. [Arbitrator's opinion, p. 4.]

The arbitrator then reviewed the parties' final offers.

The arbitrator analyzed the respective proposals in light of the following criteria, listed here as they are identified in his opinion: (1) the interest and welfare of the public; (2) comparison of wages and overall compensation and conditions of employment; (3) compensation and fringes; (4) stipulations; (5) the Borough's authority to govern, raise taxes, pass ordinances and enter into contracts; (6) the financial impact on the municipality and the taxpayers; (7) the cost of living; and (8) the stability and continuity of employment.

The arbitrator decided to award the Borough's offer.

P.L. 1995, c. 425, §11 of the Police and Fire Public Interest Arbitration Reform Act, states in part:

This act shall take effect immediately and shall apply to all collective negotiations between public fire and police departments and the exclusive representatives of their public employees except those formal arbitration proceedings in which the arbitrator has, prior to the effective date of this act, taken testimony from the parties;

The Act was approved January 10, 1996. See Historical and Statutory Notes after N.J.S.A. 34:13A-14.

P.L. 1995, c. 425 governs this case. The PBA initiated interest arbitration on January 29, 1996 and formal hearings began in July 1996. Absent an agreement to use another terminal procedure, conventional arbitration should have been the procedure used to resolve the unsettled issues between the parties. P.L. 1995, c. 425, §3(d)(2).

The Borough does not dispute that the arbitrator should have applied P.L. 1995, c. 425, but maintains that we do not have jurisdiction to decide an appeal premised on the failure to apply the correct statute. We reject the Borough's contention.

N.J.S.A. 34:13A-16(f)(5)(a) states that a party may file a notice of appeal from an interest arbitration award on the grounds that the arbitrator failed to apply the criteria specified in subsection g. or violated the standards set forth in N.J.S.A. 2A:24-8 or N.J.S.A. 2A:24-9. By challenging the arbitrator's failure to apply P.L. 1995 c. 425, the PBA has in effect appealed from the arbitrator's failure to apply all of the criteria, or at least those which were modified by the reform statute. The requirement that an appellant identify as grounds for an appeal a violation of N.J.S.A. 2A:24-8 or -9 or a failure to apply one of the criteria in N.J.S.A. 34:13A-16(g) is intended to underscore that an appeal should allege a violation of the standards governing interest arbitration. The PBA's appeal is based on such a contention. Those standards include the terminal procedure mandated by the Act in the absence of an agreement between the parties, since the terminal procedure is inseparable from the application of the criteria in N.J.S.A. 34:13A-16g.

The PBA asks us to remand this matter "for reconsideration under the control of the new statute." It asks that we direct that it be decided by "conventional arbitration rather than the last best offer provisions applied by the

arbitrator." The Borough responds that even if we had jurisdiction and ruled in the PBA's favor, it would be unnecessary to engage in lengthy analysis or remand the case because it can be inferred from the opinion how the arbitrator would have ruled had he issued a conventional arbitration award.

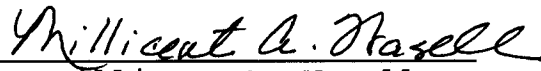
The need for a remand is not eliminated by suggestions in the arbitrator's opinion as to how he would have ruled had he decided the matter by conventional arbitration. We have the authority to affirm, modify, correct, or vacate the award or remand to the same or a different arbitrator, selected by lot. N.J.S.A. 34:13A-16(f)(5)(a). We do not have the authority to fashion an award in the first instance.

Therefore, we vacate the arbitration award, remand this case to the arbitrator, and direct him to apply P.L. 1995, c. 425.

ORDER

The arbitration award in IA-96-102 is vacated and remanded for reconsideration in accordance with P.L. 1995, c. 425.

BY ORDER OF THE COMMISSION

  
Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Boose, Buchanan, Finn, Klagholz, Ricci and Wenzler voted in favor of this decision. None opposed.

DATED: February 27, 1997  
Trenton, New Jersey  
ISSUED: February 28, 1997

P.E.R.C. NO. 97-63

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF MIDDLESEX,

Appellant,

-and-

Docket No. IA-96-115

MIDDLESEX COUNTY POLICE,  
PBA LOCAL 156,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the County of Middlesex for leave to appeal an interest arbitrator's interim award limiting the arbitration to those issues contained in the Middlesex County Police, PBA Local 156's petition. The County seeks to supplement the arbitration with additional unresolved issues. The Commission finds that there are not sufficient extraordinary circumstances to grant an interlocutory appeal of the arbitrator's finding that the County did not submit its issues for arbitration within the time frames established by N.J.A.C. 19:16-5.

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 MIDDLESEX,

Appellant,

-and-

Docket No. IA-96-115

MIDDLESEX COUNTY POLICE,  
PBA LOCAL 156,

Respondent.

Appearances:

For the Appellant, Genova, Burns, Trimboli & Vernoia,  
attorneys (James M. Burns, of counsel; James J.  
Gillespie, on the brief)

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

DECISION AND ORDER

On March 5, 1996, Middlesex County Police, PBA Local 156  
petitioned to initiate interest arbitration pursuant to N.J.S.A.  
34:13A-16(b)(2) and N.J.A.C. 19:16-5.2 and 5.3. The petition  
listed five economic issues and three non-economic issues.

N.J.A.C. 19:16-5.5(a) requires a non-petitioning party to  
file a response to a petition to initiate interest arbitration  
within seven days. Such a response may include any additional  
unresolved issues for arbitration. N.J.A.C. 19:16-5.5(b)  
provides, in part, that if a party has not submitted a response  
within the time specified, it shall be deemed to have agreed to  
the request for the initiation of interest arbitration as

submitted by the filing party. The County did not file a response or request an extension of time to file a response.

On June 27, 1996, Carl Kurtzman was appointed as arbitrator. He scheduled the first day of hearing for August 22.

On July 17, 1996, the County sent to the PBA's representative several proposals which it now seeks to have included in the interest arbitration proceeding. On August 1, the County filed a statement with the Acting Director of Arbitration listing additional unresolved issues for arbitration. The County's submission included several economic issues and one non-economic issue and consisted of a general description of the proposals forwarded to the PBA on July 17.

On August 6, 1996, the PBA informed the Acting Director of Arbitration that it objected to the County's filing of additional issues. It asserted that the addition was a "procedurally defective late filing."

On September 12, 1996, the Acting Director of Arbitration referred to the arbitrator the question of what issues could be considered in the interest arbitration proceeding.

On October 10, 1996, the arbitrator issued an interim award limiting the arbitration to those issues contained in the PBA's petition. He found that the County had failed to respond to the PBA's petition within the time specified by N.J.A.C. 19:16-5.5 and had not requested an extension of time to file its response.

The arbitrator therefore concluded that, in accordance with N.J.A.C. 19:16-5.5(b), the County was deemed to have agreed to the request for the initiation of interest arbitration as submitted by the PBA.

On October 15, 1996, the County filed with the Commission a notice of interlocutory appeal and a request for a stay. On October 17, the Acting Chair referred this matter to the full Commission. An arbitration hearing was held on October 17 and testimony was completed with respect to the issues in the PBA petition. The arbitrator held the record open in light of this appeal.

The County has filed a brief in support of its interlocutory appeal. It asserts that it did not know what additional issues were unresolved at the time the PBA filed its petition because only one negotiations session had been held and because it had not prepared its overall negotiations positions for its 32 units of employees. It specifically maintains that: (1) the PBA would suffer no demonstrable prejudice as a result of the County's issues being arbitrated; (2) N.J.A.C. 19:10-3.1(a) and 19:10-3.1(c) require that the time requirements in N.J.A.C. 19:16-5.5 be relaxed under the circumstances; and (3) the purpose of the Employer-Employee Relations Act would be frustrated by excluding the County's issues. The County also asserts that the

disposition of this matter was improperly referred to the interest arbitrator.<sup>1/</sup>

The PBA has responded to the County's notice of interlocutory appeal. It asserts that we have no statutory or regulatory authority to entertain interlocutory appeals and that we would be violating the provisions of the Administrative Procedure Act ("APA"), N.J.S.A. 52:14B-1 to -15, if we were to accept jurisdiction. In the alternative, the PBA asserts that there is no compelling reason for reversing the arbitrator's interim award.

The threshold issue is whether we have jurisdiction to entertain an interlocutory appeal. N.J.S.A. 34:13A-16(f)(5)(a) grants us review authority over interest arbitration awards. Because interlocutory review authority is an integral part of any adjudicatory process, we conclude that the Legislature intended for us to have the discretion to grant leave to appeal an interim award of an interest arbitrator, for good cause shown or in the interest of justice.

Interlocutory review implicates two competing policies. On the one hand, there is a strong public interest in favor of uninterrupted proceedings and against piecemeal review. On the

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<sup>1/</sup> The County did not seek to appeal this ruling when it was made. In any case, the dispute arose after the arbitrator was appointed and it was properly referred to him under N.J.A.C. 19:16-5.7(a). That rule provides that the conduct of the arbitration proceeding shall be under the arbitrator's exclusive jurisdiction and control.

other hand, there is an interest in avoiding the injustices which may result from the denial of any appellate review until after final judgment. In re Appeal of Pennsylvania Railroad Co., 20 N.J. 398, 404 (1956). In the judicial context, this tension has been resolved by permitting the Appellate Division to grant leave to appeal from interlocutory orders of a court or administrative agency "in the interest of justice." R. 2:2-4. Interlocutory review is "highly discretionary" and customarily exercised only sparingly. State v. Reldan, 100 N.J. 187, 205 (1985).

