BIENNIAL REPORT

OF THE

NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

ON THE

POLICE AND FIRE PUBLIC INTEREST ARBITRATION REFORM ACT, N.J.S.A. 34:13A-14, et seq., AS AMENDED BY P.L. 2010, c. 105 and P.L. 2014, c. 11

MARCH 2018

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INTRODUCTION

The Police and Fire Public Interest Arbitration Reform Act ("Reform Act" or "interest arbitration law"), P.L. 1995, c. 425, N.J.S.A. 34:13A-14, et seq. took effect on January 10, 1996. P.L. 2010, c. 105, effective January 1, 2011, enacted the first major amendments to the Reform Act. Those changes included the establishment of a 2% cap on arbitration awards and fast-tracking of the interest arbitration and appeals processes, and are outlined in more detail in the Commission's 2014 Biennial Report, which can be found on the Commission's website.[1] The 2010 amendments also created an eight-member Police and Fire Public Interest Arbitration Impact Task Force ("Task Force"), whose 2014 final report about the impact of P.L. 2010, c. 105 can be found at Tab 3 of the 2014 Biennial Report and on the Commission's website.[2] After certain provisions of the 2010 amendments, such as the 2% cap, expired on April 1, 2014, the Governor signed P.L. 2014, c. 11 on June 24, 2014, effective retroactive to April 2, 2014. P.L. 2014, c. 11 continued certain provisions of P.L. 2010, c. 105 and amended others. (Appendix, Tab 1).

[1] http://www.nj.gov/perc/Biennial%20Report%202%20January%202014.pdf

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

The 2014 amendments to the Reform Act included the following changes: the first meeting with the arbitrator is a mandatory mediation session; increased time from 45 to 90 days to issue award; increased time to file appeal of award to the Commission from 7 to 14 days; increased time for Commission to decide appeal from 30 to 60 days; increased maximum cost of arbitrator per case from $7,500 to $10,000; and allowed the 2% annual salary increase cap to be compounded annually over the contract term. These changes are outlined in more detail in the Commission's 2016 Biennial Report, available on the Commission's website.[3] The Task Force also issued a 2016 Annual Report about the impact of P.L. 2014, c. 11, which can be found at Tab 3 of the 2016 Biennial Report and on the Commission's website.[4] The Task Force's final report on P.L. 2014, c. 11 was due December 31, 2017; however, the panel was unable to obtain a majority vote in favor of a draft report, so no final report was issued and the Task Force expired. On December 31, 2017, the 2% cap provision of P.L. 2014, c. 11 expired, except for parties whose collective negotiations agreements expired prior to or on December 31, 2017 but for whom a final settlement had not yet been reached. Effectively, parties whose current or most recent agreements expire/d January 1, 2018 or later will not be subject to the 2% cap on annual salary increases in an interest arbitration award.

[3] http://www.nj.gov/perc/2016%20Biennial%20Report.pdf

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

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

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

In undertaking this charge, the Commission is mindful that interest arbitration has often been the focus of intense discussion by the parties to a specific case and the interest arbitration community as a whole. The Legislature has given interest arbitrators the authority to set contract terms that may significantly affect both management and labor, and participants in the process may at times voice their opinions about the interest arbitration statute. The Commission considers and responds to constituent concerns as appropriate within the existing statutory framework. Substantive policy discussions about the interest arbitration statute are the province of the Legislature, labor and management representatives, and the public in general. This report describes the Commission's actions to implement and administer the Reform Act and P.L. 2010, c. 105 and P.L. 2014, c. 11 in an impartial manner and in accord with the Legislature's direction.

IMPLEMENTATION AND ADMINISTRATION OF THE REFORM ACT

This 2018 Biennial Report provides historical data and information about the implementation and impact of the interest arbitration law, with primary focus on changes and developments in the two years (2016-2017) since the previous report. For interest arbitration statistics and appeals information going back further than what is contained in this report, one may access the prior biennial reports from the Commission's website at the "Reports" link found in the "Other Information" section of the "Reference" webpage.[5]

Amendments to the Interest Arbitration Law

On May 27, 2016, the Legislature enacted the "Municipal Stabilization and Recovery Act" (P.L. 2016, c. 4), which authorizes the State Local Finance Board, "under certain limited circumstances, to develop a comprehensive rehabilitation plan for local governments that are experiencing severe fiscal distress, and to act on behalf of local government units to remedy the distress." P.L. 2016, c. 4, among its many provisions, modified the interest arbitration law by adding two subsections to Chapter 16 of the Reform Act – N.J.S.A. 34:13A-16(i) and N.J.S.A. 34:13A-16(j). (Appendix, Tabs 1 and 2). N.J.S.A. 34:13A-16(i) provides that the Director of the Division of Local Government Services in the Department of Community Affairs may notify the Commission that a municipality deemed "in need of stabilization and recovery" will not participate in any impasse procedures, upon which notice the Commission must immediately cease and vacate any pending impasse procedures or interest arbitration

[5] http://www.nj.gov/perc/html/annual_reports.htm

petitions. N.J.S.A. 34:13A-16(j) provides that the Local Finance Board may subject an interest arbitration award involving a municipality deemed "in need of stabilization and recovery" to the review and approval of the Director of Local Government Services. Thus far, Atlantic City is the only municipality deemed in need of stabilization and recovery under this law. Pursuant to that designation and N.J.S.A. 34:13A-16(i), the Commission has vacated the interest arbitration petitions of two Atlantic City police units upon notice by the Director of Local Government Services that Atlantic City will not participate in impasse procedures under the Reform Act.

Amendments to the Interest Arbitration Rules

The Commission's interest arbitration rules are contained in Chapter 16 of the Commission's regulations (N.J.A.C. 19:16). In 2017, the Commission submitted proposed amendments to the interest arbitration rules to the Office of Administrative Law ("OAL"). The OAL published the proposed amendments on August 7, 2017 (49 N.J.R. 2509(a)). (Appendix, Tab 3). Following the receipt of public comments and Commission responses, the Commission adopted the proposed amendments and filed them with the OAL on January 25, 2018. On March 5, 2018, the proposed amendments to the interest arbitration rules became effective when the Commission's Notice of Adoption was published in the Register (50 N.J.R. 990(a)). (Appendix, Tab 4). These changes are now incorporated into N.J.A.C. 19:16.[6] (Appendix, Tab 5).

The 2018 amendments to N.J.A.C. 19:16 made the following changes to the interest arbitration rules:

[6] http://www.nj.gov/perc/PERC%20RULES%20-%20CHAPTER%2016.pdf

- Conformed the rules with P.L. 2014, c. 11 by extending the deadlines for the issuance of interest arbitration awards (90 days), the filing of appeals from such awards to the Commission (14 days), and the time within which the Commission must render a decision on the appeal (60 days).

- Formally adopted and updated the Commission's pilot program for expedited scope of negotiations determinations in interest arbitration.

- Codified administrative and judicial decisional law (Commission and court precedent) defining base salary items and the minimum calculations required of an interest arbitrator for determining the annual economic changes contained in an interest arbitration award, as well as what information must be provided to arbitrators in order to make those determinations.[7]

Special Panel of Interest Arbitrators

One of the Commission's most important responsibilities under the Act is maintaining a panel of highly qualified and experienced interest arbitrators. The Act makes it critical for the Commission to have an extremely competent panel, because it fundamentally changed the manner in which interest arbitrators are selected to hear cases. The statute requires that the Commission randomly select an arbitrator from its Special Panel of Interest Arbitrators. Thus, any member of the Special Panel may be assigned to the most complex and demanding interest arbitration. In recognition of this fact, the Commission continues to require that the Special Panel be composed of only those labor relations neutrals who, in the judgment of the Commission, have the demonstrated ability and experience to decide the most demanding interest arbitration matters in the most professional, competent and neutral manner. Thus, Commission rules have and will continue to require that a member of the panel must

[7] See, e.g., State of NJ and NJLESA, P.E.R.C. No. 2014-60, 40 NJPER 495 (¶160 2014), aff'd, 443 N.J. Super. 380 (App. Div. 2016), certif. den., 225 N.J. 221 (2016); and City of Atlantic City, P.E.R.C. No. 2013-82, 39 NJPER 505 (¶161 2013).

have: (1) an impeccable reputation for competence, integrity, neutrality and ethics; (2) the demonstrated ability to write well-reasoned decisions; (3) a knowledge of labor relations and governmental and fiscal principles relevant to dispute settlement and interest arbitration proceedings; (4) substantial experience as a mediator and an arbitrator; and (5) a record of competent performance on the Commission's mediation, fact-finding, and grievance arbitration panels. Panel members serve for fixed three-year terms and are eligible for reappointment. Currently, the panel consists of five members who meet the Commission's high standards.

The Commission continues to utilize its computer program to randomly select arbitrators. A description of the computer program is included in the Appendix, Tab 6, along with an April 28, 2014 recertification by the Commission's expert consultant, confirming that the program makes appointments in a random manner.

Continuing Education Programs for Special Panel Members

As part of its responsibility to administer the Reform Act, the Commission is required by N.J.S.A. 34:13A-16.1 to conduct regular continuing education programs for the Special Panel. The Commission's most recent programs have focused on interest arbitration awards and procedures since the 2014 amendments to the interest arbitration law, the property tax levy cap, health care costs, municipal finances, scope of negotiations, and interest arbitration appeals to the Commission and courts. (Appendix, Tab 7). The programs have been presented by Commission staff and have included the Director of the Division of Local Government Services, Department of Community Affairs, as a guest speaker. The Commission's continuing education programs also provide the annual ethics training required of interest arbitrators by

N.J.S.A. 34:13A-16(e)(4). In addition to providing continuing education for current Special Panel members, the Commission has an ongoing commitment to identifying talented and experienced labor relations neutrals who have the potential to become excellent interest arbitrators. It provides supplemental education to these neutrals.

Private Sector Wage Survey

In May 1996, the Commission arranged to have the New Jersey Department of Labor and Workforce Development, Division of Labor Market and Demographic Research ("NJLWD"), prepare the annual private sector wage survey required by the Reform Act, N.J.S.A. 34:13A-16.6. The first survey, prepared in September 1996, shows calendar year changes, through December 31, 1995, in the average private sector wages of individuals covered under the State's unemployment insurance system. Statistics are broken down by county and include a statewide average. Since 1997, the surveys also show changes in average wages by industry sector. Beginning with the 2002 survey, the NJLWD uses the North American Industry Classification System ("NAICS") to assign and tabulate economic data by industry.[8] Beginning with the 2015 survey, the wage surveys include a chart depicting the changes in average annual wages for the four sectors of New Jersey workers (private, federal, state, and local) since 2003. The two most recent annual surveys reflect wage data for calendar years 2014-2015 (2016 survey) and 2015-2016 (2017 survey)

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

and are included in the Appendix, Tab 8.[9] The 2016 report shows that from 2014-2015, private sector wages increased 3.1%, total government wages increased 2.3%, and state government wages increased 5.4%. The 2017 report shows that from 2015-2016, private sector wages increased 0.7%, total government wages increased 0.6%, and state government wages decreased by 0.7%.

AGENCY INITIATIVES

Interest Arbitration Resources and Information

As part of its statutory responsibility to administer the Reform Act, the Commission has aimed to provide the parties with a range of information enabling them to effectively participate in the interest arbitration process. In 2000, all interest arbitration awards issued after January 1996 were posted on the Commission's website, as were the Commission's interest arbitration appeal decisions. In 2006, the Commission began posting on its website all collective negotiations agreements and contract summary forms filed pursuant to a public employer's statutory obligation to file contracts with the Commission. Contracts are searchable by employer, employee organization, employer type, and county.

The Division of Local Government Services has assisted the Commission in collecting collective negotiations agreements by circulating notices to every municipal and county employer reminding them of their obligation, pursuant to N.J.S.A. 34:13A-8.2, to "file with the Commission a copy of any contracts it has negotiated with public employee representatives following consummation of negotiations." In 2015,

[9] The 2016 survey was issued on July 12, 2016, and the 2017 report was issued on June 30, 2017.

Local Government Services began including a question about compliance with N.J.S.A. 34:13A-8.2 in its annual "Best Practices Inventory" that each municipality must complete and achieve a minimum score on in order to secure state financial aid.[10] On the calendar year 2015/state fiscal year 2016 Best Practices questionnaires, 83%, or 463, of municipalities answered "Yes" to the question of whether they had filed their most recent collective negotiations agreements with the Commission. The 2016/2017 Best Practices Inventory did not include a N.J.S.A. 34:13A-8.2 compliance question. The 2017/2018 Best Practices Inventory added the N.J.S.A. 34:13A-8.2 compliance question back to the questionnaire, but the results have not yet been completed or updated on the Local Government Services website.

In addition, pursuant to N.J.S.A. 34:13A-16.8(d)(2) and the recommendations of the Task Force, the Commission designed a summary form which summarizes all costs and their impact associated with newly negotiated agreements. In the case of police and fire units, the summary form distinguishes between costs for base salary items, costs for other economic items, and medical insurance costs. In August 2016, the Commission revised the summary form to elicit a full accounting of the true costs of police and fire contract settlements, inclusive of increments, longevity, and other salary increases. The 2016 revised Police and Fire Collective Negotiations

[10] For information about the "Best Practices" program, including the Worksheet/Questionnaires, Answers, and Local Finance Notices about the program, see: http://www.state.nj.us/dca/divisions/dlgs/programs/best_practices.html

Agreement Summary Form[11] and Instructions[12] are available on the Commission's website and included in the Appendix, Tab 9. The Commission's Conciliation and Arbitration staff have increased efforts to remind public employers who submit new contracts to also submit properly completed summary forms. These efforts have been successful in increasing compliance and transparency for agreements settled without interest arbitration. In just over one year, from August 2016 through December 2017, public employers have submitted 93 fully completed police/fire summary forms to the Commission. This is in contrast to the nearly five year period from 2012-2016 when the Commission received only 199 old police and fire summary forms that did not provide the costs of increments or longevity for the new contracts.

In 2012, the Commission introduced a pilot program where, in limited cases, it will issue expedited scope of negotiations determinations on issues that are actively in dispute in interest arbitration proceedings subject to the processing deadlines contained in the 2010 and 2014 amendments. This program was the agency's response to arbitrators' concerns about how to contend with scope of negotiations disputes, along with all of the other interest arbitration requirements, within the new fast track time frames for issuing a final award. The procedural details of the expedited scope process were set forth in a Pilot Program Notice that was posted on the Commission's website. (See Appendix, Tab 10).

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

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

As noted earlier, the amendments to the interest arbitration rules published in 2017 and finalized in 2018 updated and codified the expedited scope of negotiations program. The decision of whether to issue an expedited scope of negotiations ruling during interest arbitration remains "within the sole, non-reviewable discretion of the Commission Chair." N.J.A.C. 19:16-5.5(c)(4). "If the Commission Chair determines not to issue an expedited scope of negotiations ruling, then any negotiability issues pending in interest arbitration may be raised to the interest arbitrator and either party may seek a negotiability determination by the Commission as part of an appeal from an interest arbitration award." N.J.A.C. 19:16-5.5(c)(8); See N.J.A.C. 19:16-5.7(l). When the fast track time lines were increased by P.L. 2014, c. 11 from 45 to 90 days, the Commission updated the pilot program by extending various deadlines for both the parties and the Commission. The time for filing a request for expedited scope determination was extended from five to ten days after the interest arbitration petition was filed; the time for the other party to respond was extended from three to seven days; the time for the Chair to decide whether to utilize the expedited procedure was extended from five to ten days after the request; and the time for the Commission or Chair to issue an expedited scope of negotiations decision was extended from 14 to 21 days after receipt of all briefs.

From 2012-2013, the Commission considered only one expedited scope of negotiations petition under the pilot program. From 2014-2015, the Commission considered three expedited scope of negotiations petitions under the pilot program. From 2016-2017, the Commission considered only one scope of negotiations petition

on an expedited basis under the pilot program.[13] In 2017 there was also an Appellate Division decision issued on an appeal from one of the Commission's 2015 expedited scope of negotiations decisions.[14] Of the 35 issues decided by the Commission in that case, the union appealed 14 and the employer appealed four. The Court affirmed the Commission on 16 of the 18 appealed issues, finding that only two of the union's challenged issues were mandatorily negotiable.

Impasse Procedures for Police and Fire Contract Negotiations

Parties may petition for mediation whenever negotiations reach an impasse. N.J.S.A. 34:13A-16(a)(2). After either party files a Notice of Impasse, a mediator is assigned. Mediation allows parties to reach a successor agreement more quickly and less expensively than interest arbitration, but even if it does not result in an agreement, it can reduce the number of issues to be resolved in interest arbitration, potentially saving the parties time and money in that forum. Either party may choose to invoke fact finding, at their own cost, if mediation is unsuccessful, and retains its right to file for interest arbitration after expiration of the previous contract. N.J.S.A. 34:13A-16(b). The filing of an interest arbitration petition will end any voluntary mediation or fact finding. N.J.S.A. 34:13A-16(b)(2). However, the 2014 amendments require the interest arbitrator to conduct an initial mediation session, regardless of whether the parties attempted voluntary mediation. N.J.S.A. 34:13A-16(b)(3).

[13] See Borough of Point Pleasant Beach, P.E.R.C. No. 2017-1, 43 NJPER 58 (¶14 2016); (Appendix, Tab 11).

[14] See City of Atlantic City, P.E.R.C. No. 2015-63, 41 NJPER 439 (¶137 2015), aff'd in part, rev'd in part, 44 NJPER 115 (¶36 App. Div. 2017); (Appendix, Tab 12).

In the most recent biennial period (2016-2017), 16 impasse petitions were filed (10 police, six fire). That is a little less than half of the number filed in the previous two-year period, as 34 impasse petitions were filed in 2014-2015 (27 police, seven fire). There were no requests for fact finding in 2016-2017. That is similar to previous years, as there was only one fact finding request in each of the two previous biennial periods (one in 2014-2015; one in 2012-2013). Of the 16 impasse petitions filed from 2016-2017, 12 contracts were settled during the mediation phase, while four are still in mediation. That settlement rate is higher than the two previous biennial periods, when nearly a third of all impasse petitions resulted in a petition for interest arbitration (23 of 71 impasse petitions from 2012-2015 proceeded to interest arbitration).

INTEREST ARBITRATION PETITIONS, AWARDS, AND SETTLEMENTS

Statistical Overview

The following chart reflects the number of petitions filed, arbitrators appointed, and awards issued each year under the interest arbitration law since 2008.[15] Note that in some cases, petitions filed in one year might have their arbitrators appointed or decisions issued in a later year.

Calendar Year	2008*	2009*	2010*	2011	2012	2013	2014	2015	2016	2017
IA Petitions Filed	107	117	121	23	48	28	88	20	9	29
Arbitrators Appointed	100	114	110	34	46	22	26	22	14	13
Mutual Selection	99	112	104	11^	0**	0**	0**	0**	0	0
By Lot Appointment	1	2	1	23	46	22	26	22	14	13
Awards Issued	15	19	14	34	37	27	12	6	8	4
IA Voluntary Settlements	58	43	45	38	29	8	16	9	7	5
Terminal Procedure:										
Conventional	15	18	13	34	36	27	12	6	8	4
Final Offer	0	1	1	0***	0***	0***	0***	0***	0***	0***

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

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

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

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

[15] For interest arbitration statistics for the years 1996-2007, see the 2008 Biennial Report, http://www.nj.gov/perc/IA_Biennial_Report_2008.pdf

As we noted in the 2016 Biennial Report, the number of interest arbitration petitions filed has decreased significantly since the January 1, 2011 effective date of the initial 2% cap law. We also noted that the number of filings (88) in 2014, though still less than pre-cap years, was an outlier for post-cap filings attributable to 74 filings made within a few days of the April 1, 2014 expiration of P.L. 2010, c. 105. More than half of those 74 filings were withdrawn (42), about one third settled (24), and only eight proceeded to interest arbitration. The following years, after the enactment of the amended 2% cap law in 2014, again saw significant drops in interest arbitration filings to 20 in 2015, nine in 2016, and 29 in 2017. The sharp increase from nine petitions in 2016 to 29 in 2017 may be attributable in part to similar causes as the 2014 spike, as 16 of the 29 petitions were filed in the final month before the expiration of the amended 2% cap on January 1, 2018.[16]

The number of interest arbitration awards issued over the last two years remained low (eight in 2016; four in 2017) as in the prior biennial period. As noted in the 2016 Biennial Report, the average number of awards in the initial three years that the 2% cap law was in effect (2011-2013) was approximately 32. That was double the average number of awards (16) in the three years prior to the 2% cap (2008-2010). However, from 2014-2017, the average number of awards decreased significantly to 7.5 per year, which is less than the pre-cap average.

[16] "[A]fter December 31, 2017, the provisions of section 2 of P.L.2010, c.105 (C.34:13A-16.7) shall become inoperative for all parties except those whose collective negotiations agreements expired prior to or on December 31, 2017 but for whom a final settlement has not been reached." N.J.S.A. 34:13A-16.9.

The numbers of voluntary settlements made after filing for interest arbitration have remained significantly lower than they were prior to 2011, with seven such settlements in 2016 and five in 2017. The average numbers of these "IA Settlements" in the three years prior to the initial 2% cap law (2008-2010) was approximately 48, which decreased by about half to 25 per year in the initial three years after the 2% cap law, and has now decreased further to an average of 9.25 per year from 2014-2017.

The thrust of many of the changes in the Reform Act, as amended in 2010 and revised in 2014, addressed the compensation components of interest arbitration awards. Besides the obvious 2% cap on annual increases in base salary, a significant aspect of the recent amendments is how "base salary" items were defined to include salary increments and longevity pay. In contrast, for awards issued to which the cap did not apply, these salary items were typically not calculated into the cost of the award. Thus any comparative analysis of pre- and post-cap awards must be adjusted by these figures, a task beyond the scope of this report.[17]

For 2008-2017, the average annual salary increases in interest arbitration awards were:

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

Year	IA Awards
2008	3.73%*
2009	3.75%*
2010	2.88%*
2011	2.05%*
2012**	1.98%
2013**	1.89%
2014**	1.69%
2015**	1.71%
2016**	1.94%
2017**	2.05%

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

** Includes only IA Awards subject to the 2% cap. For the average annual percentage increases of IA Awards since 2012 that were not subject to the 2% cap (based on the expiration date of their previous contract), see the Interest Arbitration Salary Increase Analysis chart. (Appendix, Tab 13).

As noted in the 2014 and 2016 Biennial Reports, the average salary increases in interest arbitration awards have decreased significantly from the years prior to 2012 as compared to the years after the 2% cap was enacted (though enacted in 2011, the first 2% cap award was not issued until 2012). (Appendix, Tabs 13-14). And, as discussed above, the pre-cap awards from 2008-2011 do not even take into account the costs of increments and longevity, so the true reduction in salary increases was even greater than what is represented by the percentages in the chart above. In 2016 and 2017, the average salary increases in awards subject to the 2% cap were 1.94% and 2.05% respectively, a small increase from the prior biennial period (1.69% in 2014; 1.71% in 2015). (Appendix, Tab 13). One factor affecting the most recent averages to explain the slight uptick and why the 2017 average exceeds 2% is that

P.L. 2014, c. 11 amended the 2% cap to allow interest arbitrators to annually compound it over the term of the contract. This allows for maximum annual base salary increases to average more than 2% by an amount that increases slightly with each additional year of the contract. In 2014 no awards exceeded 2%, in 2015 two out of six 2% cap awards exceeded 2%, in 2016 four out of five 2% cap awards exceeded 2%, and in 2017 the one 2% cap award exceeded 2%. All the awards that exceeded 2% complied with N.J.S.A. 34:13A-16.7 because they did not exceed the value of 2% compounded annually.

As for voluntary settlements made after filing for interest arbitration, the average annual salary increases from 2008-2017 were:

Year	IA Voluntary Settlements
2008	3.92%*
2009	3.60%*
2010	2.65%*
2011	1.87%*
2012	1.82%*
2013	1.96%*
2014	1.61%*
2015	1.73%*
2016	2.69%*
2017	1.86%*

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

The average salary increases in IA voluntary settlements were 2.69% in 2016 and 1.86% in 2017, which are slightly higher than in the previous biennial period

(1.61% in 2014; 1.73% in 2015). (Appendix, Tab 13). Overall, salary increases in IA voluntary settlements have remained lower since 2011 than in pre-cap years. (Appendix, Tabs 13-14). It must be noted that because voluntary settlements are not subject to the 2% cap, they might not include the costs of increments and longevity, so the true cost of salary increases is not represented in the above chart. Therefore, just as pre- and post-cap award percentages are difficult to compare because they account for different salary costs, an "apples-to-apples" comparison cannot be made between post-2010 IA voluntary settlements and post-2010 IA awards.

This year we also have meaningful data to report regarding average salary increases in police and fire contracts that settled before filing for interest arbitration. As discussed earlier, the modified 2016 summary form outlining contract costs, along with the efforts of Commission staff and the Division of Local Government Services, have resulted in the submission of 93 non-IA voluntary settlement summary forms that provide all of the salary increase information (increments, longevity, etc.) that has typically only been accounted for in 2% cap arbitration awards. The seven non-IA settlements received in late 2016 averaged 3.16% in annual salary increases (Appendix, Tab 13). The 86 non-IA settlements received in 2017 averaged 3.53% in average annual salary increases. (Appendix, Tab 13). This suggests that even with the backstop of the 2% interest arbitration cap to limit the salary costs of a new contract, public employers are still willing to voluntarily negotiate much higher salary increases. We can only speculate on the various reasons why public employers would prefer to voluntarily settle for higher salary costs. It could be that public employers were able to secure significant concessions in non-salary economic items

or non-economic items that were greater priorities to them than limiting overall salary increases to 2% annually, and the achievement of those terms would not have been guaranteed if the issues were presented to an interest arbitrator. Perhaps some public employers do not prefer the interest arbitration process due to the costs, time for preparation of documents and hearings, or the more formally adversarial nature of it compared to negotiations, mediation, or fact finding. There might also be unit-specific circumstances where a police department has a particularly large contingent of new and young officers who are due to earn increments on the current salary guide that will exceed the 2% cap, and the department would rather allow that guide advancement now while considering capping further salary increases in the next round of contract negotiations.

INTEREST ARBITRATION APPEALS

The following statistics pertain to interest arbitration appeals filed since the 1996 adoption of the Reform Act through December 31, 2017. Some cases may be appealed and disposed in different calendar years.

Calendar Year	1996-2009	2010	2011	2012	2013	2014	2015	2016	2017
Appeals to Commission	51	14	13	22	9	5	3	6	2
Appeals Withdrawn	20	5	4	1	1	0	0	2	0
Awards Affirmed*	17	3	8	9	6	2	2	0	2
Awards Affirmed with Modification	2	1	1	0	1	1	1	1	0
Awards Remanded	14	2	4	9	3	1	1	3	0
Leave to Appeal Denied	3	0	1	0	0	0	1	0	0
Appeals Dismissed	-	-	-	3	1	0	0	0	0
Appeals to Appellate Division	5	2	5	7	5	2	2	1	0
Appeals (Petition for Certif.) to Supreme Court	1	0	0	0	0	0	1	1	0

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

Several appeals to the Commission were filed in 1997 and in 1998, resulting in a series of decisions that set forth the Commission's standard of review; interpreted the Reform Act's provisions; and provided guidance for arbitrators concerning the analysis required by the Reform Act. After this series of initial decisions, the number of appeals declined from 1999 through 2009 to between zero and five appeals per year, but increased significantly in the initial years after the passage of P.L. 2010, c. 2015 (2010-2013) to between nine and 22 appeals per year. However, from 2014-2017, the numbers of interest arbitration appeals have subsided. In 2016 there were

six interest arbitration appeals filed with the Commission, and in 2017 there were only two appeals. The decreased number of appeals might be attributable to the following two factors: 1) Commission and court precedent from the many appeals following the passage of P.L. 2010, c. 105 has settled the majority of issues and questions arising from the new reforms; and 2) the overall number of interest arbitration filings that have proceeded to final interest arbitration awards has decreased significantly in the last four years compared to the previous four years.

Six of the eight interest arbitration appeals to the Commission in 2016-2017 were from awards on petitions filed under fast track resolution pursuant to the 2010 and 2014 amendments to the Reform Act. Five of those six appeals were also subject to the amended 2% cap, while the other one -- though the petition was filed in 2017 -- was not a 2% cap case because its contract term related back to the pre-2011 expiration of the parties' previous contract.[18] In 2016, the Commission issued three decisions on interest arbitration appeals.[19] (Appendix, Tab 15). Two of those decisions remanded the award back to the arbitrator, and one affirmed the award with modification. In 2017, the Commission issued two decisions on interest arbitration appeals, both of which affirmed the awards.[20] (Appendix, Tab 15).

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[18] This non-2% cap case was still subject to fast track processing per N.J.S.A. 34:13A-16(f)(5) because the interest arbitration petition was filed after December 31, 2010.

[19] A single consolidated decision addressed the two pre-2011 (non-fast track and non-2% cap) cases on appeal because they involved multiple units of the same employer, two of the 2% cap appeals decisions were from the same parties due to appeals from both the initial award and remand award, and two of the 2016 appeals were withdrawn before a Commission decision was issued.

[20] One decision was a 2% cap case; the other was the non-2%, fast track case.

The 2016-2017 Commission decisions on interest arbitration appeals are summarized below.

In State of New Jersey (Division of State Police), P.E.R.C. No. 2016-69, 42 NJPER 505 (¶141 2016), the Commission remanded an interest arbitration award to the arbitrator for reconsideration and issuance of a new award establishing the terms of a successor agreement between the State and STFA. The Commission found that the arbitrator did not follow the New Milford[21] standard for compliance with the statutory 2% cap because he relied on the State's calculations without placing the calculations in the body of the decision. Therefore, the award was remanded for the arbitrator to demonstrate how the base year and salary increase calculations meet the requirements of N.J.S.A. 34:13A-16.7. The Commission also ordered that the arbitrator clarify where he addressed the statutory N.J.S.A. 34:13A-16(g)(9) factor with respect to the transportation allowance and education incentive proposals. The Commission determined that the arbitrator correctly included maintenance pay and acting sergeant's pay in the base year salary calculation, and correctly excluded retroactive payments from the base year salary calculation.

In State of New Jersey (Division of State Police), P.E.R.C. No. 2017-20, 43 NJPER 133 (¶42 2016), the Commission considered the arbitrator's remand award, which both the State and STFA appealed. The Commission affirmed the interest arbitrator's application of the 2% cap, as well as non-salary economic items. However, the Commission modified the award by removing the arbitrator's grant of

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

two year's worth of previously frozen increments on the last day of the award. The Commission found that such a salary increase in the transition from this award to the parties' next contract would incorporate large carryover costs that would not be sufficiently accounted for in either contract and could handicap the next round of negotiations. The Commission held that even though that aspect of the award did not technically violate the 2% cap, it violated other sections of the Act, particularly N.J.S.A. 34:13A-16(g)(1) and (6), by undermining legislative intent to control costs and disregarding the financial impact of the step movement on the taxpayer. The STFA appealed the decision to the Appellate Division, where it is now pending.

In City of Orange Township, P.E.R.C. No. 2017-13, 43 NJPER 101 (¶31 2016), the Commission remanded an interest arbitration award to the arbitrator for a supplemental award. The City of Orange appealed from the award setting the terms of collective negotiations agreements for a police officer unit and two fire fighter units. The Commission remanded the award for explanation and clarification of the financial impact of the salary award, particularly to set forth calculations showing the total projected net economic changes for each year of the award resulting from all salary increases including salary guide advancement. The Commission also remanded the award for specification of which evidence was relied upon and for a more thorough explanation of the statutory factors he considered relevant or not relevant. Prior to issuance of the remand award, the police unit settled. The remand award, applicable to the fire units, was issued in 2017 and was not appealed.