Nevertheless, it has been recognized as an important element of the judicial process. For example, in Barry v. Wallace J. Wilck, Inc., 65 N.J. Super. 130 (App. Div. 1961), the Appellate Division considered the question whether it or the county court had jurisdiction to review interlocutory orders of the Director of the Division of Worker's Compensation. Concluding that it had jurisdiction, the Appellate Division commented that:

The right to review an interlocutory order in a proper case is so important to litigants, and so essential to a modern system of jurisprudence, that it is inconceivable that the Supreme Court would deliberately block all possibility of review without clearly saying so. [Id. at 141]

Similarly, the Supreme Court has held that an administrative agency head must have authority to review an interim order of an administrative law judge ("ALJ"). In In re Uniform Administrative Procedure Rules, 90 N.J. 85, 93-94 (1982), the Supreme Court invalidated a rule of the Office of Administrative Law which would have prohibited interlocutory

review by an agency head of an ALJ's interim procedural order. It held that an agency head must be able to determine whether interlocutory orders are reasonably likely to interfere with the decisional process. Id. at 97-98. It emphasized that, because an administrative agency's adjudicatory and regulatory functions are interrelated, preservation of interlocutory review was necessary to protect the agency head's ultimate right to decide a contested case. While the Court commented that an agency head should be less restrained than an appellate court in exercising discretion to review issues on an interlocutory basis, it also anticipated that interlocutory review of ALJ orders would be exercised sparingly, in concert with the judicial policy against piecemeal litigation. Id. at 100. It thus held that interlocutory review may be granted by an agency head only in the interest of justice or for good cause shown. Ibid.

In light of the importance of interlocutory review in judicial and administrative decision-making, we are satisfied that, in giving us jurisdiction to hear appeals of interest arbitration awards, the Legislature intended that we have the discretion to grant leave to review interlocutory decisions or orders of an arbitrator.

A grant of authority to an administrative agency should be liberally construed so as to permit the fullest accomplishment of the legislative intent. D.S. v. East Brunswick Bd. of Ed., 188 N.J. Super. 592, 598 (App. Div.), certif. denied, 94 N.J. 529

(1983). While the authority to grant leave to review an interest arbitrator's interlocutory order is not explicitly set forth in N.J.S.A. 34:13A-16f(5)(a), the courts have traditionally held that we have those quasi-judicial powers necessary to accomplish our mission, even when not expressly authorized by statute. See Newark Bd. of Ed. v. Newark Teachers Union, 152 N.J. Super. 51 (App. Div. 1977) (Commission's subpoena power extends to unfair practice as well as representation cases, even though the statute delineated the authority only in representation cases); Englewood Bd. of Ed. v. Englewood Ed. Ass'n, 135 N.J. Super. 120, 125 (App. Div. 1975) (in vesting Commission with jurisdiction over negotiability questions, the Legislature intended to include the jurisdiction and power to grant interim relief in such proceedings, despite the absence of explicit statutory authorization).

We believe that our ability to review interim awards of interest arbitrators in the interest of justice or for good cause shown is implicit in N.J.S.A. 34:13A-16f(5)(a). To hold otherwise would deprive us of the ability to review an order which would work an injustice in a particular case or have broad implications for the interest arbitration process we are charged with administering. Absent an explicit legislative statement to the contrary, it is unlikely that the Legislature intended to cut off all possibilities of interlocutory review. Cf. Barry v. Wallace J. Wilck, Inc., 65 N.J. Super. at 141.

Consistent with the practice in the administrative and judicial contexts, we will grant leave to appeal an interlocutory decision or order sparingly. We are mindful that the general policy against piecemeal review, and the attendant delay which may result from that review, is of particular concern in administering a statute which is designed to foster expeditious procedures for the resolution of disputes, N.J.S.A. 34:13A-14(a), and which places strict time limits on interest arbitration proceedings, N.J.S.A. 34:13A-16(f)(5) (arbitrator's decision shall be rendered within 120 days of his or her selection, unless an extension is granted by the Commission or agreed to by the parties). We are also mindful that ordinarily it is up to the interest arbitrator, not us, to control the hearing, N.J.A.C. 19:16-5.7(a), and that we must be extremely reluctant to intervene in those proceedings or second-guess discretionary decisions.

We are also satisfied that the authority to grant or deny interlocutory review in a particular case is not dependent on our already having promulgated procedural rules governing interlocutory appeals. Our authority to accept interlocutory appeals is readily inferable from the statute giving us review authority over arbitration awards. Moreover, an exercise of interlocutory review would not impose a new or unanticipated obligation on a party. Contrast State, Dept. of Environmental Protection v. Stavola, 103 N.J. 425, 429-30 (1986) (agency tried to regulate beach-front cabanas for the first time without express



statutory authority); Metromedia, Inc. v. Director, Div. of Taxation, 97 N.J. 313, 331-32 (1984) (new method for calculating tax had to be preceded by rulemaking when it was not readily inferable from agency's enabling legislation). For these reasons, we will consider the County's request that we entertain a interlocutory appeal in this case.

Based on our review of the record and the arbitrator's decision, we conclude that there are not sufficient extraordinary circumstances to warrant an interlocutory appeal.

We will assume that the time periods prescribed in N.J.A.C. 19:16-5.5 may be relaxed where unusual circumstances or good cause exists and where strict compliance would work an injustice or unfairness. N.J.A.C. 19:10-3.1(a). Similarly, we assume that the time periods prescribed by N.J.A.C. 19:16-5.5 may be extended where strict adherence will work surprise or injustice or interfere with the proper effectuation of the Act. N.J.A.C. 19:10-3.1(b). However, the County has not demonstrated that N.J.A.C. 19:10-3.1(a) or (b) should be invoked.

With respect to the "good cause" standard, the County has offered no persuasive reasons why it was unable to submit additional unresolved issues for arbitration within the time frames contemplated by the rules or, in the alternative, why it did not request an extension of time to submit additional issues. We recognize that the County sought to coordinate negotiations with all 32 of its negotiations units and that, at the time the

PBA filed its petition to initiate interest arbitration, the Board of Freeholders had not adopted the proposals which the County now seeks to include in the interest arbitration proceeding. However, the parties' agreement expired on December 31, 1995, and the County had a statutory obligation, once the PBA filed its petition, to engage in interest arbitration with the PBA's negotiations unit within the framework of N.J.S.A. 34:13A-14 et seq. The County was not entitled to delay its responses concerning that unit until it determined what position to take with respect to all other units. Absent some more particularized reason why the County was unable to propose additional issues concerning police officers before August 1, the submission of additional issues three weeks before the first scheduled arbitration hearing would not serve the statutory purpose of affording an alternate, expeditious, effective, and binding procedure for the resolution of disputes. N.J.S.A. 34:13A-14.

Similarly, we are not convinced that strict compliance with N.J.A.C. 19:16-5.5 should be excused because of unusual circumstances or to prevent unfairness. Allowing the submission of the County's issue would not excuse a failure to "strictly" comply with the rules: it would authorize the inclusion of additional issues four months after the regulatory deadline. We do not believe it is unfair to exclude issues which the County did not identify until more than six months after the agreement expired and four months after the petition was filed.

Finally, the County's reliance on In re Fairfield Tp., P.E.R.C. No. 79-84, 5 NJPER 201 (¶10115 1979), is misplaced. Fairfield held that a union's technical violation of a rule not directly related to interest arbitration did not justify the extraordinary unannounced remedy of barring it from invoking that procedure where: (1) there was no prejudice to the employer and (2) there was another remedy for the violation (a directive to commence timely negotiations in the future). Fairfield does not stand for the proposition that a party should be relieved from the clearly-stated consequences of a failure to comply with an interest arbitration rule, absent demonstrable prejudice to the other party.

The County has not demonstrated why the requirements of N.J.A.C. 19:16-5.5 should be relaxed. Allowing the County to submit additional issues unless the PBA can show prejudice would undermine the statutory purpose of resolving disputes quickly. A petitioning party could not rely on the non-response of its adversary, but would have to be prepared, at any time before the commencement of the proceedings -- or perhaps even after -- to demonstrate why it could not respond to new issues. That in turn would consume additional time, thereby undermining the legislative plan for expeditious resolution of disputes and rendering the deadlines in the regulations meaningless. Cf. Borough of Bogota, H.E. No. 83-31, 9 NJPER 237 (¶14110 1983) (Hearing Examiner


commented that Borough might have been barred from objecting to the union's inclusion of certain issues in its interest arbitration proposal because Borough had inexcusably failed to file a response to the union's petition).

For all these reasons, we decline to grant leave to appeal.

ORDER

Leave to appeal is denied.

BY ORDER OF THE COMMISSION

  
Millicent A. Wasell  
Acting Chair

Acting Chair Wasell, Commissioners Boose, Finn and Ricci voted in favor of this decision. None opposed. Commissioners Buchanan, Klagholz and Wenzler were not present.

DATED: November 19, 1996  
Trenton, New Jersey  
ISSUED: November 20, 1996

NOT FOR PUBLICATION WITHOUT THE  
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-1899-06T3

IN THE MATTER OF SOMERSET COUNTY  
SHERIFF'S OFFICE,

Appellant,

v.

SOMERSET COUNTY SHERIFF'S FOP  
LODGE #39,

Respondent.

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Argued January 7, 2008 - Decided January 25, 2008

Before Judges S.L. Reisner, Gilroy and  
Baxter.

On appeal from the Public Employment  
Relations Commission, Docket No. IA-2005-  
083.

Marion B. Johnson argued the cause for  
appellant (Drinker, Biddle & Reath, L.L.P.,  
attorneys; Ms. Johnson, Daniel F. O'Connell,  
and Cheoma M. Julien, on the brief).

Leon B. Savetsky argued the cause for  
respondent Somerset County Sheriff's  
Officers, FOP Lodge #39 (Loccke, Correia,  
Schlager, Linsky & Bukosky, attorneys; Mr.  
Savetsky, of counsel and on the brief).

Robert Anderson, General Counsel, argued the  
cause for respondent New Jersey Public  
Employment Relations Commission.

PER CURIAM

Somerset County appeals from a November 21, 2006 decision of the Public Employment Relations Commission (PERC) affirming an interest arbitration award setting terms for the contract between the County and its sheriff's officers, represented by the Somerset County Sheriff's FOP Lodge #39 (FOP). We affirm.

I

A collective bargaining agreement between the FOP and the County expired on December 31, 2004. After failed negotiations regarding a successor contract that was to cover the period of January 1, 2005, through December 31, 2007, the parties submitted the matter to interest arbitration pursuant to N.J.S.A. 34:13A-16. A hearing was held before an arbitrator appointed by PERC. In broad outline, the County offered the FOP a 1% annual increase, while the FOP demanded a 6% increase. On August 31, 2006, the arbitrator rendered an award giving the sheriff's officers a salary package which was near the midpoint of the parties' respective bargaining positions and which was comparable to the salary increases agreed on in the County's previous settlement with the corrections officers. To the extent relevant to this appeal, we discuss the details of the award later in this opinion.

On October 3, 2006, the County appealed the salary ruling to PERC, which affirmed the award on November 21, 2006. This appeal followed.

## II

"[I]nterest arbitration concerns the resolution of disputes about new collective bargaining agreements . . . [It] is essentially a creature of statute. With interest arbitration, PERC provides arbitrators who must apply specific uniform criteria." Policeman's Benevolent Ass'n Local 292 v. Borough of N. Haledon, 158 N.J. 392, 400 (1999).

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).

Pursuant to statutory amendments enacted effective in 1996, L. 1995, c. 425,<sup>1</sup> when a public employer and a law enforcement agency reach an impasse, the dispute is to be resolved by conventional arbitration, in which the arbitrator hears the dispute and crafts the terms of a new agreement. See N.J.S.A.

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<sup>1</sup> The amendments are known as the Police and Fire Public Interest Arbitration Reform Act. N.J.S.A. 34:13A-14a.

34:13A-16d. 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-16f(5)(a).

In deciding an interest arbitration, the arbitrator must consider the following factors:

The arbitrator or panel of arbitrators 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:

(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 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).<sup>2</sup>

[N.J.S.A. 34:13A-16g (emphasis added).]

While the arbitrator need not rely on all of the statutory factors, the arbitrator must at least consider the factors and explain why any factor not relied on is not relevant. This specific statutory requirement, added to N.J.S.A. 34:13A-16g in

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<sup>2</sup> This subsection was added to the statute in 2007 and would not have applied to the arbitration in this case.

the 1995 amendments, L. 119, c. 425 § 3, 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 . . . however, 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, emphasis added).]

In regulations adopted to implement N.J.S.A. 34:13A-16g, PERC likewise requires arbitrators to consider and explain all of the subsection g factors.

N.J.S.A. 34:13A-16g identifies eight 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).]

The regulations also implement a legislative requirement that PERC define "comparability," thus recognizing that the Legislature believed this to be an important factor:

N.J.S.A. 34:13A-16g(2)(c) lists as a factor "public employment in the same or similar comparable jurisdictions. . . ." Subsection a of section 5 of P.L. 1995, c.425 requires that the Commission promulgate guidelines for determining the comparability of jurisdictions for the purposes of paragraph (2)(c) of subsection g.

[Ibid.]

However, while PERC's regulation provides an exhaustive list of factors to consider in deciding whether certain law enforcement jobs are comparable, N.J.A.C. 19:16-5.14(c), the regulation does not indicate that comparability is the only

factor an arbitrator should consider. See N.J.A.C. 19:16-1.14(a).

In a series of cases, including Hillsdale, our courts have addressed the problem of arbitrators basing their decisions on only one or two factors without explaining why the other factors are not relevant or deserving of weight. Merely listing the other factors is not sufficient; an arbitrator must explain why they are not relevant or what, if any, weight they were given and why.

In Hillsdale, the Court reversed an arbitration award based on this deficiency, concluding that the arbitrator had failed to adequately consider the statutory factors, including, significantly, the public interest:

[a]lthough compulsory interest arbitration is essentially adversarial, the public is a silent party to the process. Compulsory interest arbitration of police and fire fighters' salaries affects the public in many ways, most notably in the cost and adequacy of police and fire-protection services. Indeed, section 16g expressly requires the arbitrator to consider the effect of an award on the general public. Hence, an award runs the risk of being found deficient if it does not expressly consider "[t]he interests and welfare of the public." N.J.S.A. 34:13A-16g(1).

[Hillsdale, supra, 137 N.J. at 82-83 (citation omitted).]

Likewise, in Twp. of Washington v. N.J. State Policemen's Benevolent Ass'n, 137 N.J. 88 (1994), the Court affirmed our decision that an arbitrator's award had improperly focused only on comparisons between contracts with law enforcement units in different municipalities, neglecting to consider the other statutory factors:

The basic flaw in the award is that the analysis of the statutory factors is deficient. In sum, the award neither identifies and weighs the relevant factors nor explains why other factors are irrelevant. Indeed, the award implies that a comparative analysis of salary increases in similar communities is dispositive. Furthermore, the arbitrator improperly placed on Washington Township the burden of proving that it was unable to pay "the 1% cost difference between the two offers." Little purpose would be served by repeating all that we said in Hillsdale about the need for arbitrators to render reasoned opinions. Suffice it to say that instead of discussing the section 16g factors, the award simply relies on salary increases awarded in other communities and on Washington Township's perceived ability to pay the one-percent differential between its last offer and that of Local 206.

[Id. at 92.]

Following Hillsdale, supra, we have also indicated our disapproval of arbitration awards that narrowly focus only on comparisons with other law enforcement units within a county, even if the parties' submissions only focused on that issue:

Paramount public interests make it inequitable to order the governing unit (and

in turn the residents and taxpayers) to be bound to an award and expend public funds merely because the arbitrator and parties failed to adequately comply with and address the statutory criteria beyond simply comparability with other law enforcement units and the non-statutory and abstract concept of the public employer's "ability to pay."

[Fox v. Morris County Policemen's Ass'n, 266 N.J. Super. 501, 513 (App. Div. 1993), certif. denied, 137 N.J. 311 (1994).]

In Fox, we affirmed the trial court's decision to vacate an interest arbitration award in favor of the Morris County sheriff's officers because the arbitrator erroneously grouped "together '[t]he interests and welfare of the public,' 16g(1), '[t]he lawful authority of the employer,' 16g(5), and '[t]he financial impact on the governing unit, its residents and taxpayers,' 16g(6), under the rubric of a nonstatutorily based category dubbed 'ability to pay.'" Id. at 516. We concluded that

[t]he grouping of three of the statute's eight factors under the vague "ability to pay" label effectively renders two of the criteria of 16g mere surplusage. It also seriously undervalues the public's interests and welfare, factors which can fairly be said to always be relevant since the arbitrator's award may have a great impact on a governing body's policy decisions.

[Ibid.]

We also noted the problems inherent in over-reliance on internal comparisons with other county law enforcement

contracts. In Fox, the arbitrator concluded that an earlier award to the County's corrections officers supported the sheriff's officers' proposal because it would "'maintain internal comparability' and foster stability between the law enforcement units." Id. at 509. In discussing the arbitrator's analysis of the second statutory factor, we noted the danger in this approach:

As for 16g(2), the statute requires a comparison with other employees, both public and private. No one in the instant case considered comparisons with private sector employment. In fact, the Sheriff argued to Judge Stanton that comparison with private employment is unnecessary. The [lower court] judge correctly called for a "thoughtful" comparison to be attempted, even if it proves difficult.

The arbitrator categorized an arbitration award involving the corrections officers as having "enormous importance in this case" and expressed his unwillingness to select the public employer's last offer because to do so would, in his words, "undo that salary scale established . . . through the . . . award[] of the [public] Employer's last offer" in that other arbitration. Over-reliance on maintaining parity with the corrections officers, however, promotes whipsawing, as there will be a constant need to increase each unit's wages in the unending quest for parity. Despite his claim that comparability in general was "not given determinative weight in this proceeding," the only realistic conclusion to be drawn from a reading of the arbitrator's opinion is that he was almost entirely influenced by maintaining parity with the corrections officers.

[Id. at 517-18 (emphasis added).]



With these precedents in mind, we turn to the case at hand. 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. Benev. Ass'n Local No. 42, 353 N.J. Super. 289, 300 (App. Div. 2002) (citations omitted), aff'd o.b., 177 N.J. 560 (2003).

In turn, in reviewing an arbitrator's decision, PERC follows Hillsdale, Washington Twp., and Fox, in determining whether the arbitrator gave due weight to the subsection g factors and whether the decision was supported by substantial credible evidence. Cherry Hill Twp., P.E.R.C. No. 97-119, 23 NJPER 287 (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., 266 N.J. Super. 501 (App. Div. 1993), certif. denied, 137 N.J. 311 (1994).

In Washington Twp., Hillsdale, and Morris Cty., the courts underscored that arbitrators should focus on the full range of statutory factors and not just police salaries in surrounding jurisdictions or the governing body's "ability to pay" the other party's offer. Hillsdale, 137 N.J. at 85-86; Washington Twp., 137 N.J. at 92; Morris Cty., 266 N.J. Super. at 516-517.

[Ibid.]