In New Jersey Transit, P.E.R.C. No. 2017-69, 44 NJPER 11 (¶5 2017), the Commission affirmed an interest arbitration award establishing the terms of a

successor agreement between PBA Local 304 and New Jersey Transit. New Jersey Transit appealed, arguing that an ex parte communication to the arbitrator after the record closed tainted the award. The Commission held that the arbitrator addressed all of the N.J.S.A. 34:13A-16g statutory factors, adequately explained the relative weight given, analyzed the evidence on each relevant factor, and did not violate N.J.S.A. 2A:24-8 and -9 in her handling of the ex parte communication.

In City of Jersey City, P.E.R.C. No. 2018-22, __ NJPER __ (¶_ 2017), the Commission affirmed an interest arbitration award establishing the terms of a successor agreement between the POBA and the City. The POBA appealed the award, arguing that with respect to longevity, contract duration, compensatory time, tour exchanges, vacation deferral, and injury and sick leave, the arbitrator did not require the City to satisfy the burden necessary to justify modification of existing terms and conditions of employment and placed almost exclusive reliance on internal comparability while ignoring the other statutory factors. The Commission held that the arbitrator's award addressed all of the N.J.S.A. 34:13A-16g factors, adequately explained the relative weight given, was based on sufficient evidence, analyzed the evidence on each relevant factor, and did not violate N.J.S.A. 2A:24-8 and -9. The POBA appealed the decision to the Appellate Division, where it is now pending.

From 2016-2017, the courts issued three decisions reviewing the Commission's interest arbitration appeals decisions. (Appendix, Tab 16). Those decisions are summarized below.

In State of NJ and New Jersey Law Enforcement Supervisors Association, P.E.R.C. No. 2014-60, 40 NJPER 495 (¶160 2014), aff'd, 443 N.J. Super. 380 (App.

Div. 2016), certif. den., 225 N.J. 221 (2016), the Commission affirmed an award, holding that the arbitrator's use of the State's scattergram and decision not to credit the unit with the State's actual savings in the first two years of the award is consistent with N.J.S.A. 34:13A-16.7(b) and Commission precedent. The Commission held that whether speculative or known, any changes in financial circumstances benefitting the employer or union are not contemplated by the statute and should not be considered by the arbitrator. The union appealed to the Appellate Division which affirmed the Commission's decision, holding that it fully comported with precedent and the Reform Act's 2% salary cap. This was the first published Appellate Division decision affirming the Commission's application of the 2% cap law, including the determination of base salary and calculation of increases to base salary items. The Supreme Court denied the union's petition for certification.

In Borough of Oakland and PBA Local 164, P.E.R.C. No. 2015-075, 42 NJPER 30 (¶7 2015), aff'd, 43 NJPER 221 (¶67 App. Div. 2017), the Commission affirmed an interest arbitration award establishing the terms of a successor agreement between the Borough of Oakland and PBA Local 164. The PBA appealed, asserting that the arbitrator modified contract provisions, mostly related to new hires, without making any cost analysis for each year of the contract. The Commission found that the arbitrator properly did not factor projected retirements or new hires into his calculations under the 2% cap, and was not required to provide a cost analysis for modifications of economic terms for new hires. The Commission also found that the arbitrator addressed all of the N.J.S.A. 34:13A-16(g) statutory factors, adequately explained the relative weight given, and analyzed the evidence on each relevant factor. The PBA

appealed to the Appellate Division, which affirmed the Commission's decision. The court agreed with the Commission and arbitrator that: "A full cost-out of these changes for new hires is impossible and has not been required in prior PERC decisions." The court found that the arbitrator appropriately applied New Milford by only using actual, known personnel and salary numbers for the 12 months preceding the new agreement in order to determine what could be awarded under the 2% cap, and then projected costs for the duration of the agreement from the total base salary of the officers on the roster as of the day before the start of the new agreement. The Court also found that the arbitrator appropriately addressed every 16(g) factor and explained the relative weight given to each one.

In State of New Jersey and FOP Lodge 91, P.E.R.C. No. 2016-11, 42 NJPER 168 (¶42 2015), aff'd, 450 N.J. Super. 586 (App. Div. 2017), the Commission affirmed in part, and modified in part, an interest arbitration award on remand establishing the terms of the first collective negotiations agreement between the State of New Jersey and FOP Lodge 91. The State and FOP cross-appealed. The Commission denied the FOP's requests to reconsider its decision in an earlier appeal from the arbitrator's initial award regarding the applicability of the statutory 2% cap to the newly certified unit (P.E.R.C. 2015-50). With respect to the salary award and calculations, the State argued the award violated the 2% cap. The Commission found that the arbitrator's methodology complied with the interest arbitration statute and Commission precedent. The State also appealed the arbitrator's award of various non-salary economic items and non-economic items, which the Commission analyzed under the N.J.S.A. 34:13A-16(g) statutory factors. The Commission denied the State's requests to

vacate some of those portions of the award, but granted the State's requests to modify or vacate other non-salary and non-economic items in the award. The FOP appealed to the Appellate Division and the State cross-appealed.

The Appellate Division affirmed the Commission's determination that the 2% cap applies to newly certified units who file for interest arbitration. The court held: "We reject the FOP's argument, because read as a whole and construed in light of its purposes, the Police and Fire Interest Arbitration Reform Act both entitles a newly certified unit to demand interest arbitration and subjects that arbitration process to the two percent cap. Read literally, the Act does not permit interest arbitration for newly certified bargaining units or subject such arbitration to the cap. Both N.J.S.A. 34:13-16(b)(2), requiring interest arbitration, and the section setting forth the two percent cap, N.J.S.A. 34:13A-16.7(b), apply by their terms to situations in which an existing CNA is expiring. However, a literal reading of the Act would produce absurd results, contrary to its purpose." The court concluded: "Accordingly, we agree with PERC that the FOP cannot obtain the Act's benefits without also accepting its burdens. Interpreting the Act to give newly certified bargaining units the benefit of interest arbitration without the financial limit of the two percent cap would produce a skewed result, at odds with the Legislature's intent in enacting the salary cap provision." As for the State's cross-appeal, prior to oral argument it withdrew its appeal of the Commission's determination that the awarded salary increases complied with the 2% cap. As for the non-salary items appealed by the State, the court affirmed the Commission's decision upholding those aspects of the award.

CONCLUSION

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

APPENDIX

TAB

2018 BIENNIAL REPORT

TAB 1

Police and Fire Public Interest Arbitration Reform Act

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

The Legislature finds and declares:

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

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

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

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

L. 1977, c. 85, s. 1; Amended 1995, c. 425, s. 2.

34:13A-14a. Short title

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

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

34:13A-15. Definitions

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

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

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

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

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

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

charge shall not delay or impair the impasse resolution process.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) Stipulations of the parties.

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

(6) The financial impact on the governing unit, its residents, the limitations imposed upon the local unit's property tax levy pursuant to section 10 of P.L.2007, c.62 (C.40A:4-45.45), and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take into account, to the extent that evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element or, in the case of a county, the county purposes element, required to fund the employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers of the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in a proposed local budget.

(7) The cost of living.

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

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

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

i. The Director of the Division of Local Government Services in the Department of Community Affairs may notify the commission, through the Division of Public Employment Relations, that a municipality deemed a "municipality in need of stabilization and recovery" pursuant to section 4 of P.L.2016, c.4 (C.52:27BBBB-4) will not participate in any impasse procedures authorized by this section. Upon such notice, any pending impasse procedures authorized by this section shall immediately cease, and any pending petition for arbitration shall be vacated. Nothing in this subsection shall be construed to limit the scope of any general or specific powers of the Local Finance Board or the director set forth in P.L.2016, c.4 (C.52:27BBBB-1 et al.).

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

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

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

The commission shall establish an annual continuing education program for the arbitrators appointed to its special panel of arbitrators. The program shall include sessions or seminars on topics and issues of relevance and importance to

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

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

L. 1995, c. 425, s. 4.

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.

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

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

L. 1995, c. 425, s. 6.

34:13A-16.4. Biennial reports

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

L. 1995, c. 425, s. 7.

34:13A-16.5. Rules, regulations

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

L. 1995, c. 425, s. 8.

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

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

L. 1995, c. 425, s. 9.

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

a. As used in this section:

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

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

b. An arbitrator shall not render any award pursuant to section 3 of P.L.1977, c.85 (C.34:13A-16) which, in the first year of the collective negotiation agreement awarded by the arbitrator, increases base salary items by more than 2.0 percent of the aggregate amount expended by the public employer on base

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

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

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

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

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

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

(1) four to be appointed by the Governor;

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

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

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

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

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

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

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

f. The task force shall annually report its findings, along with any recommendations it may have, to the Governor and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the

Legislature. The task force's final report due on or before December 31, 2017 shall include, in addition to any other findings and recommendations, a specific recommendation for any amendments to the arbitration award cap. Upon the filing of its final report on or before December 31, 2017, the task force shall expire.

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

34:13A-16.9. Effective date

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

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

34:13A-17. Powers of arbitrator

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

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

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

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

L. 1977, c. 85, s. 5; Amended 1997, c. 330, s. 4.

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

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

L. 1977, c. 85, 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.

2018 BIENNIAL REPORT

TAB 2

P.L. 2016, c. 4, § 6, eff. May 27, 2016

6. Section 3 of P.L.1977, c.85 (C.34:13A-16) is amended to read as follows:

. . .

i. The Director of the Division of Local Government Services in the Department of Community Affairs may notify the commission, through the Division of Public Employment Relations, that a municipality deemed a "municipality in need of stabilization and recovery" pursuant to section 4 of P.L.2016, c.4 (C.52:27BBBB-4) will not participate in any impasse procedures authorized by this section. Upon such notice, any pending impasse procedures authorized by this section shall immediately cease, and any pending petition for arbitration shall be vacated. Nothing in this subsection shall be construed to limit the scope of any general or specific powers of the Local Finance Board or the director set forth in P.L.2016, c.4 (C.52:27BBBB-1 et al.).

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

2018 BIENNIAL REPORT

TAB 3

(a)

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Negotiations, Impasse Procedures, and Compulsory Interest Arbitration of Labor Disputes in Public Fire and Police Departments

Proposed Amendments: N.J.A.C. 19:16-1.1, 4.1, 5.2, 5.5, 5.7, 5.8, 5.9, 5.11, 5.12, 5.14, and 8.1

Authorized By: Public Employment Relations Commission, P. Kelly Hatfield, Chair.

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

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2017-179.

Submit comments by October 6, 2017, to:

P. Kelly Hatfield, Chair
Public Employment Relations Commission
PO Box 429
Trenton, New Jersey 08625-0429

Comments may also be submitted via facsimile to 609-777-0089 or via e-mail to rulecomments@perc.state.nj.us.

The agency proposal follows:

Summary

The proposed amendments provide for implementation of P.L. 2014, c. 11, which amended and supplemented P.L. 1977, c. 85, P.L. 1995, c. 425, and P.L. 2010, c. 105. The statutes are collectively known as the "Police and Fire Public Interest Arbitration Reform Act." These laws provide for compulsory interest arbitration to resolve collective negotiations impasses in public fire and police departments and supplement the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq.

The rules describe: procedures for initiating interest arbitration; the required content of petitions and responses; filing fees; appointment of arbitrators; hearing procedures; the required content of an arbitration award; and procedures for appealing awards to the Commission. The rules also include guidelines to be used by the parties and arbitrators in applying the statutory comparability criterion, N.J.S.A. 34:13A-16(g)(2); standards for appointment and reappointment to the special panel of interest arbitrators; and procedures for suspending, disciplining or removing arbitrators from the special panel during an arbitrator's three-year term.

Proposed amendments to the rules would conform N.J.A.C. 19:16 to requirements imposed by P.L. 2014, c. 11, in particular the modified deadlines for the issuance of interest arbitration awards, the filing of appeals and cross-appeals from such awards with the Commission, and the time within which the Commission must issue its decision resolving the parties' appeals. Amendments are also proposed to codify a procedure that has been used by the Commission pertaining to expedited scope of negotiations determinations to clarify whether a disputed proposal may be submitted to interest arbitration. Since the effective date of that law, the Commission has modified its administration of interest arbitration cases to conform to the new mandates. The amendments would formally incorporate modifications to meet the changes in the interest arbitration statute mandating that:

- The completion of interest arbitration hearings and the issuance of an interest arbitration award within 90 days after an arbitrator is appointed;
- Any appeal of an interest arbitration award be filed with the Commission within 14 days after the issuance of an award;
- The Commission must issue a written decision within 60 days after it receives an appeal;
- In all cases, an interest arbitration award must be implemented immediately; and
- The Commission adopt a fee schedule for the compensation of interest arbitrators providing for a maximum fee of $1,000 per day up to a limit of $10,000 per case.

The amendments would also make non-substantive changes eliminating unnecessary language.

Following is a summary of the specific proposed amendments:

At N.J.A.C. 19:16-1.1, Purpose of procedures, the proposed amendment explains that the rules implement the most recent changes to the statute contained in P.L. 2014, c. 11.

At N.J.A.C. 19:16-4.1, Initiation of fact-finding, paragraphs (a)7 and 8 are proposed for deletion because the language is duplicative of N.J.A.C. 19:16-3.1(a)5 and 6, which already require submission of identical information.

At N.J.A.C. 19:16-5.2, Initiation of compulsory interest arbitration, paragraphs (a)3 and 4 are proposed for deletion as they repeat language that has been a part of the interest arbitration law since the enactment of P.L. 2010, c. 105; therefore, these paragraphs are unnecessary.

At N.J.A.C. 19:16-5.5, Response to the petition requesting the initiation of compulsory interest arbitration, subsection (c) is proposed amendment to incorporate a reference to the expedited scope of negotiations procedure used by the Commission in interest arbitration cases. New paragraphs (c)1 through 8 describe how such cases will be processed and decided, replacing the existing list in subsection (c).

At N.J.A.C. 19:16-5.7, Conduct of the arbitration proceeding, the proposed amendment, replacing subsection (c), would require that the first meeting among the arbitrator and the parties be a mediation session to effect a voluntary resolution of the impasse and that the arbitrator, throughout the proceedings, may mediate or assist the parties in reaching a mutually agreeable settlement.

Proposed new N.J.A.C. 19:16-5.7(g)1 specifies the contents of a pre-hearing notice to be issued by the arbitrator to the parties, which shall contain a deadline for the public employer to provide salary and economic cost information pertinent to the employees in the collective negotiations unit.

At N.J.A.C. 19:16-5.7(g)2, the proposed amendment increases to 10 days before the hearing, from the previous two days, the deadline for the submission of each party's final offer to the arbitrator.

At N.J.A.C. 19:16-5.7(i), the proposed amendment incorporates a reference to the expedited scope of negotiations determination and specifies how the arbitrator shall proceed where such a determination has been made and also where such a determination is not made.

At N.J.A.C. 19:16-5.7(l) and (m), the proposed amendments would conform the subsections to the changes made by P.L. 2014, c. 11, which expanded the time limit within which an interest arbitration award must be issued from 45 days to 90 days.

At N.J.A.C. 19:16-5.8, Stenographic record, the proposed amendment provides that any delay in receiving the record shall not serve to delay the 90-day time period (changed from 45-day) for issuing an award or the 14-day time limit (changed from seven-day) for appealing an award.

At N.J.A.C. 19:16-5.9, Opinion and award, the proposed amendment to subsection (a) would conform the subsection to the changes made by P.L. 2014, c. 11, which expanded the time limit within which an interest arbitration award must be issued from 45 days to 90 days.