This 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 has determined that a public employer's pattern of settlements with similar employee units is an important consideration in applying one of the subsection g factors:

N.J.S.A. 34:13A-16g(2)(c) requires an 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.

. . . Pattern is an important labor relations concept that is relied on by both labor and management.

. . . 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. Thus, 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.

[Union County Corrections Officers, PBA Local 999 v. County of Union, 30 NJPER 38 (2004)].

The agency reached a similar conclusion in County of Essex and Essex County Sheriff and Essex County Sheriff's Officers, PBA Local 183, 31 NJPER 41 (2005). That is a rational policy determination, and is consistent with the general equitable concept that employees who perform similar job duties should receive comparable wages.

On the other hand, an arbitrator cannot focus solely on internal comparisons, and must explain how and why the arbitrator gave or did not give weight to the other statutory factors:

Fashioning a conventional arbitration award is not a precise mathematical process, Allendale Bor., P.E.R.C. No. 98-123, 24 NJPER 216 (2016 1998). Given that the statute sets forth general criteria rather than a formula, the setting of wage figures necessarily involves judgment and discretion and an arbitrator will rarely be able to conclusively demonstrate that his or her award is the only "correct" one. Allendale Bor. 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. However, the arbitrator should state what statutory factors he or she considered most important in arriving at the award, explain why they were given significant weight, and explain how other evidence or factors were weighed and considered in arriving at a final award.

[In re Bor. of Lodi and PBA Local 26, 24  
NJPER 466 (1998) (emphasis added).]

Likewise, in County of Essex and Essex County Sheriff and  
Essex County Sheriff's Officers, PBA Local 183, 31 NJPER 41  
(2005), PERC observed:

The Reform Act reflects the Legislature's intent that arbitrators focus on the full range of statutory factors not just public safety salaries in surrounding jurisdictions or the governing body's ability to pay the other party's offer. Accordingly, the Act expressly requires the arbitrator to indicate which of the statutory factors are deemed relevant, satisfactorily explain why the others are not relevant, and analyze each relevant factor. It also expressly requires the arbitrator to consider the limitations imposed on the employer by the CAP law. However, while the Act directs that "due weight" be given to the taxpayers interests, it does not automatically equate the employer's offer with the public interest. The Legislature also recognized "the unique and essential" duties of law enforcement officers and found that an effective interest arbitration process was requisite to maintaining their "high morale," thereby ensuring the efficient operation of public safety departments and the protection of the public. N.J.S.A. 34:13A-14. Accordingly, arbitrators have viewed the public interest as encompassing the need for both fiscal responsibility and the compensation package required to maintain an effective public safety department with high morale.

[Ibid. (citations omitted).]

The question in this case is whether the arbitrator, and PERC, adhered to these well-understood standards. The County

contends that the arbitrator, and PERC, gave too much weight to internal comparisons with other County law enforcement agencies and gave no weight to the other statutory factors. The County argues that the arbitrator "excluded consideration of other County contracts with aligned and non-aligned employees." In that regard, the County urges that "[h]ad the Arbitrator considered evidence of other County and public and private sector salaries and contracts he should have concluded instead that the County's offer was more consistent with the economic realities of the County and best served the interests of the taxpayers." The County also argues that the arbitrator did not explain why he gave little weight to factors the County considered important, such as the low increase in the Consumer Price Index.

In this case, the arbitrator was aware of the County's financial status, because his opinion began by summarizing that information as background. Notably, the average household income in the County was about \$12,000 above the state-wide average, and the County's tax rate decreased between 2004 and 2005, while its valuations increased. The arbitrator then summarized the parties' positions.

The FOP argued that sheriff's officers performed work comparable to that of other law enforcement officers, and that they were underpaid compared to law enforcement officers in

other counties and compared to other law enforcement units within Somerset County. The FOP also contended that the County's 2005 budget was \$5.5 million under its statutorily-mandated budget cap, and that the Sheriff's Office had a large enough budget to accommodate a wage increase. The FOP also relied on the fact that the County was relatively wealthy, and that its tax rate had decreased each year for the past ten years.

The County's position was that the FOP's demand was excessive particularly in light of the fact that Sheriff's officers received annual "step increases" in addition to contract wage increases, while non-law enforcement employees did not receive step increases. The County also noted the Sheriff's officers' already-generous benefit package, comparably lower private sector wage increases, lower average contract settlements in state and local governments, lower contract increases for law enforcement employees throughout the State, and small increases in the CPI. The County also contended that the Sheriff's officers' existing wages compared favorably with those in other counties, and that their job duties were not fairly comparable to those of police officers.

The arbitrator then proceeded to his own analysis, acknowledging his obligation to consider the factors set forth

in N.J.S.A. 34:13A-16g.<sup>3</sup> He first concluded that neither party's proposal was justified. He rejected the FOP's attempted comparison with other county sheriff offices, because its analysis omitted counties where the sheriff's officers received lower salaries, and he explained why sheriff's officers were not comparable to municipal police officers. He also rejected the County's proposal because it gave "virtually no weight to internal comparisons" with other Somerset County law enforcement agencies. He noted that the County "relies mainly upon the cost impact of step increases . . . , the cost of living, internal comparisons with its non-law enforcement units and private sector wage settlements."

The arbitrator began his analysis with this lengthy general discussion:

All of the statutory criteria have some relevance, directly or indirectly, when setting salary modifications. The more significant question is the weight to be given to the criteria. By way of example, statutory financial limitations and the financial impact of the terms of an award on the public employer, while separate criteria, are among the items that must be considered under the public interest criterion. Continuity and stability of employment of unit employees is also a separate criterion but one that has been found to be interrelated with the public interest. Another factor that interrelates

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<sup>3</sup> We do not address the arbitrator's decision on issues other than salary, since they are not the subject of this appeal.

with the interests and welfare of the public is comparability, especially among several units of a single employer who have strong common interests such as in law enforcement. In this instance the record shows that the work performed in the various units is coordinated and integrated. . . . Where evidence of pattern or consistency between and among law enforcement units is alleged to exist, any such claim must be examined under criteria that concerns the public interest, internal comparability, continuity and stability of employment and factors ordinarily or traditionally considered in determining wages, hours and employment conditions. All these criteria have been found to be implicated by pattern of settlement.

The arbitrator then addressed the parties' arguments concerning internal comparability, focusing on the agreements the County had previously reached with the Sheriff's Superior Officers for 2005, 2006 and 2007, the Correction Officers and Corrections Superior Officers for 2004, 2005 and 2006, and the Prosecutor's Detectives and Investigators for 2003, 2004, 2005 and 2006. The arbitrator explained why he gave less weight to the cost of step increases, based on a comparison of the way the County had treated that issue in its negotiated agreements with all of the other law enforcement units.

Further focusing on the issue of comparability, the arbitrator concluded, "I am persuaded that the relationship to be given the most weight in this proceeding is the one between the county's corrections and sheriffs' officer rank and file



units." He did not, however, explain why he reached this conclusion, although he had previously explained in general that "the record shows that the work performed in the various [County law enforcement] units is coordinated and integrated." The arbitrator did provide a detailed explanation as to how he calculated the wage increase he concluded was appropriate, and he provided a detailed explanation of the cost of that award.

After reciting again that he had "considered and applied the statutory criteria," the arbitrator concluded that his award was "consistent with the public interest by giving substantial weight to internal settlements and settlement patterns within the County's law enforcement units." He also concluded that "[t]he deviation from internal comparability sought by the County without reasonable justification has the potential to affect the continuity and stability of employment in the Sheriff unit." The arbitrator, however, gave no explanation as to how he reached that conclusion. He did not, for example, cite to any evidence as to the current or past rate of turnover in that unit.

Finally, the arbitrator briefly addressed other factors:

The financial terms of the award exceed what the County has proposed and are less than what the FOP has proposed. The costs can be borne without conflicting with the County's statutory spending limitations and without adverse financial impact on the governing body, its residents and taxpayers. The

record clearly reflects that the County is on sound financial footing and its ability to fund an award of this level is evident from an examination of its official budget documents. Ratables have grown for many years while the tax rate itself has declined over the last 10 years. In addition, the County's budget was adopted significantly below the limitations proposed by the State Budget CAP. The cost of living and private sector data has been considered, but cannot be found to be controlling given the fact that the award is consistent with internal law enforcement settlements, all of which are at levels above the cost of living.

The County appealed this award to PERC. In rejecting the County's appeal, PERC found that the arbitrator had considered all of the statutory factors and had properly concluded that internal settlements with other law enforcement agencies was a very significant factor:

Interest arbitrators have traditionally found that internal settlements involving other uniformed employees are of special significance . . . [M]aintaining an established pattern of settlement promotes harmonious labor relations, provides uniformity of benefits, maintains high morale, and fosters consistency in negotiations. . . . In this case, the arbitrator determined that each party's proposal would alter the relationships among the County's various law enforcement units and undermine the need for reasonable consistency during the collective negotiations process absent a demonstrated need for deviation. . . . He specifically found that the County's law enforcement units shared strong common interests and performed coordinated and integrated work and that the relationship between the units of Corrections Officers and Sheriff's

Officers and the County's negotiated agreement with that unit deserved the most weight and provided an appropriate model for structuring this award.

The agency also found that the arbitrator had considered all of the factors the County cited, such as private sector wage increases, CPI adjustments, local government wage increases in general, but reasonably concluded that those factors did not outweigh the importance of "an award consistent with internal law enforcement settlements, all of which are at levels above the cost of living." Further, "the employer has not justified why its own internal settlement pattern should not be maintained and why consideration of private sector wages should outweigh the impact of the employer's own settlements with other negotiations units." The agency also reasoned that "because the impact of an award on the continuity and stability of employment cannot be precisely measured, we will not disturb an arbitrator's award for concluding that reducing relative compensation for one of an employer's negotiations units would strain the ongoing relationship between those negotiations units."

After reviewing the record, which includes previous arbitration awards arising from impasses between the County and the sheriff's officers, we conclude that PERC's determination must be affirmed. Our review of PERC's decision is limited,

Teaneck, supra, 353 N.J. Super. at 300, and the arbitrator's decision, while minimally adequate, is sufficient to meet the statutory requirements.

The County and its sheriff's officers have a long history of inability to agree on salary levels, even though the County has historically reached settlements with its other law enforcement units. Our review of the prior arbitration awards (which the County included in its appendix) reveals that the County has repeatedly, and unsuccessfully, insisted that its sheriff's officers do not perform work comparable to other law enforcement units. That continuing dispute seems to be at the heart of this arbitration as well. Resolution of that question was a fact and policy issue for the arbitrator and PERC to decide and we cannot conclude that the arbitrator's decision was not supported by substantial credible evidence.

Moreover, prior arbitration awards indicated that in the past, high turnover has been a problem for the Sheriff's Office, with sheriff's officers leaving to take positions with other law enforcement units. Hence, the current arbitrator's concern with stability of the work force seems well grounded even if he did not explain it in detail.<sup>4</sup>

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<sup>4</sup> This arbitrator has handled previous arbitrations involving these parties. While familiarity may make the arbitrator better able to understand the parties' disputes, the arbitrator cannot  
(continued)

Finally, while the arbitrator focused much of his analysis on the issue of comparability and the pattern of settlements with other law enforcement units, he also considered the other statutory factors. Nothing in the record suggests that his conclusion was unsupported by the evidence or that remanding this case for further explanation would produce a different result. Perhaps one reason for the relatively brief discussion of the County's financial issues is that there really are no significant issues; unlike cases such as Essex County, supra, where Essex County faced severe economic constraints, in this case Somerset County is affluent, has consistently reduced its taxes, and otherwise has not documented any financial problems that would militate against the modest wage increase awarded here. Moreover, given that the County reached settlements with all of its other law enforcement units, the arbitrator's award of a similar wage package here is reasonable. On this factual record, we need not address the County's theoretical concern with out-of-control spiraling wage inflation.

We agree with PERC that the arbitrator properly calculated the total net economic changes for each year of the agreement. N.J.S.A. 34:13A-16d(2). To the extent not discussed here, the

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(continued)

simply assume that PERC, or we, know the history, and he should still provide a more detailed analysis of the relevant factors including labor stability.

County's arguments are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

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  
A-1850-99T1

TOWNSHIP OF TEANECK,

Plaintiff-Appellant/  
Cross-Respondent,

v.

TEANECK FIREMEN'S MUTUAL  
BENEVOLENT ASSOCIATION LOCAL  
NO. 42,

Defendant-Respondent/Cross-  
Appellant.

APPROVED FOR PUBLICATION

JUL 16 2002

APPELLATE DIVISION

FILING DATE  
APPELLATE DIVISION

JUL 16 2002

*Jon Flynn*  
CLERK

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Argued April 30, 2002 - Decided

JUL 16 2002

Before Judges Stern, Collester and Parker.

On appeal from New Jersey Public Employment  
Relations Commission.

Jeffrey M. Daitz argued the cause for appellant/  
cross-respondent (Peckar & Abramson, attorneys;  
Mr. Daitz, on the brief).

David I. Fox argued the cause for respondent/  
cross-appellant Teaneck Firemen's Mutual  
Benevolent Association (Fox & Fox, attorneys;  
Deborah A. Young, on the brief).

Susan E. Galante, Deputy General Counsel, argued  
the cause for Public Employment Relations  
Commission (Robert E. Anderson, attorney; Ms.  
Galante, on the brief).

The opinion of the court was delivered by

COLLESTER, J.A.D.

The Township of Teaneck appeals from an order of the Public  
Employment Relations Commission (PERC) entered on October 28, 1999,

affirming a public interest arbitration award settling an impasse in collective bargaining negotiations between Teaneck and the Teaneck Firemans Mutual Benevolent Association Local 42 (FMBA), which represents Teaneck's sixty-eight rank and file firefighters. The FMBA cross-appeals from that portion of the order modifying the arbitration award. We affirm in part and reverse in part.

The collective bargaining agreement between the parties had expired on December 31, 1996, and attempts to negotiate a successor agreement failed. FMBA declared an impasse in negotiations and filed a petition with PERC on January 2, 1997, to initiate compulsory interest arbitration pursuant to the Police and Fire Public Interest Arbitration Reform Act (the Reform Act), N.J.S.A. 34:13A-14a to -16.6.

PERC provided a list of arbitrators from its special panel, and the parties mutually agreed on Carl Kurtzman. Accordingly, Timothy Hundley, PERC's acting arbitration director, appointed Kurtzman in February 1997. After unsuccessful attempts to mediate the dispute, Kurtzman asked to be relieved of the assignment on grounds that the FMBA had requested his withdrawal. Over Teaneck's objection, Hundley accepted Kurtzman's resignation. Since the parties could not agree on a new arbitrator, Hundley appointed James Begin from PERC's special panel.

After conducting hearings on diverse dates between June and October 1998, Begin issued a decision on March 15, 1999: (1) awarding salary increases within the percentages requested by the



parties; (2) granting a two percent stipend for firefighters with emergency medical training (EMT) certifications; and (3) adopting on a trial basis a new shift schedule for FMBA firefighters of a twenty-four hour shift, followed by seventy-two hours off duty, known as a "24/72."

Teaneck filed a notice of appeal to PERC in March 1999. After hearing oral argument, PERC issued its decision on October 29, 1999, affirming the arbitrator's award but modifying the implementation of the 24/72 schedule pending either agreement for the parties or the adoption of the 24/72 schedule for the fire officers' unit. Teaneck appealed from PERC's decision<sup>1</sup>, and the FMBA filed a notice of cross-appeal as to PERC's modification of the arbitrator's order implementing the 24/72 work schedule.

By far the most contentious issue before the arbitrator was the FMBA's proposed change in shift schedule to a 24/72. The Teaneck firefighters worked two ten hour days followed by twenty-four hours off, then two fourteen hour nights, followed by seventy-two hours off, which is known as a "10/14" schedule. Under either shift schedule the firefighters work forty-eight hours in an eight day tour. Testifying for the FMBA, Paul Chrystal, a member of the Union Township Fire Department and battalion chief, said that the 10/14 shift was in effect in Union from 1960 to 1979 when the

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<sup>1</sup> Teaneck has since implemented the salary increases and modifications of the contractual agreements procedure as determined by the arbitrator and does not raise these issues on appeal.

change was made to the 24/72 shift. He participated in an evaluation of the change prepared by both the officers' and rank-and-files' local unions of the last six years of the 10/14 shift (1974-1979) and the first six years of the 24/72 shift (1980-1986). Chrystal testified there was a ninety-five percent increase in services provided (classified alarms, inspections and non-emergency aid) as a result of the change to the 24/72 shift, a twenty-three percent decrease in firefighting injuries, a thirty-five percent decrease in sick leave, a fifty-eight percent decrease in overtime and a thirty-eight percent decrease in civilian injuries.

Chrystal attributed each of the improvements to the adoption of the 24/72 schedule. He claimed the decrease in firefighter injuries was due to the increase in recuperative time to seventy-two hours; the decrease in civilian injuries because of an increase in fire prevention activities; and the decrease in overtime as a result of the diminished number of injuries and sick leave. He explained that the more recuperative time for firefighters translated to less sick time and fewer injuries because seventy-two hours was "an optimal recuperation time for a firefighter's body to eliminate toxins" from inhaling gases, which posed the greatest risk to firefighters. He added that the new schedule raised morale with more sustained quality time off. It also gave more opportunity for firefighter training because firefighters working weekend days on the 10/14 shift would go eight days before the weekday training division could work with them while only four days

would elapse on the 24/72 shift. Chrystal testified further that in both New Jersey and throughout the United States there was a significant trend toward adoption of the 24/72 shift for firefighters and that the International Association of Firefighters approved the 24/72 shift because it resulted in fewer firefighter fatalities.

Supporting Chrystal's testimony was William Lavin, president of the New Jersey FMBA and the Elizabeth Local, who testified that when Elizabeth changed from the 10/14 shift to the 24/72 shift in 1976, there was a 3800 man-hour reduction in sick leave in the first year. He added that the new schedule resulted in an improvement in production, service, training and motivation. Moreover, the City of New Brunswick accepted the change to the 24/72 shift because it was "better for the health of the firefighters."

Testifying for Teaneck in opposition to the change to the 24/72 shift was William Norton, Teaneck's Fire Chief. He opposed the switch on grounds that it would impede proper supervision. He claimed the new schedule would require another deputy chief and staff officer to maintain the department's day-to-day operations.<sup>2</sup> Most significant was his testimony that the continuity of supervision would suffer from the change for the rank-and-file to a 24/72 while the officers were on the 10/14 schedule.

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<sup>2</sup> The FMBA represents that "since the time of the Chief's testimony, an additional Deputy Chief position has been filled by the Township."

Prior negotiations with the officers unit, Local 242, culminated in interest arbitration under the Reform Act, and one of the issues involved a proposal by the officers for a change to a 24/72 shift. Teaneck opposed, and the arbitrator rejected the shift change. In the Matter of Tp. of Teaneck and Prof'l Officers Ass'n (PERC Docket No. IA-97-58, Sept. 4, 1998). The subsequently negotiated agreement with the Teaneck officers continued the 10/14 shift and expires in 2004.