The proposed amendment to N.J.A.C. 19:16-5.9(b) deletes the final sentence as the context of this sentence is already covered by the prior three sentences in this subsection. The proposed deletion contains nothing related to substance or procedure.

Proposed new N.J.A.C. 19:16-5.9(c) would codify the requirement that the arbitrator's award must comply with the two percent average annual cap on increases in base salary items as required by N.J.S.A. 34:13A-16.7, as amended by P.L. 2014, c. 11.

At N.J.A.C. 19:16-5.11, Cost of arbitration, the proposed amendment would, in accordance with P.L. 2014, c.11, raise the ceiling on fees for the arbitrator's services to $10,000 (or other amount set by statute) from $7,500.

At N.J.A.C. 19:16-5.12, Fees for filing and processing interest arbitration petitions, the final sentence of subsection (b) is proposed for deletion because delaying the commencement of interest arbitration proceedings until the second party remits its fee would conflict with the mandates contained in P.L. 2014, c. 11 that: (1) an interest arbitrator be assigned by the Commission one business day after a petition is filed; and (2) an award be issued within 90 days thereafter. The removal of the language would prevent a delay in remission of a fee to act as an impediment to the commencement and/or completion of interest arbitration.

At N.J.A.C. 19:16-8.1, Appeals and cross-appeals, the proposed amendment to subsection (a) would reflect that in accordance with P.L. 2014, c. 11, the time to appeal an interest arbitration award with the Commission has been increased from seven to 14 days and to clarify that the 14-day time limit also applies to cross-appeals; as a result of this amendment, existing subsection (b) is proposed for deletion. A proposed amendment to recodified subsection (b) would also reflect the enlargement of the appeal period to 14 days; as a result of this amendment, existing subsection (d) is proposed for deletion. The proposed amendment to recodified subsection (d) would conform the rule to the changes made by P.L. 2014, c. 11, which expanded from 30 days to 60 days, the time limit within which the Commission must issue a decision on an appeal from an interested arbitration award.

As the Commission has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The Police and Fire Public Interest Arbitration Reform Act, as most recently amended by P.L. 2014, c. 11, provides for conventional interest arbitration as the sole terminal procedure for resolving negotiations impasses involving police officers and firefighters in public police and fire departments. The Legislature has determined that an expeditious, effective, and binding arbitration procedure is necessary to the high morale of police officers and firefighters, the efficient operation of police and fire departments, and the well-being and benefit of the citizens of New Jersey. N.J.S.A. 34:13A-14.a. The Commission believes that the proposed amendments, needed to conform the rules to new substantive and procedural requirements, including modified deadlines made by P.L. 2014, c. 11, will benefit the public, as well as employers and employees participating in interest arbitration by continuing the framework for conducting the process and by ensuring that it proceeds expeditiously and is not needlessly delayed in accordance with the intent of the Legislature reflected in the provisions of P.L. 2014, c. l1 and the statements accompanying that law.

Economic Impact

The proposed amendments address the procedures and deadlines governing the interest arbitration process involving police officers and firefighters. Included are procedures and deadlines for petitioning for arbitration, submitting final offers, issuing awards, and appealing awards. Also included are the codification of the Commission's procedure for Expedited Scope of Negotiations Determinations. The proposed amendments are intended to make the process less costly to public employers.

Federal Standards Statement

The National Labor Relations Act excludes from its coverage "any State or political subdivision thereof." See 29 U.S.C. § 152(2). No Federal law or regulation applies and the Commission cannot rely upon a comparable Federal rule or standard to achieve the aims of the Police and Fire Public Interest Arbitration Reform Act, as amended by P.L. 2014, c. 11. The proposed amendments are, thus, necessary and proper.

Jobs Impact

The proposed amendments should have no direct impact on jobs to be generated or lost as a result of their promulgation.

Agriculture Industry Impact

The Commission's jurisdiction is limited to employer-employee relations in public employment. The proposed amendments impose no requirements on the agriculture industry.

Regulatory Flexibility Statement

The Commission's jurisdiction is limited to employer-employee relations in public employment. The proposed amendments impose no requirements on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-1 et seq.

Housing Affordability Impact Analysis

The proposed amendments will have no impact on the affordability of housing because the rules are designed to resolve collective negotiations impasses between public employers and the representatives of their police officers and fire fighters.

Smart Growth Development Impact Analysis

The proposed amendments will have no impact on housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan because the rules are designed to resolve collective negotiations impasses between public employers and the representatives of their police officers and fire fighters.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. PURPOSE OF PROCEDURES

19:16-1.1 Purpose of procedures

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

(b)-(d) (No change.)

SUBCHAPTER 4. FACT-FINDING

19:16-4.1 Initiation of fact-finding

(a) If the parties fail to resolve the impasse through mediation, the public employer, the employee representative, or the parties jointly may request the Director of Conciliation and Arbitration, in writing, to invoke fact-finding and upon receipt of such request, fact-finding with recommendations for settlement shall be invoked. An original and four

copies of such request shall be filed with the Director of Conciliation and Arbitration, together with proof of service upon the other party. The request shall be signed and dated and shall contain the following information:

1.-6. (No change.)

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

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

Recodify existing 9.-10. as **7.-8.** (No change in text.)

(b)-(e) (No change.)

SUBCHAPTER 5. COMPULSORY INTEREST ARBITRATION

19:16-5.2 Initiation of compulsory interest arbitration

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

1.-2. (No change.)

[3. Either party may petition the Commission for compulsory interest 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.

4. The non-petitioning party, within five days of receipt of the petition, shall separately notify the Commission in writing of all issues in dispute. The filing of the written response shall not delay, in any manner, the interest arbitration process.]

[5.] **3.** Any mediation or fact-finding [invoked pursuant to (a)2 above or (b)1 below] shall terminate immediately upon the filing of a petition for arbitration.

(b)-(c) (No change.)

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

(a)-(b) (No change.)

(c) Where a dispute exists with regard to whether an unresolved issue is within the required scope of negotiations, the party asserting that an issue is not within the required scope of negotiations shall file with the Commission **Chair,** a petition for **an expedited** scope of negotiations determination [pursuant to N.J.A.C. 19:13. This petition must be filed within: five days of the filing of a joint petition; five days of receipt of the Director of Conciliation and Arbitration's notice of filing of the petition requesting the initiation of compulsory interest arbitration; 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]. **The failure to file a request for a scope determination pursuant to N.J.A.C. 19:13 or this chapter shall be deemed a waiver of the negotiability objection.**

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

2. The issues for which a negotiability determination is sought must be among those identified as being in dispute in either the interest arbitration petition or the response to the interest arbitration petition. The Commission will not determine the negotiability of any issues that are no longer in dispute during the pending interest arbitration. It shall be the obligation of all parties to immediately advise the Commission Chair and the assigned interest arbitrator that an issue that is the subject of a pending scope of negotiations petition is no longer actively in dispute during interest arbitration.

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

4. Within 10 days after receipt of an expedited scope of negotiations petition, the Commission Chair will advise the parties whether the petition will be resolved using the expedited procedure. The decision to issue an expedited scope of negotiations ruling during the pendency of a compulsory interest arbitration proceeding shall be within the sole, non-reviewable discretion of the Commission Chair.

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

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

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

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

(d) (No change.)

19:16-5.7 Conduct of the arbitration proceeding

(a)-(b) (No change.)

[(c) The appointed arbitrator may mediate or assist the parties in reaching a mutually agreeable settlement at any time throughout formal arbitration proceedings. However, mediation efforts shall not stay or extend the deadlines for issuance of an award or the filing of an appeal.]

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

(d)-(e) (No change.)

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

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

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

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

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

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

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

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

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

(h) (No change.)

(i) Unless the Commission Chair [directs otherwise] **decides to issue an expedited scope of negotiations determination pursuant to N.J.A.C. 19:16-5.5(c)**, if a party objects to an issue as being outside the scope of mandatorily negotiable subjects, the parties may state their positions to the arbitrator on the record. The arbitrator shall be permitted to take evidence and render a **preliminary** decision on the issue **for purposes of rendering the award**. Any further negotiability argument may be made to the Commission post-award if **the award is** appealed [and provided the negotiability objection has not been waived by a party's failure to file a timely petition for scope of negotiations determination].

(j)-(k) (No change.)

(l) The parties, at the discretion of the arbitrator, may file post-hearing briefs. The arbitrator, after consultation with the parties, shall have the authority to set a time period for the submission of briefs, but that period shall not stay the [45-day] **90-day** time period, or such other period of time that may be set by N.J.S.A.34:13A-14 et seq., for issuing an award. The parties shall not be permitted to introduce any new factual material in the post-hearing briefs, except upon special permission of the arbitrator.

(m) An arbitrator must issue an award within [45] **90** days from appointment or within such other period of time that may be set by N.J.S.A. 34:13A-14 et seq.

(n) (No change.)

19:16-5.8 Stenographic record

(a)-(c) (No change.)

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

1. The [45-day] **90-day** time period, or such other period of time that may be set by N.J.S.A. 34:13A-14 et seq., for rendering an award; or

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

19:16-5.9 Opinion and award

(a) If the impasse is not otherwise resolved, the arbitrator shall decide the dispute and issue a written opinion and award within [45] **90** days, or within such other period of time that may be set by N.J.S.A. 34:13A-14 et seq., of the Director of Conciliation and Arbitration's assignment of that arbitrator. Any arbitrator who fails to issue an award within [45] **90** days, or within such other period of time that may be prescribed by N.J.S.A. 34:13A-14 et seq., shall be fined $1,000 per each day late.

(b) Each arbitrator's decision shall be accompanied by a written report explaining how each of the statutory criteria played into the arbitrator's determination of the final award. The opinion and award shall be signed and based on a reasonable determination of the issues, giving due weight to those factors listed in N.J.S.A. 34:13A-[16(g) which are judged relevant for the resolution of the specific dispute. In the award, the arbitrator shall indicate which of the factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor. The opinion and award shall set forth the reasons for the result reached]**16.g**.

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

Recodify existing (c)-(e) as **(d)-(f)** (No change in text.)

19:16-5.11 Cost of arbitration

(a) (No change.)

(b) The fee for services provided by the arbitrator shall not exceed $1,000 per day**, or such other amount that may be prescribed by N.J.S.A. 34:13A-14 et seq**. The total cost of services provided by an arbitrator shall not exceed [$7,500] **$10,000, or such other amount that may be prescribed by N.J.S.A. 34:13A-14 et seq**.

(c) (No change.)

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

(a) (No change.)

(b) The petition shall not be processed until the petitioning party pays the filing fee of $175.00. [The processing of the petition shall be deemed suspended until the required fee is received from the non-petitioning party.]

(c) (No change.)

19:16-5.14 Comparability guidelines

(a) N.J.S.A. 34:13A-[16g]**16.g** identifies the factors that an interest arbitrator must consider in reviewing the parties' proposals. In addition, in every interest arbitration proceeding, the parties shall introduce evidence regarding the factor set forth in N.J.S.A. 34:13A-[16g(6)]**16.g**(6): the financial impact on the governing unit, its residents, the limitations imposed upon the local unit's property tax levy pursuant to P.L. 2007, c. 62, section 10 (N.J.S.A. 40A:4-45.45), and taxpayers. The arbitrator must indicate which of the factors listed in N.J.S.A. 34:13A-[16g]**16.g** are deemed relevant; satisfactorily explain why the others are not relevant; and provide an analysis of the evidence on each relevant factor. N.J.S.A. 34:13A-[16g(2)(c)]**16.g(2)(c)** lists as a factor "public employment in the same or similar comparable jurisdictions. . .." Subsection a of section 5 of P.L. 1995, c. 425 requires that the Commission promulgate guidelines for determining the comparability of jurisdictions for the purposes of paragraph (2)(c) of subsection g.

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

1. (No change.)

2. The Commission further recognizes that it is the arbitrator's responsibility to consider all the evidence submitted and to determine the weight of any evidence submitted based upon the guidelines in (c) and (d) below and to determine the relevance or lack of relevance of comparability in relationship to all of the factors set forth in N.J.S.A. 34:13A-[16g]**16.g**. Promulgation of these guidelines is not intended to require that any party submit evidence on all or any of the elements set forth in (c) and (d) below or assert that the comparability factor should or should not be deemed relevant or accorded any particular weight in any arbitration proceeding. Nothing in this section shall preclude the arbitrator from supplementing the factual record by issuing subpoenas to require the attendance of witnesses and the production of documents.

Nor does anything in this section prevent the arbitrator from requesting the parties to supplement their presentations in connection with this factor or any other factor set forth in the law.

(c) (No change.)

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

1.-3. (No change.)

4. Compensation and other conditions of employment:

i.-viii. (No change.)

ix. Workload:

(1) [umber] **Number** of calls or runs per officer; and

(2) (No change.)

x. (No change.)

5. (No change.)

SUBCHAPTER 8. APPEALS

19:16-8.1 Appeals and cross-appeals

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

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

2.-5. (No change.)

[(b) Within seven days after the service of an appeal, the respondent may file a cross-appeal brief with the Commission, together with the $200.00 fee required under N.J.A.C. 19:16-5.13.

1. The brief 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 brief on the arbitrator.

4. The cross-appellant shall simultaneously file an original and nine copies of the 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)] **(b)** [Where no cross-appeal is being filed, within seven] **Within 14** days after the service of a brief in support of [the] **an** appeal **or cross-appeal,** the **respective** respondent**s** 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] **or cross-appeal**. The **respective** respondent**s** may also file an original and nine copies of an appendix containing those parts of the record not included in the appellant's **or cross-appellant's** appendix that the respondent considers necessary to the proper consideration of the issues. Filings shall be accompanied by proof of service of a copy on the other party.

[(d) Where a cross-appeal has been filed, within three 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)] **(c)** (No change in text.)

[(f)] **(d)** The Commission shall render a decision within [30] **60** days, or within such other period of time that may be set by N.J.S.A. 34:13A-14 et seq., from receipt of the appeal.

[(g)] **(e)** (No change in text.)

2018 BIENNIAL REPORT

TAB 4

1.-4. (No change.)

19:11-8.3 Contents of request for review; timely presentment of facts

(a) A request for review must be a self-contained document enabling the Commission or Chair to rule on the basis of its contents.

(b)-(d) (No change.)

(a)

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Negotiations, Impasse Procedures, and Compulsory Interest Arbitration of Labor Disputes in Public Fire and Police Departments

Adopted Amendments: N.J.A.C. 19:16-1.1, 4.1, 5.2, 5.5, 5.7, 5.8, 5.9, 5.11, 5.12, 5.14, and 8.1

Proposed: August 7, 2017, at 49 N.J.R. 2509(a).
Adopted: January 25, 2018, by the Public Employment Relations Commission, P. Kelly Hatfield, Chair.
Filed: January 25, 2018, as R.2018 d.087, **without change**.

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

Effective Date: March 5, 2018.
Expiration Date: September 7, 2019.

Summary of Public Comments and Agency Responses:

1. COMMENT: Richard D. Loccke of the law firm of Loccke, Correia & Bukosky, counsel to the New Jersey State AFL-CIO and the State Troopers Fraternal Association comments on behalf of both organizations. Mr. Loccke directs his comments to proposed rule N.J.A.C. 19:16-5.9(c) and recommends that the Commission not adopt it. N.J.A.C. 19:16-5.9(c) would provide:

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

Mr. Loccke points out that N.J.S.A. 34:13A-16.7, the statute that imposes the so-called two percent hard cap on salary increases, is scheduled to sunset on December 31, 2017, pursuant to N.J.S.A. 34:13A-16.9. The latter statute provides in pertinent part that "the provisions of section 2 of P.L.2010, c.105 [C.34:13A-16.7] shall become inoperative for all parties except those whose collective negotiations agreements expired prior to or on December 31, 2017 but for whom a final settlement has not been reached." Mr. Loccke states that the proposed amendment seeks to codify the hard cap, which he maintains is inappropriate and confusing.