Gary Saage, Teaneck's municipal manager, testified that it would be "chaotic" to have officers and rank-and-file firefighters on different schedules. Notably, the officers and rank-and-file in both Union and Elizabeth adopted the 24/72 schedule at the same time. Nonetheless, Chrystal opined that effective supervision could occur with the two groups on different schedules.

Chief Norton further testified that he understood from other fire chiefs that firefighters on the 24/72 shift moved farther away from their municipalities, which made it more difficult to recall them. However, Lavin disputed this claim, stating that the change to the 24/72 did not result in more firefighters moving out of town in either Elizabeth or Union. While Chief Norton acknowledged the possibility of improvement in morale and less use of sick leave and overtime with the 24/72 shift, he was fearful that the firefighters might use less sick time during a trial period and then return to increased sick leave, which he claimed was already "out of control."

Regarding the proposed EMT stipend, Chief Norton and Richard Silvia, a Teaneck captain, explained that firefighters render first aid at accident and fire scenes until the ambulance corps or paramedics from a hospital arrive. They stated there had been a substantial increase in medical calls. Seven rank-and-file Teaneck firefighters had obtained EMT certifications and were seeking an EMT stipend. According to an exhibit produced by the FMBA, nine other fire departments in the area awarded EMT stipends ranging in amounts from \$1,250 to \$3,471. Municipal manager Saage testified that Teaneck encouraged firefighters to take the EMT training and paid for them to maintain their certification. However, he said that as a matter of policy, the Township did not pay stipends for certifications.

Both sides presented testimony on Teaneck's ability to fund the FMBA's economic proposals. Raphael Caprio, the FMBA's expert in municipal budgets, reviewed Teaneck's budgets and financial data and concluded that Teaneck was financially sound and able to fund the FMBA's proposal. Saage countered Caprio's analysis and stated that he anticipated a budget deficit in 1998.

After receiving and considering the evidence and testimony, the arbitrator ruled in favor of both the 24/72 shift schedule and a stipend for EMT firefighters. He relied on the prevalence of the 24/72 schedule in other communities, the findings of Union's twelve year study, the favorable results from the schedule change in Elizabeth, and Chrystal's testimony that the officers and rank-and-

file could work effectively on different schedules. He rejected Chief Norton's objections as speculative and noted that Teaneck offered no direct evidence from the New Jersey communities with the 24/72 schedule to indicate any substance to the concerns expressed by the Chief. He found that "the substantial benefits of the 24/72 schedule to all parties, the Town, the firefighters, and the public, justifies undertaking a trial run." He added that the 24/72 schedule should not continue beyond a trial period unless both parties, or an arbitrator if they could not agree, were convinced that the new schedule achieved the "objectives of (1) improving moral, (2) reducing sick leave, (3) reducing overtime, (4) enhancing training, (5) maintaining or improving productivity using the same number of firefighters and work hours, and (6) reducing firefighter and civilian injuries." He recommended the parties appoint a joint committee to evaluate the impact of the new schedule and that Teaneck consider implementing the same schedule for its fire officers.

With respect to the EMT stipend, the arbitrator found three compelling reasons for awarding a two percent stipend for EMT certification: (1) the "demonstrable increase in the first medical response workload"; (2) the award of EMT certification stipends in other communities in amounts higher than the two percent awarded here; and (3) as a "quid pro quo" for a change in dates of salary increases.

Teaneck appealed the arbitrator's decision and award to PERC

in March 1999. PERC approved the arbitrator's findings on the desirability of the 24/72 schedule based on the FMBA's largely undisputed evidence, but it determined that the arbitrator should have given more weight to the consequences of different work schedules for the rank-and-file and the officers. Finding that supervision would be impaired with the two units on different schedules, PERC delayed implementation of the new schedule until it could be employed for both units.

PERC also found that the evidence supported the arbitrator's award of the stipend for EMT certification. PERC reasoned that because Teaneck encouraged firefighters to obtain EMT certification, "the arbitrator reasonably concluded that it was appropriate, as part of an overall economic package, to compensate those unit members who obtained training that their employer believed was useful, although not required, for their position."

Teaneck appeals from both the award of an EMT stipend and the approval of a 24/72 work schedule, claiming that the issues were non-negotiable management prerogatives. It also asserts that the removal of Kurtzman as arbitrator was without good cause, violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 to -30, and was arbitrary and capricious.

With respect to recusal by Kurtzman, PERC asserts that when an interest arbitrator acts as a mediator and mediation is unsuccessful, most interest arbitrators will withdraw from a case if one party so requests. Therefore, PERC contends its decision to

allow Kurtzman's withdrawal was consistent with interest arbitration practice. Furthermore, PERC emphasized that Kurtzman resigned and was not removed.

Kurtzman's resignation was obviously with reluctance. He wrote to PERC's acting arbitration director explaining that he had conducted five mediation sessions with the parties and submitted two mediation recommendations. He related that the FMBA failed to ratify his second recommendation and requested that he resign while Teaneck objected to his withdrawal. Kurtzman noted that this was the first time in twenty-six years as an arbitrator for PERC that a party had asked him to withdraw. He added that he felt confident he could conduct the arbitration hearing and issue an award consistent with the statutory criteria without reference to the prior settlement discussions and feared that honoring the request for withdrawal "could inhibit aggressive mediation efforts by arbitrators." On the other hand, he was concerned that litigation over the arbitrator would substantially delay resolution of the impasse and therefore asked to be relieved "so that the impasse may be expeditiously resolved."

We find no basis in Teaneck's claim of error with regard to the replacement of Kurtzman as arbitrator. The record substantiates that PERC did not remove Kurtzman; it approved his withdrawal. Teaneck has failed to show how this action honoring Kurtzman's request was in any way arbitrary or capricious. PERC's decision is entitled to deference. See N.J.A.C. 19:16-5.6(d) and



(e). We find no error in its actions. Cf. Aberdeen v. PBA Local 163, 286 N.J. Super. 372 (App. Div. 1996).

Teaneck contends that PERC erred in affirming the shift change to a 24/72 and in ordering EMT stipends on grounds that these were issues of managerial prerogative and not negotiable or arbitrable. It argues that the schedule change would interfere with its governmental policy interest in maintaining stability, continuity, supervision and efficient operation of the fire department. It further maintains that the award of EMT stipends would impede its authority to address staffing levels and determine whether EMT services should be maintained.

It is undisputed that Teaneck did not file a scope-of-negotiations petition with PERC stating that negotiations were not appropriate on either the shift change or the EMT stipend. Absent a pre-arbitration scope petition asserting that negotiations are not permitted on a subject, the parties are deemed to have agreed to arbitrate all unresolved issues. N.J.A.C. 19:16-5.5(b) and (c). A party cannot go through the negotiations process and then argue it was not required to engage in that process because the subject was not mandatorily negotiable. The PERC regulations specifically provide that when a party contends that an unresolved issue is not within the required scope of negotiations, and the other party disagrees, the party seeking to exclude the issue from negotiations "shall file with [PERC] a petition for scope of negotiations determination." N.J.A.C. 19:16-5.5(c). The regulation continues:

This petition must be filed within 14 days of receipt of the notice of filing of the petition requesting the initiation of compulsory interest arbitration. The failure of a party to file a petition for scope of negotiations determination shall be deemed to constitute an agreement to submit all unresolved issues to compulsory interest arbitration.

[Ibid.]

In this instance Teaneck did not raise the issue of the arbitrability of the EMT stipend by filing a scope-of-negotiations petition before PERC and therefore cannot now argue that the issue was not a negotiable one. PERC's decision on the scope-of-negotiations will stand unless it is clearly demonstrated to be arbitrary and capricious under N.J.S.A. 34:13A-16(g). See City of Jersey City v. Jersey City PBA, 154 N.J. 555, 568 (1998); Matter of Hunterdon County Board of Chosen Freeholders, 116 N.J. 322, 329 (1989). Therefore, Teaneck is estopped from arguing the issue of negotiability of the EMT stipend.<sup>3</sup>

Therefore, we limit consideration of Teaneck's arguments to the issue of whether sufficient evidence supported PERC's determination with regard to the criteria set forth in N.J.S.A. 34:13A-16(g).

The arbitrator awarded the EMT stipend in part because he found that it was in the public interest for firefighters to have

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<sup>3</sup> We further note that the Supreme Court has held that additional compensation for education or training that is not a job requirement is a mandatorily negotiable subject. Board of Ed. of City of Englewood v. Englewood Teachers Ass'n, 64 N.J. 1, 5-6, 8 (1973).

EMT training. He also noted the increase in medical response workload in Teaneck and the number of other municipalities in the area granting such stipends. He estimated the eight firefighters with EMT training would cost Teaneck \$8,448 in 1999 for the two percent stipend. PERC affirmed the arbitrator. While recognizing a governmental policy issue arises as to whether a fire department is authorized to provide EMT services, the issue was not raised in the instant case since the fire department in Teaneck provided EMT training over a period of a year.

Our scope of review of PERC decisions reviewing arbitration is sensitive, circumspect and circumscribed. Hunterdon, supra, 116 N.J. at 328. PERC's decision will stand unless clearly arbitrary or capricious. Matter of Bridgewater Tp., 95 N.J. 235, 244-45 (1984). We find no basis to overturn the determination by PERC affirming the award of the EMT stipend.

The issue as to Teaneck's failure to file a scope of negotiations petition respecting the proposed 24/72 shift change comes from a different procedural posture. The 24/72 work schedule was listed in FMBA's January 1997 petition. While not filing a scope of negotiations petition, the Township participated in the five hearing dates with considerable testimony concerning the work schedule. While Teaneck raised its negotiability arguments before the arbitrator, he had no authority to rule on it. N.J.S.A. 34:13A-5.4d; N.J.A.C. 19:16-5.7(h).

The situation here is analogous to that in In the Matter of

Tp. of Delran and Delran Twp. SOA, 25 NJPER 166 (130076 1999), in which the Township challenged the arbitrability of a proposal, first before the arbitrator who rejected the argument, and then on appeal before PERC. PERC said:

This type of threshold challenge to the arbitrator's jurisdiction and the legal arbitrability of a proposal, like a more typical scope of negotiations challenge, can affect the issues that will be considered in a proceeding and, therefore, should be made and decided before the arbitrator's final opinion and award. See N.J.A.C. 19:16-5.5(c).... Further, this type of challenge to the legal arbitrability of an interest arbitration proposal should be decided in the first instance by us, not the arbitrator...

For these reasons, we hold that challenges to an arbitrator's jurisdiction or the legal arbitrability of a proposal, should, in the future, be made in the time and manner prescribed by N.J.A.C. 19:16-5.5(c).

[Delran, supra, 25 NJPER at 168.]

Both PERC and the FMBA argue that Teaneck should be estopped by virtue of its failure to assert a scope of negotiations petition, from contending that the work schedule was not negotiable since it would undermine the authority of the arbitrator and the arbitration system under PERC. However, unlike the issue of the EMT stipend the claim on non-negotiability was made by Teaneck before the arbitrator and, subsequently, before PERC. Moreover, PERC considered and decided the issue of negotiability after the arbitration hearing in the course of considering whether the evidence adduced at arbitration supported the award. N.J.S.A. 34:13A-5.4d give PERC "the power and duty, upon the request of any

public employer...to make a determination as to whether a matter in dispute is within the scope of collective negotiations."

We interpret N.J.A.C. 19:16-5.5(c) in light of N.J.S.A. 34:13A-5.4d to permit PERC to consider late challenges to a proposal's negotiability. The "agreement to submit all unresolved issues to compulsory interest arbitration," established in N.J.A.C. 19:16-5.5(c) when a party fails to file a scope-of-negotiations petition, need not preclude a challenge to negotiability made after the arbitration when PERC decides to consider the issue. See Jersey City, supra, 154 N.J. at 567.

Under N.J.S.A. 34:13A-5.3, public employers and employees are authorized to negotiate "terms and conditions of employment." In the public sector, however, because the employer is government, the responsibility is to make and implement public policy through the political process, as opposed to negotiation and arbitration. The Supreme Court clarified the important distinction in Local 195, IFPTE, AFL-CIO v. State, 88 N.J. 393 (1982).

[A] subject is negotiable between public employers and employees when (1) the item intimately and directly affects the work and welfare of public employees; (2) the subject has not been fully or partially preempted by statute or regulation; and (3) a negotiated agreement would not significantly interfere with the determination of governmental policy.

[Id. at 404-05.]

In making this last determination, the Court stated:

it is necessary to balance the interest of the public employees and the public employer. When the dominant concern is the government's

managerial prerogative to determine policy, a subject may not be included in collective negotiations even though it may intimately affect employees' working conditions.

[Id. at 405.]

Applying this standard, the court in Local 195 held that a proposal to make a normal workweek consist of five consecutive workdays, where practicable, was negotiable. Id. at 411-12. The Court reasoned: "The contract provision in this case concerns the negotiable subject of individual work schedules rather than the formation of an overall calendar." Id. at 412. In Jersey City, supra, 154 N.J. at 574-75, the Court reaffirmed that the question of negotiability must be determined on a case-by-case basis.

In the instant case, the issue is whether the suggested change of shift schedule would interfere with Teaneck's managerial prerogative to determine public policy. Teaneck relies on Bor. of Atl. Highlands v. Atl. Highlands PBA Local 242, 192 N.J. Super. 71 (App. Div. 1983), certif. denied, 96 N.J. 293 (1984). There, the PBA proposed a work schedule that added a day off every three weeks, which the Borough alleged would create gaps in necessary coverage and reduce the department's efficiency. Id. at 74-75. We underscored the small size of the Borough and its police force, in concluding that "the fixing of the overall work schedule" was not negotiable because negotiation "would significantly interfere with the exercise of the inherent managerial prerogatives necessary to the proper operation of a police force." Id. at 77. In the instant case, the size of the force does not present the same

issues. Moreover, the FMBA proposal does not reduce the firefighters' work time since under both the old and proposed shift schedules, they would work forty-eight hours every eight days.

Teaneck further relies on Irvington PBA Local No. 29 v. Town of Irvington, 170 N.J. Super. 539, 545-56 (App. Div. 1979), certif. denied, 82 N.J. 296 (1980), in which we held that a police officers' schedule change, from fixed to rotating shifts, was not negotiable because "the change was basic to the direction and functioning of the police department and that the requirement of mandatory negotiation impeded the police chief in his efforts to increase efficiency and to enforce discipline." Id. at 545. No such issue of discipline and efficiency is presented under the proofs at bar.

In Matter of Mt. Laurel Tp., 215 N.J. Super. 108, 114 (App. Div. 1987), we refused to interpret Atlantic Highlands and Irvington "as establishing a per se rule of exclusion for police scheduling issues" and declared that each case must be determined individually under the balancing test set forth in Local 195, supra, 88 N.J. at 401-05. We also noted the comment in Local 195 that "rates of pay and working hours" were "prime examples of subjects" that were negotiable. Id. at 403.

Our holding in Mt. Laurel was that the union's proposal to reduce to writing a work schedule already in effect was negotiable. We emphasized that the Township submitted no facts in support of its position and failed to meet its burden "to advance reasons in

support of its need, from a policy making point of view, to unilaterally control police work hours." Mt. Laurel, supra, 215 N.J. Super. at 115. Moreover, unlike Highlands and Irvington, the assertions by the public employer that the proposed changes would impact efficiency and discipline were challenged. Id. at 114.

PERC has also considered issues of police and fire scheduling to be a proper subject for mandatory negotiation. In In re Tp. of Maplewood and Maplewood FMBA Local No. 25, 23 NJPER 106, 113-14 (¶28054 1997), PERC held that the FMBA's proposal to change from the 14/10 to the 24/72 shift was negotiable. While avoiding the merits of the shift change, the Commission concluded that the employer's concerns were "not so compelling and so incontrovertible as to warrant cutting off negotiations and the interest arbitration process altogether." Id. at 114. The decision is silent as to whether the superior officers were on the same 24/72 schedule as the other firefighters.

PERC has held that a shift change is not negotiable when it would result in different shifts for supervisors and rank-and-file. In In the Matter of City of Newark and Prf'l Fire Officers' Ass'n, Local 1860, 14 NJPER 248 (¶19092 1988), the officers proposed to change to the 24/72 shift while the firefighters remained on the 14/10. PERC determined that the superior officers would not be able to supervise firefighters effectively, and the proposal was therefore not negotiable. Id. at 249-50. Similarly, in In re Bor. of Closter and PBA Local 233, 11 NJPER 132 (¶16059 1985), the



Borough required patrol officers to begin and end their shifts three hours earlier, so that their shifts would conform to those of the superior officers. PERC held that the change was not negotiable because it was "necessary for effective supervision and to enable the force to function effectively as a unit." Id. at 135.

We determine that Teaneck's need for effective supervision should not preclude negotiability of a change to a 24/72 shift for firefighters. Mt. Laurel rejected a per se rule for exclusion of police work schedules from the scope of negotiations, and work hours are a negotiable term and condition of employment for both police officers and firefighters under N.J.S.A. 34:13A-16g(2) and (8). Therefore, the question is whether the proposed work schedule would so impede governmental policy to foreclose the issue for arbitration. Local 195, supra, 88 N.J. at 401-02. We hold that the issue is negotiable in the instant case. Special circumstances such as presented in Atlantic Highlands and Irvington are absent. The arbitrator could consider the arguments pro and con with respect to a proposed work schedule for firefighters which is common throughout the State and whether the claim of increase in personal safety of firefighters and safety of the public outweighs the municipal concerns of efficiency and supervision under the balancing test of Local 195.

Teaneck argues that the fact that the fire officers' contract which maintains the 10/14 schedule forecloses the issue of a 24/72

work schedule for the rank-and-file from mandatory negotiations because of the "chaos" which would result from the firefighting units working on different schedules. However, it is within the power of Teaneck to negotiate the 24/72 schedule for both units if it chooses to do so. The record does not indicate that the officers sought the 24/72 shift and received an adverse determination in interest arbitration under the Reform Act. Under N.J.S.A. 34:13A-5.3 a modification of the officers' contract governing workday conditions could be re-negotiated if Teaneck desired.

We conclude, therefore, that PERC was correct in determining that the issue of work schedules for rank-and-file firefighters was not foreclosed as a managerial prerogative and was subject to mandatory negotiations or interest arbitration.

We now turn to the issue on cross-appeal by the FMBA from PERC's modification of the decision of the arbitrator so as to delay the implementation of the 24/72 shift until the same schedule was adopted for both officers and rank-and-file firefighters.<sup>4</sup> The FMBA contends that PERC exceeded its scope of review and improperly substituted its judgment for that of the arbitrator by modifying the arbitrator's fact findings which were based on substantial credible evidence in the record. The FMBA also argues that PERC's modification of the award constitutes an illegal parity clause and

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<sup>4</sup> We are advised that the contract with the fire officers expires in 2004.

improperly links supervisory and non-supervisory units.

PERC counters that it did not modify the arbitrator's fact findings but instead established guidelines for implementation of work schedule changes. It also asserts that it was justified in linking the schedule change between the officers' and line firefighters' units because it would impair supervision to have the two units work a different schedule. Teaneck does not address this issue.