RESPONSE: The Commission thanks Mr. Loccke and the AFL-CIO for their comments. The Commission is not seeking to codify the hard cap and acknowledges that N.J.S.A. 34:13A-16.9 contains a December 31, 2017, sunset date. For that reason, the proposed amendment contains the qualifying language "where applicable" and "whether or not subject to the two percent cap." The Commission is also aware that bills have been introduced (A-2123 and S-1639) that would make the two percent cap permanent. The Commission believes that the language of the proposed amendment is flexible, so that it would be pertinent and useful whether the two percent cap expires as presently scheduled, is extended, or made permanent. Finally, the Commission points out that the two percent hard cap will not immediately expire on December 31, 2017. Rather, N.J.S.A. 34:13A-16.7 becomes inoperative after December 31, 2017, except for parties whose collective negotiations agreements expired on or before December 31, 2017 but for whom a final settlement has not been reached as of that date.

2. COMMENT: David Beckett, Esq. Mr. Beckett's comments address proposed amendments or additions to N.J.A.C. 19:16-5.5(c)1 through 8, 5.7(i), and 5.9(b) and (c). N.J.A.C. 19:16-5.5(c)1 through 8 would add new language allowing expedited scope of negotiations determinations to be issued by the Commission Chair where the issue arises in connection with interest arbitration. N.J.A.C. 19:16-5.7(i) sets forth a procedure for the parties to address their negotiability arguments to the arbitrator unless the Chair decides to issue an expedited scope of negotiations determination. Mr. Beckett asserts that the proposed amendments cannot be adopted because (1) the procedures are not authorized by the Commission's enabling statute; (2) would allow the Chair to exercise powers not authorized by the Commission's enabling statute; (3) N.J.A.C. 19:16-5.5(c)7, allowing the Chair's expedited scope of negotiations determinations to be final decisions appealable to the Appellate Division of the Superior Court, conflicts with N.J.S.A. 34:13A-5.4.d, vesting the power to make negotiability rulings in the full Commission; and (4) where the expedited procedure is not used, the language in N.J.A.C. 19:16-5.7(i) describing a scope of negotiations ruling in an interest arbitration award as "preliminary" differentiates that ruling from other decisions in an interest arbitration award and will lead to confusion.

RESPONSE: The Commission thanks Mr. Beckett for his comments. N.J.S.A. 34:13A-6f provides in relevant part:

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

The above statute provides the necessary authority for the Commission Chair to issue expedited scope of negotiations rulings. At its regular meeting on October 25, 2012, the Commission approved the expedited scope of negotiations procedure and delegated to the Commission Chair the authority to issue rulings using the expedited procedure.

The advent of this program occurred in response to the enactment of P.L. 2010, c. 105, which imposed a 45-day (from arbitrator appointment) deadline for the issuance of interest arbitration awards. That deadline, later expanded to 90 days by P.L. 2014, c. 11, necessitated an expeditious method to resolve scope of negotiations disputes to allow interest arbitrators to issue awards within the statutory deadline. The details of the program have been on the Commission's website for the past five years. See http://www.state.nj.us/perc/Pilot_Program_Notice.pdf.

To date, the Commission Chair has issued five written decisions pursuant to this procedure, one of which was appealed to the Appellate Division of the Superior Court. In the appeal, 18 of the Chair's 35 determinations were challenged, and all but two were affirmed. *City of Atlantic City*, P.E.R.C. No. 2015-63, 41 *NJPER* 439 (¶137 2015), *aff'd in part and rev'd in part*, 2017 *N.J. Super. Unpub. LEXIS* 2366 (Dkt. No. A-3817-14T2, 9/20/2017).

The reference in N.J.A.C. 19:16-5.7(i) classifying an arbitrator's determination of a scope of negotiations dispute as "preliminary" does nothing more than clarify that such a ruling, like the rest of an interest arbitration award, can be reviewed through an appeal to the Commission. It also distinguishes between an interest arbitrator's resolution of a scope of negotiations dispute and a determination made by the Chair through the expedited procedure or the Commission in a regular scope of negotiations proceeding.

3. COMMENT: Regarding N.J.A.C. 19:16-5.9(b) and (c), Mr. Beckett asserts that the elimination of text in the proposed amendment to N.J.A.C. 19:16-5.9(b) makes the rule inconsistent with the language of N.J.S.A. 34:13A-16.g by requiring the award to consider and comment on all section 16.g factors. Mr. Beckett argues that the new language in proposed N.J.A.C. 19:16-5.9(c) is unnecessary because the subject

addressed has been clarified by decisional law and that it may cause interest arbitrators to apply it to awards where the cap is not relevant.

RESPONSE: The proposed changes to N.J.A.C. 19:16-5.9(b) do not affect the way interest arbitrators must apply the N.J.S.A. 34:13A-16.g factors in their awards. The Appellate Division in *In re City of Camden*, 429 *N.J. Super*. 309, 335, *certif. den*., 215 *N.J*. 485 (2013), describing the obligations on interest arbitrators under N.J.S.A. 34:13A-16.g, stated:

> The arbitrator is required to give a "reasoned explanation" that reflects he gave "due weight" to the statutorily mandated criteria. As we have noted, the arbitrator was required by N.J.S.A. 34:13A-16(f)(5) to accompany his decision with a written report "explaining how each of the statutory criteria played into [his] determination of the final award."

Earlier in its opinion, 429 *N.J. Super*. at 326, the court gave a more expansive explanation, including an observation that P.L. 2010, c. 105, reinforced the requirement that an award discuss all section 16.g factors.

> The arbitrator must "indicate which of the factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor[.]" The arbitrator need not rely on all factors, but must identify and weigh the relevant factors and explain why the remaining factors are irrelevant. The resulting "reasoned explanation" serves to satisfy the requirement that the decision be based on the statutory factors that are judged to be relevant and reflect the fact that the arbitrator gave "due weight" to each factor. "Without such an explanation, the opinion and award may not be a 'reasonable determination of the issues.' " The requirement that such an explanation be included in the arbitrator's decision was codified in the amendment to N.J.S.A. 34:13A-16 that became effective in January 2011. As amended, N.J.S.A. 34:13A-16(f)(5) states, "[e]ach arbitrator's decision shall be accompanied by a written report explaining how each of the statutory criteria played into the arbitrator's determination of the final award."

To the extent that Mr. Beckett's comments on the proposed new language in N.J.A.C. 19:16-5.9(c) refer to the scheduled sunset of the two percent cap, the Commission refers the commenter to the Response to Comment 1.

4. COMMENT: Dominick Marino, President of the Professional Firefighters Association of New Jersey, International Association of Fire Fighters, AFL-CIO-CLC. Mr. Marino asserts that the proposed rule changes are unnecessary and should not be implemented. He states:

> For the Public Employment Relations Commission to suggest these rule changes as a way of simplifying or clarifying current existing rules would do just the opposite and cause more confusion and appears to be an attempt by PERC to circumvent the state legislative process by imposing this rule change. The guidelines/rules on the arbitration process have been clearly written so that every arbitrator would have a complete understanding of the process.

RESPONSE: The Commission thanks Mr. Marino and the Professional Firefighters Association of New Jersey for their comments. The comments address the amendments and rules as a whole, without specifying which of the proposed amendments are "confusing" or represent an attempt "to circumvent the legislative process." The Commission disagrees that the proposed amendments are confusing or circumvent the legislative process. The Commission invites Mr. Marino to review the other comments that have been submitted to the agency on the rule proposal and the Commission's responses thereto.

5. COMMENT: Robert B. Hille, President of the New Jersey State Bar Association (NJSBA), submitted comments on behalf of the NJSBA. Observing that a "major provision" of the Police and Fire Interest Arbitration Reform Act is set to expire on December 31, 2017, the NJSBA asserts that PERC "should not now adopt rules purporting to implement and incorporate substantive portions of the Act. The NJSBA opposes the adoption of any such Regulations until after the Legislature acts to readopt the expiring provision or to amend the Act in any other manner."

RESPONSE: The Commission thanks President Hille and the NJSBA for their comments. To the extent that the comments are intended to refer to the proposed new language in N.J.A.C. 19:16-5.9(c) and/or to the scheduled sunset of the two percent cap pursuant N.J.S.A. 34:13A-16.9, the Commission refers the commenter to the Responses to Comments 1 and 2.

6. COMMENT: Craig S. Gumpel, Esq., counsel to the New Jersey State Firefighters Mutual Benevolent Association (FMBA). Mr. Gumpel, on behalf of the FMBA, comments on amendments to N.J.A.C. 19:16-5.9(c), 5.11(b), and 8.1. Mr. Gumpel also requested that the Commission conduct a public hearing on the rule proposal. This request is denied as untimely. N.J.S.A. 52:14B-4 and N.J.A.C. 1:30-5.5 and 19:10-6.4, all cited by the FMBA, provide that a request for a public hearing on a rule proposal shall be filed within 30 days of its publication in the New Jersey Register. The rule proposal was published on August 7, 2017 at 49 N.J.R. 2509(a). The request for a public hearing is dated October 4, 2017, beyond the 30-day deadline.

As to N.J.A.C. 19:16-5.9(c)

With regard to proposed rule N.J.A.C. 19:16-5.9(c), Mr. Gumpel states that it is contrary to current law and should be rejected because it fails to establish a fixed date on which the two percent cap will become inoperative. He also asserts that after December 31, 2017, the portion of N.J.S.A. 34:13A-16.7 that limits an arbitrator's authority to award base salary items and non-salary economic issues not included in the prior collective negotiations agreement will expire. Finally, the FMBA asserts that there is no authority for the Commission to require by rule that the arbitrator "cost out" base salary figures in the award.

As to N.J.A.C. 19:16-5.11(b) and 8.1

Mr. Gumpel asserts that proposed rules N.J.A.C. 19:16-5.11(b) and 8.1 would permit deviations from the interest arbitration statute regarding, respectively, the arbitrator's compensation and the time for the Commission to decide an appeal from the arbitrator's decision. At N.J.A.C. 19:16-5.11(b), the proposed amendment maintains arbitrator compensation at $10,000 per case but adds "or such other amount that may be prescribed" by the interest arbitration law. Similarly, N.J.A.C. 19:16-8.1 provides that the Commission must rule on an appeal within 60 days, "or within such other period of time that may be set" by the interest arbitration law. In both cases, the FMBA asserts that there is no explanation "for the added language which permits a deviation" from the $10,000 cap or the 60-day time limit.

RESPONSE: As to N.J.A.C. 19:16-5.9(c): The proposed amendment would recodify existing N.J.A.C. 19:16-5.9(c) as subsection (d) and would add new N.J.A.C. 19:16-5.9(c), which as noted above would provide:

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

The Commission thanks Mr. Gumpel and the FMBA for their comments. As stated in the Response to Comment 1, the Commission acknowledges that N.J.S.A. 34:13A-16.9 contains a December 31, 2017 sunset date. For that reason, the proposed amendment contains the qualifying language "where applicable" and "whether or not subject to the two percent cap." The Commission is also aware that bills have been introduced (A-2123 and S-1639) that would have made the two percent cap permanent. The Commission believes that the proposed amendment is flexible, so that it would be pertinent and useful whether the two percent cap expires as presently scheduled, is extended, or made permanent.

The Commission acknowledges the FMBA's position that the limitation on the inclusion of base salary items and non-salary economic issues not included in the prior collective negotiations agreement also expires after December 31, 2017. The proposed amendments are silent with respect to the statutory limitation. Given that the Commission does not engage in statutory interpretation absent a present controversy before it where the issue is raised and litigated between adverse parties, resolution of the issue raised by the FMBA must await a decision by the Commission and/or the courts based on the specific facts of an actual case.

Finally, the language requiring the arbitrator's decision to "cost-out" salary awards reflects the decisions of appellate courts reviewing the sufficiency of interest arbitration awards. See the comments of the Appellate Division in *In re City of Camden*, 429 *N.J. Super*. 309, 335, *certif. den*., 215 *N.J*. 485 (2013), that are reproduced in the Responses to Comments 2 and 3.

As to N.J.A.C. 19:16-5.11(b) and 8.1

The proposed amendments do not permit deviations from the applicable statutes but rather recognize the principle that the terms of a statute take precedence over existing implementing rules. The Legislature made procedural and substantive amendments to the interest arbitration law in 2010, and these were followed relatively quickly by legislative changes to many of the same items in 2014. The language to which the FMBA objects would obviate the need to amend these rules if additional statutory changes are made to the cap on arbitrator compensation or the deadline for a Commission decision.

7. COMMENT: Paul L. Kleinbaum, Esq., of the firm of Zazzali, Fagella, Nowak, Kleinbaum and Friedman, submitted comments on behalf of the New Jersey State Policemen's Benevolent Association (PBA). The State PBA objects to any substantive changes to the current rules, citing proposed N.J.A.C. 19:16-5.9(c), stating that same should await legislative action on the section of the interest arbitration law that sunsets on December 31, 2017. The PBA also asserts that there is no authority for the Commission to require the arbitrator to "cost out" base salary figures in an award that is not subject to the two percent cap and points out that the arbitrator is already bound by the factors listed in N.J.S.A. 34:13A-16.g. The commenter also objects to the proposed amendment to N.J.A.C. 19:16-5.5(c), relating to expedited scope of negotiations determinations made by the Commission Chair. The PBA states that the procedure should not be incorporated into the rules without experiential and "empirical data on how and if this process has worked." The PBA observes that the procedure is not referenced in P.L. 2014, c. 11. The PBA states that it does not object to changes to procedural or ministerial rules, such as those made to conform the rules to legislative changes in the length of time to complete arbitration and to file appeals and to arbitrator compensation.

RESPONSE: The Commission thanks Mr. Kleinbaum and the PBA for their comments on the proposed amendments. The proposed changes to N.J.A.C. 19:16-5.9(c) do not affect the way interest arbitrators must apply the N.J.S.A. 34:13A-16.g factors in their awards. See the excerpts from the opinion of the Appellate Division of the Superior Court in *In re City of Camden*, 429 *N.J. Super*. 309, 335, *certif. den*. 215 *N.J*. 485 (2013) that are reproduced in the Responses to Comments 2 and 3. To the extent that the PBA comments on the proposed new language in N.J.A.C. 19:16-5.9(c) regarding the scheduled sunset of the two percent cap, the Commission refers the commenter to the Response to Comment 1.

As noted by the PBA, the expedited scope of negotiations procedures were adopted as a pilot program. The Commission believes that the process has been effective. The Commissioner refers the commenter to the Response to Comment 2.

Federal Standards Statement

The National Labor Relations Act excludes "any State or political subdivision thereof." See 29 U.S.C. § 152(2). No Federal law or regulation applies and the Commission cannot rely upon a comparable Federal rule or standard to achieve the aims of the Police and Fire Public Interest Arbitration Reform Act. The rules readopted with amendments are, thus, necessary and proper.

Full text of the adoption follows:

SUBCHAPTER 1. PURPOSE OF PROCEDURES

19:16-1.1 Purpose of procedures

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

(b)-(d) (No change.)

SUBCHAPTER 4. FACT-FINDING

19:16-4.1 Initiation of fact-finding

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

1.-6. (No change.)

Recodify existing 9.-10. as 7.-8. (No change in text.)

(b)-(e) (No change.)

SUBCHAPTER 5. COMPULSORY INTEREST ARBITRATION

19:16-5.2 Initiation of compulsory interest arbitration

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

1.-2. (No change.)

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

(b)-(c) (No change.)

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

(a)-(b) (No change.)

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

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

2. The issues for which a negotiability determination is sought must be among those identified as being in dispute in either the interest arbitration petition or the response to the interest arbitration petition. The Commission will not determine the negotiability of any issues that are no longer in dispute during the pending interest arbitration. It shall be the obligation of all parties to immediately advise the Commission Chair and the assigned interest arbitrator that an issue that is the subject of a pending scope of negotiations petition is no longer actively in dispute during interest arbitration.