The Reform Act authorizes PERC to decide appeals of interest arbitration awards. It may "affirm, modify, correct or vacate the award or may, at its discretion, remand the award to the same arbitrator." N.J.S.A. 34:13A-16f(5)(a). 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. Hillsdale PBA Local 207 v. Bor. of Hillsdale, 137 N.J. 71, 82 (1994); In the Matter of Cherry Hill Tp. and FOP Lodge 28, 23 NJPER 287 (128131 1997); In the Matter of Bor. of Bogata and PBA, Local 86, 24 NJPER 454 (129210 1998); In the Matter of Borough of Allendale and PBA Local No. 217, 24 NJPER 216 (129103 1998).

In reviewing Begin's decision PERC upheld his statutory findings as well as his evidential findings of the substantial benefits for adoption of the 24/72 schedule on a trial basis.

However, it modified the arbitrator's award based on its concern as to whether supervision would be impaired with the rank-and-file firefighters in a different schedule from the superior officers. By its decision PERC provided direction to interest arbitrators to conduct a factual analysis on the question of supervisory impairment where the work schedule proposal results in differing work schedules for firefighters.

PERC noted that its only decisions dealing with a similar change of schedule proposal resulting in different shifts for supervisors and rank-and-file were scope of negotiations decisions where the merits of the proposals were not discussed. See Maplewood, supra, 23 NJPER at 110-14; Bor. of Closter, supra, 14 NJPER at 135. It refused to adopt Teaneck's position that the resulting different shifts rendered the FMBA's proposal non-negotiable, stating "we do not hold that a proposal that would result in different work schedules for superior officers and rank-and-file is not mandatorily negotiable as a matter of law." However, it added the following standard for arbitrators in such cases:

[A]n arbitrator may award such a proposal only if he or she finds that the different work schedules will not impair supervision or that, based on all the circumstances, there are compelling reasons to grant the proposal that outweigh any supervision concerns.

PERC acknowledged that the arbitrator properly placed the burden on the FMBA to justify its proposal, but then stated

However, [the arbitrator] did not have the

benefit of this opinion clarifying the relationship between our scope-of-negotiations case law and the interest arbitration process, and we find more weight should have been given to the fact that the proposal would result in different work schedules for the two units. At the same time, the FMBA offered undisputed evidence as to the potential benefits of the 24/72 schedule. Absent the supervision issue, we would find that the arbitrator's decision to award the proposal on a trial basis was a reasonable determination of the issues, N.J.S.A. 34:13A-16g, that was supported by substantial credible evidence in the record as a whole.

Rather than remand the matter back to the arbitrator for re-evaluation in light of its new guideline, PERC stated:

In this posture we will exercise our authority under N.J.S.A. 34:13A-16f(5)(a) and modify the award to provide that the 24/72 work schedule shall be implemented only if and when the 24/72 schedule is adopted for the superior officers' unit.

The upshot of PERC's application of its new standard by modifying the arbitrator's award rather than remanding it for reconsideration is that although the FMBA proposal was found to provide greater health and safety benefits, it is held captive to the results of future negotiations between the Township and the much smaller unit of superior officers who apparently favor the 24/72 schedule but whose other concerns and priorities may differ from the rank-and-file. .

By tying the rank-and-file to the superior officers, the PERC decision entwines the future collective bargaining of each unit. When Teaneck considers the proposal of the fire officers to change to the 24/72 shift, if the officers make such a proposal in 2004,

Teaneck will inevitably consider that if it agrees, it must also grant the shift change to the FMBA. The FMBA will thus have an impact on the negotiations between Teaneck and the officers. Further, the officers will have an impact on future negotiations between Teaneck and the FMBA, because any FMBA proposal to change to the 24/72 shift will depend on the officers' obtaining this same benefit.

From a practical standpoint PERC's decision dooms the FMBA rank-and-file to continuation on the 10/14 shift in perpetuity so long as the Township continues to oppose the change to a 24/72 shift for the officers, even though the FMBA proved in contested hearings before the arbitrator that the 24/72 schedule is superior in several ways including increased safety and health benefits for firefighters as well as greater safety to the general public. By its postponement of a trial period for the 24/72 schedule, PERC has sent FMBA's proposal off to a political never-never land. Such a result is both arbitrary and unreasonable.

We also find that PERC departed from its proper scope of review of an arbitration decision under the Reform Act. In Cherry Hill, supra, 28 NJPER at 289 the Commission described its role on review of an interest arbitration award as follows:

[T]he reform statute vests the arbitrator with the responsibility to weigh the evidence and fashion 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 standards in the reform statute or the Arbitration Act or shows that the award

is not supported by substantial credible evidence in the record as a whole.

PERC's decision sub judice recognizes that the arbitrator considered the statutory criteria of N.J.S.A. 34:13A-16g and finds substantial evidence in support of his findings as the superior benefits of the 24/72 shift. However, it adds that "more weight should have been given to the fact that the proposal would result in different work schedules for the two units."

In fact, a review of the arbitrator's decision indicates that the different work schedules was given significant consideration by the arbitrator. He gave attention to the testimony of Chief Norton about potential supervisory problems and noted that the Chief indicated that the 24/72 schedule was manageable with additional staff. In determining that the benefits of the 24/72 schedule were worthy of a trial basis, the arbitrator was clearly mindful of supervisory concerns. The comment of PERC that "more weight" should have been given to the consequences of different work schedules for the two units is comprehensible only as a sub silentio finding by PERC that supervision would be impaired, which was in contrast to the finding by the arbitrator that the two schedules could not be "unworkable."

In its argument on appeal PERC argues that it did not engage in fact finding. It contends that the arbitrator's decision indicated "in effect a finding that supervision would be impaired by different schedules" so that there was a basis to modify the award rather than remand the matter to the arbitrator. But what

the arbitrator said was quite different. He found as follows:

Although the record indicates that different schedules for the Fire Officers and the Firefighters would not be unworkable, the Arbitrator believes that supervisory efficiency and teamwork would be best served if the Fire Officers and Firefighters worked the same schedule, and he recommends that the parties responsible for that decision consider implementing a common schedule. (Emphasis in original.)

We find no error in PERC establishing its new guideline or standard in care of this nature. However, we find that by modifying the arbitrator's award in this fashion rather than remanding to the arbitrator, PERC exceeded the scope of its review, improperly foreclosed the arbitrator from applying its new guideline to his factual findings, and effectively deprived the FMBA from consideration of the 24/72 schedule on the trial basis awarded by the arbitrator .

We reverse PERC's order and remand to the Commission to succinctly articulate its new guideline regarding impairment of supervision and to remand to the same arbitrator for evaluation of proofs and factual findings in light of PERC's standard. The arbitrator may consider receipt of additional testimony or other evidence if he deems it necessary or appropriate. We do not retain jurisdiction.

Affirmed in part. Reversed and remanded in part.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.

*Jim Flynn*  
CLERK OF THE APPELLATE DIVISION



SUPREME COURT OF NEW JERSEY  
A-33 September Term 2002

TOWNSHIP OF TEANECK,

Appellant-Appellant,

v.

TEANECK FIREMEN'S MUTUAL  
BENEVOLENT ASSOCIATION, LOCAL  
NO. 42,

Respondent-Respondent.

Argued September 8, 2003 - Decided October 1, 2003

On certification to the Superior Court,  
Appellate Division, whose opinion is  
reported at 353 N.J. Super. 289 (2002).

Jeffrey M. Daitz argued the cause for  
appellant (Peckar & Abramson, attorneys; Mr.  
Daitz, David Lew and Elana Ben-Dov, on the  
briefs).

David I. Fox argued the cause for respondent  
Teaneck Firemen's Mutual Benevolent  
Association, Local No. 42 (Fox & Fox,  
attorneys; Mr. Fox and Gregory A. Busch, of  
counsel and on the brief).

Robert E. Anderson, General Counsel, argued  
the cause for respondent New Jersey Public  
Employment Relations Commission (Mr.  
Anderson, attorney; Susan E. Galante, Deputy  
General Counsel, on the brief).

Bruce H. Nagel argued the cause for amicus  
curiae, New Jersey State Firemen's Mutual  
Benevolent Association (Nagel, Rice,  
Dreifuss & Mazie, attorneys).

PER CURIAM

The judgment is affirmed, substantially for the reasons expressed in Judge Collester's opinion of the Appellate Division, reported at 353 N.J. Super. 289 (2002).

CHIEF JUSTICE PORITZ and JUSTICES LONG, VERNIERO, LaVECCHIA, ZAZZALI, ALBIN and WALLACE join in this opinion.

SUPREME COURT OF NEW JERSEY

NO. A-33

SEPTEMBER TERM 2002

ON CERTIFICATION TO Appellate Division, Superior Court

TOWNSHIP OF TEANECK,

Appellant-Appellant,

v.

TEANECK FIREMEN'S MUTUAL  
BENEVOLENT ASSOCIATION, LOCAL  
NO. 42,

Respondent-Respondent.

DECIDED October 1, 2003

Chief Justice Poritz

PRESIDING

OPINION BY Per Curiam

CONCURRING OPINION BY \_\_\_\_\_

DISSENTING OPINION BY \_\_\_\_\_

CHECKLIST	AFFIRM		
CHIEF JUSTICE PORITZ	X		
JUSTICE LONG	X		
JUSTICE VERNIERO	X		
JUSTICE LaVECCHIA	X		
JUSTICE ZAZZALI	X		
JUSTICE ALBIN	X		
JUSTICE WALLACE	X		
TOTALS	7		