3. The party filing a request for an expedited scope determination shall file a supporting brief with its request, a copy of which shall be served simultaneously upon the other party. The other party shall file with the Commission Chair a brief in response to the request within seven business days of receipt of the request and shall serve simultaneously a copy of the brief upon the party who requested the expedited scope determination. All briefs shall conform to the

requirements set forth in N.J.A.C. 19:13-3.6(f). No additional briefs or submissions shall be filed.

4. Within 10 days after receipt of an expedited scope of negotiations petition, the Commission Chair will advise the parties whether the petition will be resolved using the expedited procedure. The decision to issue an expedited scope of negotiations ruling during the pendency of a compulsory interest arbitration proceeding shall be within the sole, non-reviewable discretion of the Commission Chair.

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

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

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

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

(d) (No change.)

19:16-5.7 Conduct of the arbitration proceeding

(a)-(b) (No change.)

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

(d)-(e) (No change.)

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

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

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

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

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

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

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

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

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

(h) (No change.)

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

(j)-(k) (No change.)

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

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

(n) (No change.)

19:16-5.8 Stenographic record

(a)-(c) (No change.)

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

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

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

19:16-5.9 Opinion and award

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

(b) Each arbitrator's decision shall be accompanied by a written report explaining how each of the statutory criteria played into the arbitrator's determination of the final award. The opinion and award shall be signed and based on a reasonable determination of the issues, giving due weight to those factors listed in N.J.S.A. 34:13A-16.g.

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

Recodify existing (c)-(e) as (d)-(f) (No change in text.)

19:16-5.11 Cost of arbitration

(a) (No change.)

(b) The fee for services provided by the arbitrator shall not exceed $1,000 per day, or such other amount that may be prescribed by N.J.S.A. 34:13A-14 et seq. The total cost of services provided by an arbitrator shall not exceed $10,000, or such other amount that may be prescribed by N.J.S.A. 34:13A-14 et seq.

(c) (No change.)

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

(a) (No change.)

(b) The petition shall not be processed until the petitioning party pays the filing fee of $175.00.

(c) (No change.)

19:16-5.14 Comparability guidelines

(a) N.J.S.A. 34:13A-16.g identifies the factors that an interest arbitrator must consider in reviewing the parties' proposals. In addition, in every interest arbitration proceeding, the parties shall introduce evidence regarding the factor set forth in N.J.S.A. 34:13A-16.g(6): the financial impact on the governing unit, its residents, the limitations imposed upon the local unit's property tax levy pursuant to P.L. 2007, c. 62, section 10 (N.J.S.A. 40A:4-45.45), and taxpayers. The arbitrator must indicate which of the factors listed in N.J.S.A. 34:13A-16.g are deemed relevant; satisfactorily explain why the others are not relevant; and provide an analysis of the evidence on each relevant factor. N.J.S.A. 34:13A-16.g(2)(c) lists as a factor "public employment in the same or similar comparable jurisdictions...." Subsection a of section 5 of P.L. 1995, c. 425 requires that the Commission promulgate guidelines for determining the comparability of jurisdictions for the purposes of paragraph (2)(c) of subsection g.

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

1. (No change.)

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

(c) (No change.)

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

1.-3. (No change.)

4. Compensation and other conditions of employment:

i.-viii. (No change.)

ix. Workload:

(1) Number of calls or runs per officer; and

(2) (No change.)

x. (No change.)

5. (No change.)

SUBCHAPTER 8. APPEALS

19:16-8.1 Appeals and cross-appeals

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

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

2.-5. (No change.)

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

(c) (No change in text.)

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

(e) (No change in text.)

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TAB 5

CHAPTER 16

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

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SUBCHAPTER 1. PURPOSE OF PROCEDURES

19:16-1.1 Purpose of procedures

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

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

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

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

SUBCHAPTER 2. COMMENCEMENT OF NEGOTIATIONS

19:16-2.1 Commencement of negotiations

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

1. The parties shall meet at least three times during that 120-day period. The first of those three meetings shall take place no later than the 90th day prior to the day on which their collective negotiations agreement is to expire.

2. By mutual consent, the parties may agree to extend the period during which the second and third meetings are required to take place beyond the date on which their collective negotiations agreement is to expire.

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

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

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

SUBCHAPTER 3. MEDIATION

19:16-3.1 Initiation of mediation

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

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

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

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

4. The dates and duration of negotiations sessions;

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

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

7. Whether the request is a joint request; and

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

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

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

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

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

19:16-3.2 Appointment of a mediator

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

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

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

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

19:16-3.3 Mediator's function

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

19:16-3.4 Mediator's confidentiality

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

19:16-3.5 Mediator's report

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

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

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

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

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

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

SUBCHAPTER 4. FACT-FINDING

19:16-4.1 Initiation of fact-finding

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

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

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

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

4. The name of the mediator;

5. The number and duration of mediation sessions;

6. The date of the last mediation effort;

7. Whether the request is a joint request; and

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

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

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

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

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

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

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

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

19:16-4.2 Appointment of a fact-finder

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

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

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

19:16-4.3 Fact-finder's function

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

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

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

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

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

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

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

SUBCHAPTER 5. COMPULSORY INTEREST ARBITRATION

19:16-5.1 Scope of compulsory interest arbitration

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

19:16-5.2 Initiation of compulsory interest arbitration

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

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

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

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

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

1. If the charge is sustained, the Commission shall order that the respondent be assessed for all legal and administrative costs associated with the filing and resolution of the charge.

2. If the charge is dismissed, the Commission shall order that the charging party be assessed for all legal and administrative costs associated with the filing and resolution of the charge.

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

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

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

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

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

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

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

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

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

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

8. Whether the request is a joint request;

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

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

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

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

19:16-5.4 Conventional arbitration to be terminal procedure

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

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

(a) In the absence of a joint petition requesting the initiation of compulsory interest arbitration, the non-petitioning party, within five days of receipt of the petition, shall separately notify the Commission in writing of all issues in dispute. The filing of the written response shall not, in any manner, delay the interest arbitration process. The statement of response shall include:

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

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

3. A statement as to whether it refuses to submit any of the issues listed on the notification or petition to arbitration on the ground that such issue is not within the required scope of negotiations; and

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

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

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

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

2. The issues for which a negotiability determination is sought must be among those identified as being in dispute in either the interest arbitration petition or the response to the interest arbitration petition. The Commission will not determine the negotiability of any issues that are no longer in dispute during the pending interest arbitration. It shall be the obligation of all parties to immediately advise the Commission Chair and the assigned interest arbitrator that an issue that is the subject of a pending scope of negotiations petition is no longer actively in dispute during interest arbitration.

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

4. Within 10 days after receipt of an expedited scope of negotiations petition, the Commission Chair will advise the parties whether the petition will be resolved using the expedited procedure. The decision to issue an expedited scope of negotiations ruling during the pendency of a compulsory interest arbitration proceeding shall be within the sole, non-reviewable discretion of the Commission Chair.

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

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

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

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

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

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

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

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

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

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

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

19:16-5.7 Conduct of the arbitration proceeding

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19:16-5.8 Stenographic record

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

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

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

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

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

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

19:16-5.9 Opinion and award

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

(b) Each arbitrator's decision shall be accompanied by a written report explaining how each of the statutory criteria played into the arbitrator's determination of the final award. The opinion and award shall be signed and based on a reasonable determination of the issues, giving due weight to those factors listed in N.J.S.A. 34:13A-16.g.

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

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

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

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

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

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

19:16-5.11 Cost of arbitration

(a) The costs of services performed by the arbitrator shall be borne equally by the parties. Each party shall pay its share of the arbitrator's fee within 60 days of receipt of the arbitrator's bill or invoice.

(b) The fee for services provided by the arbitrator shall not exceed $1,000 per day, or such other amount that may be prescribed by N.J.S.A. 34:13A-14 et seq. The total cost of services provided by an arbitrator shall not exceed $10,000, or such other amount that may be prescribed by N.J.S.A. 34:13A-14 et seq.

(c) An assessment of not more than $500.00 may be imposed by the arbitrator if a proceeding is cancelled without good cause. If the parties jointly cancel the proceeding the fee will be shared. Otherwise the party causing the cancellation or adjournment shall be responsible for payment of the entire fee.

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

(a) At the time a joint petition to initiate interest arbitration is filed pursuant to N.J.A.C. 19:16-5.2, each party shall pay a $175.00 fee. If the petition is filed by one party only, then the petitioning party shall pay a $ 175.00 fee upon filing the petition and the non-petitioning party shall pay a $175.00 fee upon filing its response to the petition pursuant to N.J.A.C. 19:16-5.5.

(b) The petition shall not be processed until the petitioning party pays the filing fee of $175.00.

(c) Fees shall be paid by checks made payable to the "State of New Jersey"; purchase orders may be submitted.

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

At the time a party files a notice of appeal of an interest arbitration award with the Commission, the appealing party shall pay a $200.00 fee. At the time a party files a notice of cross-appeal of an interest arbitration award with the Commission, the cross-appealing party shall pay a $200.00 fee. At the time a party files with the Commission a request for special permission to appeal an interlocutory order or ruling, the party shall pay a $ 75.00 fee. Fees shall be paid by checks made payable to the "State of New Jersey"; purchase orders may be submitted.

19:16-5.14 Comparability guidelines

(a) N.J.S.A. 34:13A-16.g identifies the factors that an interest arbitrator must consider in reviewing the parties' proposals. In addition, in every interest arbitration proceeding, the parties shall introduce evidence regarding the factor set forth in N.J.S.A. 34:13A-16.g(6): the financial impact on the governing unit, its residents, the limitations imposed upon the local unit's property tax levy pursuant to P.L. 2007, c. 62, section 10 (N.J.S.A. 40A:4-45.45), and taxpayers. The arbitrator must indicate which of the factors listed in N.J.S.A. 34:13A-16.g are deemed relevant; satisfactorily explain why the others are not relevant; and provide an analysis of the evidence on each relevant factor. N.J.S.A. 34:13A-16.g(2)(c) lists as a factor "public employment in the same or similar comparable jurisdictions...." Subsection a of section 5 of P.L. 1995, c. 425 requires that the Commission promulgate guidelines for determining the comparability of jurisdictions for the purposes of paragraph (2)(c) of subsection g.

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

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

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

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

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

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

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

4. History of negotiations:

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

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

5. Pattern of salary and benefit changes; and

6. Any other considerations deemed relevant by the arbitrator.

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

1. Geographic:

i. Neighboring or overlapping jurisdictions;

ii. Nearby jurisdictions;

iii. Size; and

iv. Nature of employing entity.

2. Socio-economic considerations:

i. Size, density, and characteristics of population;

ii. Per capita income;

iii. Average household income;

iv. Average property values;

v. Gain or loss of assessed value;

vi. Ratable increases/decreases from year to year;

vii. Tax increases/decreases over last few years;

viii. Cost-of-living (locally);

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

x. Nature of services provided;

xi. Crime rate;

xii. Violent crime rate;

xiii. Fire incident rate; and

xiv. Fire crime rate.

3. Financial considerations:

i. Revenue:(1) Taxes:(A) School;

(B) County;

(C) Municipal;

(D) Special district;

(E) State equalization valuation and ratio; and

(F) Other taxes;

(2) Tax base/ratables;

(3) Equalized tax rate;

(4) Tax collections;

(5) Payments in lieu of taxes;

(6) Delinquent tax and lien collections;

(7) State aid revenues;

(8) Federal aid revenues;

(9) Sale of acquired property;

(10) Budget surplus;

(11) Other miscellaneous revenues;

(12) Prior years surplus appropriated;

(13) Total revenues;

(14) Reserve for uncollected taxes;

(15) Taxes as percentage of total municipal revenues;

(16) All other municipal revenues;

(17) Any other sources of revenue;

(18) Total municipal revenues; and

(19) Budget cap considerations;

ii. Expenditures:

(1) Police protection;

(2) Fire protection;

(3) Total municipal functions;

(4) Police protection as percentage of total municipal functions;

(5) Fire protection as percentage of total municipal functions; and

(6) Percentage of net debt/bond rating;

iii. Trends in revenues and expenditures;

4. Compensation and other conditions of employment:

i. Relative rank within jurisdictions asserted to be comparable;

ii. Wage and salary settlements of uniformed employees;

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

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

v. Top step salaries;

vi. Overall compensation:

(1) Wage and salaries;

(2) Longevity;

(3) Holidays;

(4) Vacations;

(5) Uniform allowance;

(6) Medical and hospitalization benefits;

(7) Overtime;

(8) Leaves of absence;

(9) Pensions; and

(10) Other retiree benefits;

vii. Work schedules;

viii. Work hours;

ix. Workload:

(1) Number of calls or runs per officer; and

(2) Other relevant standards for measuring workload; and

x. Other conditions of employment; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. Any other applicable requirements.

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

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

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

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

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

3. Has served in a partisan political capacity.

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

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

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

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

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

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

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

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

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

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

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

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

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

SUBCHAPTER 6. DETERMINATION OF DISPUTES OVER ISSUE DEFINITION

19:16-6.1 Purpose of procedure

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

19:16-6.2 (Reserved)

SUBCHAPTER 7. FAILURE TO SUBMIT A NOTICE OR OTHER DOCUMENT

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

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

SUBCHAPTER 8. APPEALS

19:16-8.1 Appeals and cross-appeals

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

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

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

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

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

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

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

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

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

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

19:16-8.2 Oral argument

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

19:16-8.3 Action by the Commission

The Commission may affirm, modify, correct, or vacate the award or may, at its discretion, remand the award to the same arbitrator or to another arbitrator selected at random by computer.

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[i] Title 19, Chapter 16 -- Chapter Notes

CHAPTER AUTHORITY:

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

SOURCE AND EFFECTIVE DATE:

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

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

EXPIRATION DATE:

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

2018 BIENNIAL REPORT

TAB 6

New Jersey Public Employment Relations Commission

Interest Arbitrator By-Lot Selection
Program:

Random Number Generation
Testing for Re-Certification

By

Francis A. Steffero, PhD, CISA

April 28, 2014

I. INTRODUCTION

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

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

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

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

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

II. BACKGROUND INFORMATION

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

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

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

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

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

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

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

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

III. METHODOLOGY

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

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

Production Server Environment

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

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

PRNG Test (Steffero, 2009)

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

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

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

Completed Application Test

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

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

Results appear in the next section.

IV. RESULTS

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

PRNG Test (from Steffero, 2009)

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

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

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

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

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

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

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

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

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

V. CONCLUSION

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

BIBLIOGRAHY

Flexner, S.B. Ed., Random House Dictionary of the English Language, 2nd Edition, New York, Random House, 1987.

Knuth, Donald E., "The Art of Computer Programming," Volume II, Seminumerical Algorithms, 2nd Edition. Addison Wesley, 1981.

Knuth, Donald E., "The Art of Computer Programming," Volume II, Seminumerical Algorithms, 3rd Edition. Addison Wesley, 1998.

Siegel, Sidney. Nonparametric Statistics for the Behavioral Sciences. New York, McGraw-Hill, 1956.

Steffero, Francis A., A Study Submitted to the New Jersey Public Employment Relations Commission. "Interest Arbitration Panel Creation Program: Random Number Generation Testing For Certification," September 30, 1991.

Steffero, Francis A. A Study Submitted to the New Jersey Public Employment Relations Commission. "Interest Arbitration Selection Program: Random Number Generation Testing for Re-Certification. March 26, 1996.

Steffero, Francis A. A Study Submitted to the New Jersey Public Employment Relations Commission. "Interest Arbitrator Selection Program: Random Number Generation Testing for Re-Certification." December 7, 2005.

Steffero, Francis A. A Study Submitted to the New Jersey Public Employment Relations Commission. "Interest Arbitrator By-Lot Selection Program: Random Number Generation Testing for Re-Certification." November 14, 2009.

Steffero, Francis A. A Study Submitted to the New Jersey Public Employment Relations Commission. "Interest Arbitrator By-Lot Selection Program: Random Number Generation Testing for Re-Certification." December 27, 2011.

Signature Page

I hereby certify to the authenticity of the report entitled:

New Jersey Public Employment Relations Commission

Interest Arbitrator By-Lot Selection
Program:

Random Number Generation
Testing for Re-Certification

Francis A. Steffero, PhD, CISA

4/25/14
Date

2018 BIENNIAL REPORT

TAB 7

ANNUAL INTEREST ARBITRATION TRAINING

OCTOBER 24, 2016

New Jersey Law Center
1 Constitution Square, New Brunswick, NJ 08901

4:00 – 4:30 p.m.	Registration
4:30 – 4:35 p.m.	Welcome *P. Kelly Hatfield, Chair*
4:35 - 4:45 p.m.	Review of Interest Arbitration Process *Daisy B. Barreto, Director of Conciliation and Arbitration*
4:45 – 5:00 p.m.	Annual Ethics Training *Christine Lucarelli-Carneiro, Deputy General Counsel*
5:00 – 5:30 p.m.	Overview of Local Government Finances, Revenue and Levy Cap Application and Interpretation of the Levy Cap Law Public Employee Pension and Health Care Benefits, L. 2011, c. 78, which expired in 2015 *Timothy Cunningham, Director of Local Government Services, Department of Community Affairs*
5:30 – 6:00 p.m.	Dinner
6:00 – 7:00 p.m.	Interest Arbitration Award Appeals and Scope of Negotiations Update *Robin McMahon, General Counsel* *Frank Kanther, Deputy General Counsel* *Joseph Blaney, Deputy General Counsel*
7:00 – 8:00 p.m.	Discussion and Open Forum

STATE OF NEW JERSEY

PUBLIC EMPLOYMENT RELATIONS COMMISSION

ANNUAL INTEREST ARBITRATION TRAINING

OCTOBER 30, 2017

New Jersey Law Center
1 Constitution Square, New Brunswick, NJ 08901

4:00 – 4:30 p.m.	Registration
4:30 – 4:35 p.m.	Welcome *P. Kelly Hatfield, Chair*
4:35 - 4:40 p.m.	Update on Interest Arbitration *Daisy B. Barreto, Director of Conciliation and Arbitration*
4:40 – 5:00 p.m.	Scope of Negotiations Update *Robin McMahon, General Counsel*
5:00 – 5:30 p.m.	Overview of Local Government Finances *Timothy Cunningham, Director of Local Government Services, Department of Community Affairs*
5:30 – 6:00 p.m.	Dinner
6:00 – 6:20 p.m.	Interest Arbitration Award Appeals and *Frank Kanther, Deputy General Counsel*

6:20 – 7:00 p.m. Annual Ethics Training
Christine Lucarelli-Carneiro, Deputy General Counsel

7:00 – 8:00 p.m. Discussion of Current Issues

2018 BIENNIAL REPORT

TAB 8

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

PO Box 429
TRENTON, NEW JERSEY 08625-0429

www.state.nj.us/perc

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UNFAIR PRACTICE/REPRESENTATION
(609) 292-6780

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July 12, 2016

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

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

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

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

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

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

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

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

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

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

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

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

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

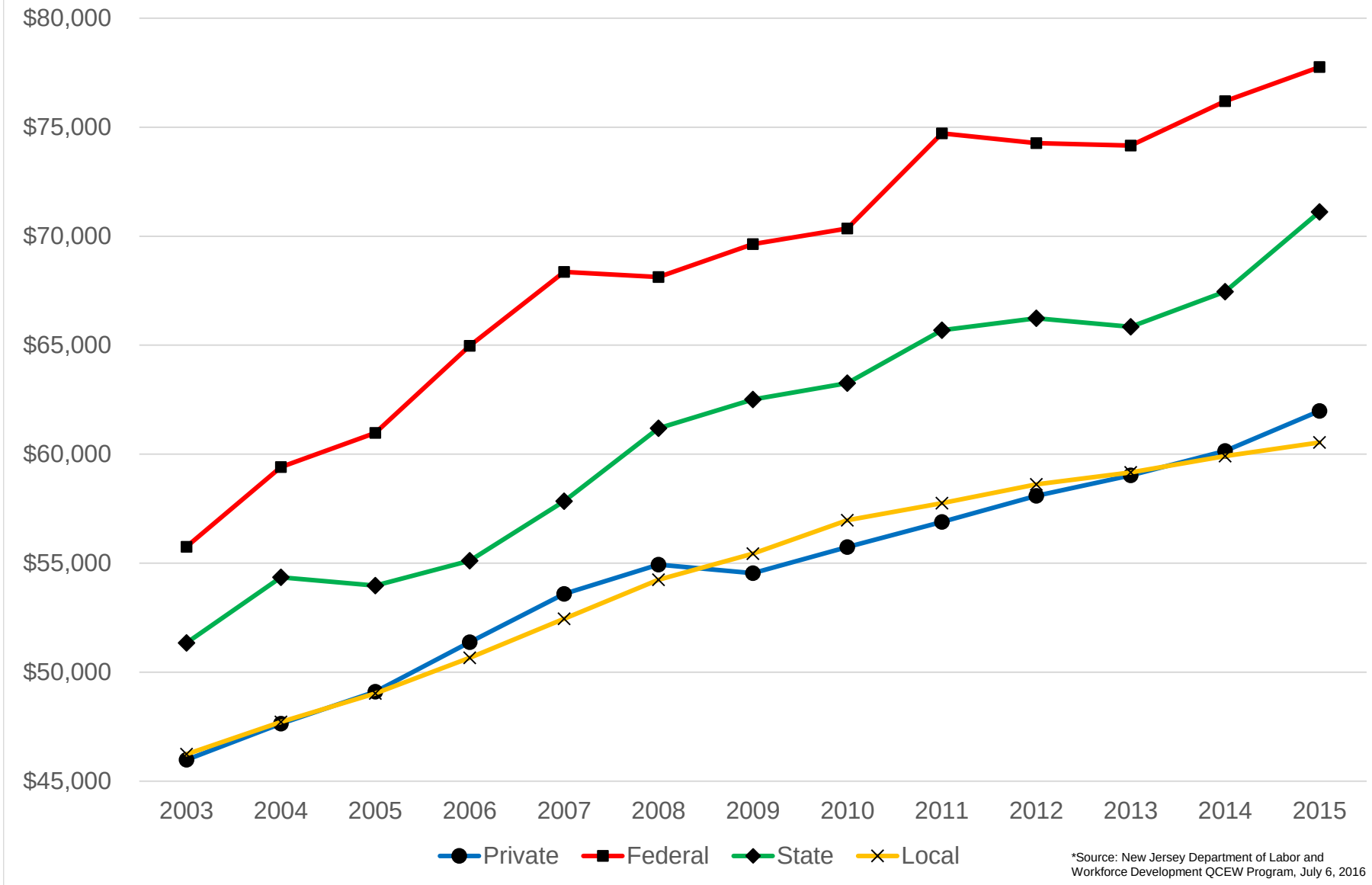
* Includes firms which have failed to provide sufficient geographical information as to the location of the business.

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

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

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

New Jersey Average Annual Wages
2003 - 2015*



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

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

PO Box 429
TRENTON, NEW JERSEY 08625-0429

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(609) 292-6780

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

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

June 30, 2017

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

The first table shows changes in average wages in employment for major industry groups in New Jersey between 2015 and 2016. The calculations were made by dividing total wages paid by covered private sector employers in particular industry groups by the number of jobs reported by those employers at their work sites. The first table also shows changes in the average wages of state and local government jobs covered under the state's unemployment insurance system, as well as changes in the average wages of federal government jobs in New Jersey covered by the federal unemployment insurance system. The North American Industry Classification System ("NAICS") was used to assign and tabulate economic data by industry.

The second table shows changes in the average wages of private sector jobs covered under the state's unemployment insurance system between 2015 and 2016. Statistics are broken down by county and include a statewide average. These calculations were made by dividing total wages paid by covered private sector employers by the number of jobs reported by those employers at their work sites.

The chart depicts the average annual wage for private, federal, state and local employees in New Jersey from 2003-2016.

NEW JERSEY
AVERAGE ANNUAL WAGES
FOR JOBS COVERED BY UNEMPLOYMENT INSURANCE
BY NAICS INDUSTRY SECTOR
2015 and 2016

NAICS Industry Sector	2015	2016	Net Change	% Change
Total Private Sector *	$61,981	$62,424	$443	0.7%
Utilities	$116,259	$118,627	$2,368	2.0%
Construction	$67,675	$68,755	$1,080	1.6%
Manufacturing	$77,137	$78,580	$1,443	1.9%
Wholesale Trade	$87,616	$87,115	-$501	-0.6%
Retail Trade	$32,927	$33,241	$314	1.0%
Transportation/Warehousing	$53,524	$53,881	$357	0.7%
Information	$103,255	$105,135	$1,880	1.8%
Finance/Insurance	$120,259	$122,204	$1,945	1.6%
Real Estate/Rental/Leasing	$63,735	$62,909	-$826	-1.3%
Professional/Technical Services	$106,752	$106,455	-$297	-0.3%
Management of Companies/Enterprises	$159,472	$160,326	$854	0.5%
Administrative/Waste Services	$40,805	$41,477	$672	1.6%
Educational Services	$49,665	$49,510	-$155	-0.3%
Health Care/Social Assistance	$51,106	$51,705	$599	1.2%
Arts/Entertainment/Recreation	$33,999	$34,434	$435	1.3%
Accomodation/Food Service	$21,903	$22,392	$489	2.2%
Other Services **	$33,840	$33,980	$140	0.4%
Total Government	$64,431	$64,840	$409	0.6%
Federal Government	$77,757	$78,234	$477	0.6%
State Government	$71,114	$70,606	-$508	-0.7%
Local Government	$60,537	$61,242	$705	1.2%
TOTAL	$62,341	$62,774	$433	0.7%

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

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

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

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

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

PRIVATE SECTOR
AVERAGE ANNUAL WAGES
FOR JOBS COVERED BY UNEMPLOYMENT INSURANCE
BY COUNTY
2015 and 2016

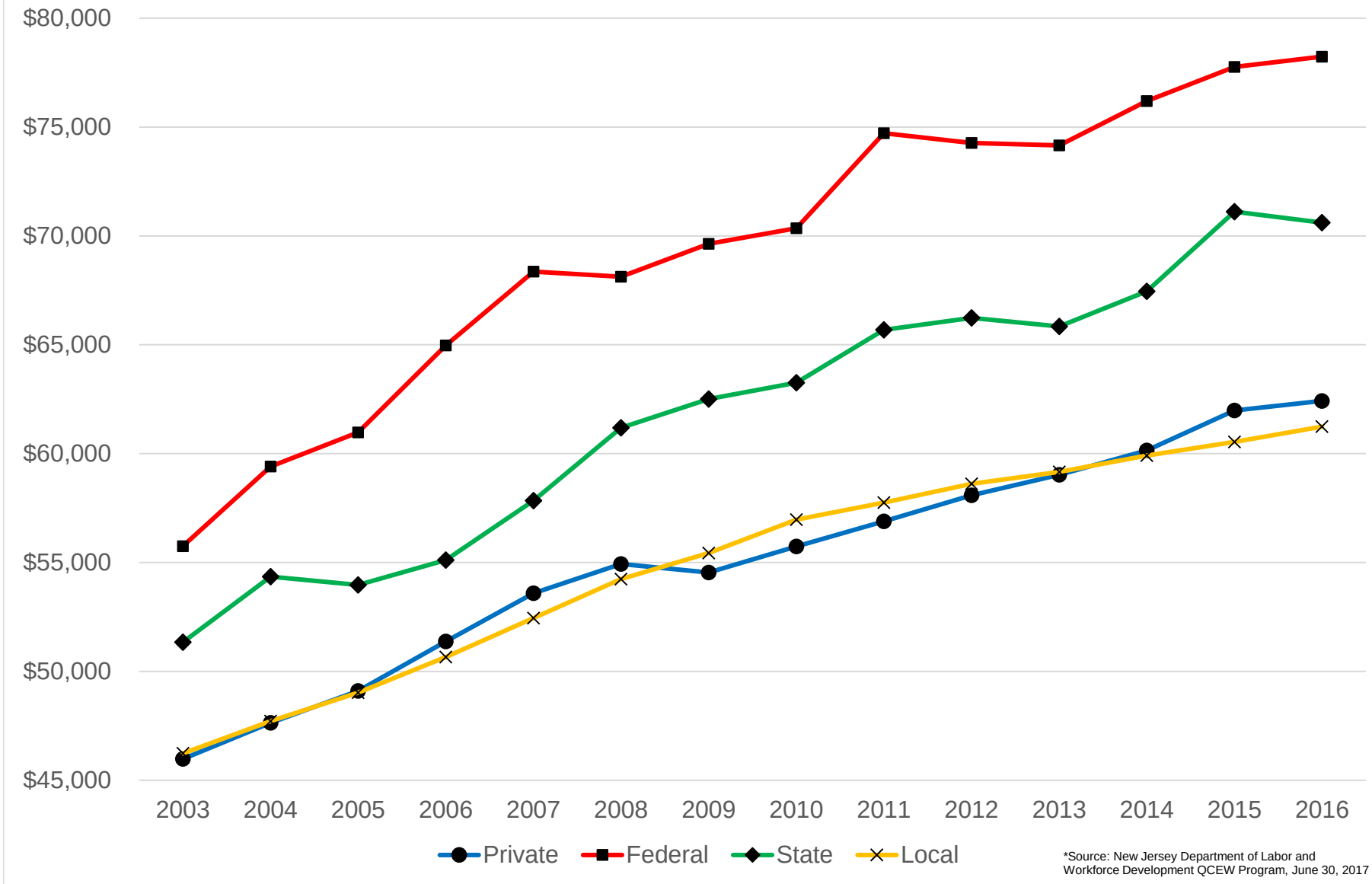
County	2015	2016	% Change
Atlantic	$ 39,665	$ 40,362	1.8%
Bergen	$ 63,085	$ 63,323	0.4%
Burlington	$ 53,798	$ 53,456	-0.6%
Camden	$ 49,078	$ 49,585	1.0%
Cape May	$ 32,361	$ 33,248	2.7%
Cumberland	$ 40,951	$ 41,038	0.2%
Essex	$ 63,197	$ 64,966	2.8%
Gloucester	$ 42,778	$ 43,404	1.5%
Hudson	$ 72,715	$ 72,935	0.3%
Hunterdon	$ 62,093	$ 62,442	0.6%
Mercer	$ 68,999	$ 70,162	1.7%
Middlesex	$ 62,978	$ 62,739	-0.4%
Monmouth	$ 50,304	$ 51,158	1.7%
Morris	$ 81,101	$ 80,897	-0.3%
Ocean	$ 38,898	$ 39,584	1.8%
Passaic	$ 49,691	$ 49,469	-0.4%
Salem	$ 57,915	$ 55,888	-3.5%
Somerset	$ 87,243	$ 86,965	-0.3%
Sussex	$ 40,603	$ 41,662	2.6%
Union	$ 67,711	$ 68,054	0.5%
Warren	$ 46,982	$ 47,047	0.1%
Total Private Sector*	$ 61,981	$ 62,424	0.7%

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

*** For additional historical employment and wage data for New Jersey, please go to the Office of Research and Information - Quarterly Census of Employment and Wages (QCEW) website:
http://lwd.dol.state.nj.us/labor/lpa/employ/qcew/qcew_index.html

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

New Jersey Average Annual Wages
2003 - 2016*



*Source: New Jersey Department of Labor and Workforce Development QCEW Program, June 30, 2017

2018 BIENNIAL REPORT

TAB 9

New Jersey Public Employment Relations Commission

POLICE AND FIRE

COLLECTIVE NEGOTIATIONS AGREEMENT SUMMARY FORM

Line #

SECTION I: Parties and Term of Contracts

1 Public Employer: _____ County: _____

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

3 Base Year Contract Term: _____

4 New Contract Term: _____

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

5 ☐ Contract settled without neutral assistance

6 ☐ Contract settled with assistance of mediator

7 ☐ Contract settled with assistance of fact-finder

8 ☐ Contract settled in Interest Arbitration

9 If contract was settled in Interest Arbitration, did the Arbitrator issue an Award? Yes ☐ No ☐

SECTION III: Base Salary Calculation

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

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

10 Salary Costs in base year **$**_____

11 Longevity Costs in base year **$**_____

12 Other base year salary costs

_____ $_____

_____ $_____

_____ $_____

_____ $_____

Sum of "Other" Costs Listed in Line 12. **$**_____

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

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

14 Total Base Salary Cost from Line 13: **$**_____

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

SECTION V: Average Increase Over Term of New CNA

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

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

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

SECTION VI: Other Economic Items Outside Base Salary and Increases

			←Increases→					
24	**Item Description**	**Base Year Cost ($)**	***Year 1***	***Year 2***	***Year 3***	***Year 4***	***Year 5***	***Year 6***
25	**Totals ($):**							

SECTION VII: Medical Costs

	Insurance Costs	**Base Year**	**Year 1**
26	Health Plan Cost	$	$
27	Prescription Plan Cost	$	$
28	Dental Plan Cost	$	$
29	Vision Plan Cost	$	$
30	Total Cost of Insurance	$	$

SECTION VII: Medical Costs (continued)

31	Employee Insurance Contributions	**$**_____	**$**_____
32	Contributions as % of Total Insurance Cost	_____**%**	_____**%**

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

SECTION VIII: Certification and Signature

34 The undersigned certifies that the foregoing figures are true:

Print Name: _____

Position/Title: _____

Signature: _____

Date: _____

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

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

Revised 8/2016

New Jersey Public Employment Relations Commission

POLICE AND FIRE

COLLECTIVE NEGOTIATIONS AGREEMENT SUMMARY FORM

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

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

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

Instructions for Completing the Summary Form

SECTION I: Parties and Term of Contracts

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

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

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

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

SECTION II: Type of Contract Settlement

Place a check on Line 5, 6, 7, or 8 to indicate the forum used to reach a settlement.

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

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

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

Line 8: Parties reached contract settlement through participation in interest arbitration.

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

SECTION III: Base Salary Calculation

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION V: Average Increase Over Term of the New Agreement

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

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

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

SECTION VI: Increased Cost of Other Economic Items Outside Base Salary

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

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

SECTION VII: Medical Costs

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

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

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

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

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

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

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

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

Line 33: In the box provided, identify any insurance changes that were negotiated or awarded: e.g., change in carrier, change in plans, change in benefits levels, co-pays, deductibles, employee contributions, etc.

SECTION VIII: Certification and Signature

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

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

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

8/22/16

2018 BIENNIAL REPORT

TAB 10

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

PO Box 429
TRENTON, NEW JERSEY 08625-0429

www.state.nj.us/perc

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(609) 292-6780

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495 WEST STATE STREET
TRENTON, NEW JERSEY 08618

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

December 3, 2012

TO: All Interested Parties

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

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

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

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

Thank you for your cooperation.

EXPEDITED SCOPE RULINGS FOR INTEREST ARBITRATION

I. Purpose and Applicability of Procedure

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

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

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

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

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

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

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

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

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

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

II. Procedure for expedited scope of negotiations determinations:

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

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

C. Briefs:

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

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

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

4. No additional briefs or submissions shall be filed.

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

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

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

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

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

2018 BIENNIAL REPORT

TAB 11

P.E.R.C. NO. 2017-1

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF POINT PLEASANT BEACH,

Petitioner,

-and- Docket No. SN-2016-082

PBA LOCAL 106,

Respondent.

SYNOPSIS

The Commission Chair issues an expedited scope of negotiations ruling on disputed proposals in a pending interest arbitration proceeding between the Borough and the PBA. The Borough filed a scope of negotiations petition and request for expedited resolution, asserting that the disputed proposals were not mandatorily negotiable and should not be submitted to the interest arbitrator. The PBA argued that the proposals were negotiable and should be submitted to the interest arbitrator.

The decision holds that the following proposals are not mandatorily negotiable: a 12-hour shift schedule is preempted by N.J.S.A. 40A:14-132 given the Borough's adoption of the necessary enabling ordinance; participation in the selection of a health insurance carrier absent a change in the level of benefits or administration of the plan; the payment schedule for health insurance premiums is preempted by N.J.S.A. 40A:10-21.2 to the extent the parties are negotiating a multi-year successor agreement that encompasses the period January 1, 2015 to August 1, 2015. The decision holds that the following proposals are mandatorily negotiable: a request for information in the Borough's possession regarding the benefits and administration of the insurance plan under consideration or selected by the Borough; to the extent the parties are negotiating a one-year successor agreement for 2015 and a subsequent multi-year successor agreement, the payment schedule for health insurance premiums is not preempted by N.J.S.A. 40A:10-21.2 for the successor agreement following the one-year agreement.

The order provides that the provisions that are mandatorily negotiable may be submitted to compulsory interest arbitration for inclusion in a successor collective negotiations agreement and those that are not mandatorily negotiable may not be submitted to compulsory interest 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.

P.E.R.C. NO. 2017-1

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF POINT PLEASANT BEACH,

Petitioner,

-and- Docket No. SN-2016-082

PBA LOCAL 106,

Respondent.

Appearances:

For the Petitioner, Armando V. Riccio, LLC, attorneys (Armando V. Riccio, on the brief)

For the Respondent, Loccke, Correia & Bukosky, attorneys (Richard D. Loccke, of counsel; Cory M. Sargeant, on the brief)

DECISION

This decision is issued under the Commission's Pilot Program to make expedited scope of negotiations rulings on disputed proposals in a pending interest arbitration proceeding.[1/]

On June 21, 2016, PBA Local 106 (PBA) submitted a petition to initiate compulsory interest arbitration to resolve a negotiations impasse with the Borough of Point Pleasant Beach

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1/ N.J.A.C. 19:16-5.7(I) gives interest arbitrators jurisdiction to make negotiability determination in their awards "[u]nless the Commission Chair directs otherwise." See State of New Jersey (New Jersey Law Enforcement Supervisors Ass'n), P.E.R.C. No. 2014-21, 40 NJPER 210 (¶81 2013). This exception allows expeditious resolution of negotiability disputes that are unresolved at the start of interest arbitration under a pilot program described at: http://www.state.nj.us/perc/Pilot_Program_Notice.pdf

(Borough) over the terms of a successor collective negotiations agreement (CNA) between the parties. On June 28, the Borough petitioned for a scope of negotiations determination and requested to have the issues decided on an expedited basis pursuant to the Pilot Program. The request was granted on June 28 and the PBA filed opposition on July 1.[2/]

The scope of negotiations for police officers and firefighters is broader than for other public employees because N.J.S.A. 34:13A-16 provides for a permissive as well as a mandatory category of negotiations. Paterson Police PBA No. 1 v. City of Paterson, 87 N.J. 78, 92-93 (1981), outlines the steps of a scope of negotiations analysis for firefighters and police:

> First, it must be determined whether the particular item in dispute is controlled by a specific statute or regulation. If it is, the parties may not include any inconsistent term in their agreement. State v. State Supervisory Employees Ass'n, 78 N.J. 54, 81 (1978). If an item is not mandated by statute or regulation but is within the general discretionary powers of a public employer, the next step is to determine whether it is a term or condition of employment as we have defined that phrase. An item that intimately and directly affects the work and welfare of police and firefighters, like any other public employees, and on which negotiated agreement would not significantly interfere with the exercise of inherent or express management prerogatives is mandatorily negotiable. In a

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2/ The Borough filed a brief, exhibits, and the certification of its Business Administrator. The PBA filed a brief and the certification of its Attorney.

> case involving police and firefighters, if an item is not mandatorily negotiable, one last determination must be made. If it places substantial limitations on government's policymaking powers, the item must always remain within managerial prerogatives and cannot be bargained away. However, if these governmental powers remain essentially unfettered by agreement on that item, then it is permissively negotiable.

In cases involving collective negotiations or interest arbitration, our policy has been not to decide whether contract language or proposals are permissively negotiable because an employer has no obligation to negotiate over such proposals or to consent to their submission to interest arbitration. City of Atlantic City, P.E.R.C. No. 2015-63, 41 NJPER 439 (¶137 2015)(citing Town of West New York, P.E.R.C. 82-34, 7 NJPER 594 (¶12265 1981)). We consider only whether the proposals are mandatorily negotiable.

The parties' CNA expired on December 31, 2014. The Borough has identified specific PBA proposals that it asserts are not mandatorily negotiable. The proposed language or topic appears below and is underlined.

> **Article XVII - Overtime**
> The current schedule system shall continue. The current twelve (12) hour shift schedule (6 A.M. - 6 P.M., 6 P.M. - 6 A.M.) shall continue. Shifts will continue to be chosen by each Officer on a seniority basis for each calendar year.

The Borough asserts that the above language is not mandatorily negotiable because the authority to establish a work

schedule for police officers has been granted to the governing body of a municipality pursuant to N.J.S.A. 40A:14-132. The Borough argues that this topic has been preempted given that it previously adopted an ordinance setting the maximum number of hours within a shift at eight hours consistent with the statutory requirement. The PBA responds that hours of work are, in general, mandatorily negotiable. The PBA maintains that the Borough's ordinance does not sufficiently fix a term and condition of employment with respect to the number of hours an employee must work. The PBA also argues that the ordinance is inoperable because the Borough has failed to demonstrate that there was approval by legal voters of the municipality and no related resolution has been adopted and filed.

N.J.S.A. 40A:14-132 provides in pertinent part:

> The hours of employment of the uniformed members and officers of the police department and force in any municipality shall not exceed 8 continuous hours in any one day nor more than 40 hours in any one week. No such member or officer shall be required to perform any police duty which would involve more time than herein specified except in cases of emergency.
>
> The provisions herein shall be inoperative unless and until adopted by ordinance of the governing body of the municipality. . . .

N.J.S.A. 40A:14-134 defines "emergency" to:

> [I]nclude any unusual conditions caused by any circumstances or situation including shortages in the personnel of the police department or force caused by vacancies,

> sickness or injury, or by the taking of accrued leave or both, whereby the safety of the public is endangered or imperiled, as shall be determined within the sole discretion of the officer, board or official having charge of the police department or force in any municipality.

The Borough has adopted Ordinance 2-10, entitled "Department of Police and Civil Defense," Section f., entitled "Hours of Employment," which provides:

> The hours of employment of uniformed members of the police department shall not exceed eight consecutive hours in any one day nor 40 hours in any one week; provided, that in case of an emergency the chief of police or the director shall have full authority to summon and keep on duty any and all such members during the period of emergency. Although certain hours will be allotted for the performance of regular tours of duty, officers are considered at all times available for duty and must act promptly at any time that their services are required, except when on authorized leave or in the event of disability.

"[A]n otherwise negotiable topic cannot be the subject of a negotiated agreement if it is preempted by legislation." Bethlehem Tp. Bd. of Educ. v. Bethlehem Tp. Educ. Ass'n, 91 N.J. 38, 44 (1982). "However, the mere existence of legislation relating to a given term or condition of employment does not automatically preclude negotiations." Id. "Negotiation is preempted only if the [statute or] regulation fixes a term and condition of employment 'expressly, specifically and comprehensively.'" Id. (citing Council of New Jersey State

College Locals v. State Board of Higher Educ., 91 N.J. 18, 30 (1982)). "The legislative provision must speak in the imperative and leave nothing to the discretion of the public employer." Id.

We find that the PBA's 12-hour shift proposal is preempted by N.J.S.A. 40A:14-132 given that the Borough has adopted the necessary enabling ordinance. The statute specifically fixes the maximum daily and weekly hours of employment for police officers, absent emergency, if a municipality adopts an enabling ordinance. Moreover, the Commission has held that "N.J.S.A. 40A:14-132 and N.J.S.A. 40A:14-134 . . . preempt[] negotiations over the managerial determination that overtime work is necessary." City of Long Branch, P.E.R.C. No. 83-15, 8 NJPER 448 (¶13211 1982). Unlike Long Branch, the issue of which employees will work overtime has not been raised by the parties in this petition.

> **Article XIX - Medical Coverage**
> B. The PBA proposes that PBA representatives be provided with active participation in the review, evaluation and ultimate selection of the health care provider.

The Borough asserts that its choice of health insurance carrier is not mandatorily negotiable so long as the negotiated level of benefits is not changed. The PBA argues that it is only seeking the ability to review and evaluate terms and conditions of employment relating to the level of insurance benefits provided by the potential health care provider and the administration of the plan in order to ensure that unit members

are receiving the contractually guaranteed "equivalent to or better than present coverage" level of benefits. The PBA also seeks the ability to provide information, opinions, and recommendations regarding the Borough's potential health care provider in order to avoid litigation between the parties.

The Commission has held that "[a]n employer's choice of health insurance carriers is not mandatorily negotiable so long as the negotiated level of benefits is not changed." Rockaway Bor. Bd. of Ed., P.E.R.C. No. 2010-9, 35 NJPER 293 (¶102 2009) (citing City of Newark, P.E.R.C. No. 82-5, 7 NJPER 439 (¶12195 1981)). "Once an employer and a union agree upon a level of benefits, the employer has discretion to choose a health insurance carrier, and the employer is not normally required to negotiate over which health insurance carrier it contracts with to provide those benefits." Id. "[P]arties can agree to permit an employer to change carriers consistent with the collective negotiations agreement." Id. (citing Camden Cty. College, P.E.R.C. No. 2008-67, 34 NJPER 254 (¶89 2008)). However, "[w]here changing the identity of the carrier changes terms and conditions of employment, i.e., the level of insurance benefits, and the administration of the plan, it becomes a mandatory subject for negotiations." Id. (citing Metuchen Bor., P.E.R.C. No. 84-91, 10 NJPER 127 (¶15065 1984)).

Accordingly, to the extent that the PBA's proposal seeks to participate in the selection of a health insurance carrier, it is not mandatorily negotiable absent a change in the level of benefits or administration of the plan. Conversely, the proposal would be mandatorily negotiable to the extent it is construed to be a request for information in the Borough's possession regarding the benefits and administration of the insurance plan under consideration or selected by the Borough. See Lakewood Bd. of Educ., P.E.R.C. No. 97-44, 22 NJPER 397 (¶27215 1996).

C. The PBA wishes to negotiate the payment schedule with respect to health care premiums effective August 1, 2015.

The Borough argues that negotiations regarding health insurance premiums are preempted by N.J.S.A. 40A:10-21.2 until the next CNA after the one currently being negotiated given that full implementation of Chapter 78 did not occur until after the expiration of the most recent CNA. The PBA argues that Clementon Bd. of Educ., P.E.R.C. No. 2016-10, 42 NJPER 117 (¶34 2015), appeal docketed, A-0372-15T1 (App. Div. Sept. 22, 2016) is currently on appeal and only pertains to employee contributions and premiums for school districts under N.J.S.A. 18A:16-17.2. However, the PBA is willing to include the phrase "provided such premium contribution is lawfully consistent with the provisions of Chapter 78" in order to reserve its rights. Notwithstanding this concession, the PBA maintains that because Chapter 78 was

fully implemented as of August 1, 2015, its proposal to negotiate over the payment schedule for health insurance premiums is mandatorily negotiable.

The Commission has held that employee health benefits contributions become negotiable in the next collective negotiation agreement after full implementation of the four-tiered contribution levels and that Tier 4 levels of employee health benefits contributions constitute the status quo once employee contribution levels become negotiable pursuant to Chapter 78.[3/] Clementon Bd. of Ed. In Clementon, an analogous case, the Commission stated:

> Therefore, depending on the length of the successor agreement that the Board and the Association agree to, [the proposal] may be preempted by N.J.S.A. 18A:16-17.2. For example, if the parties agree to a contract with a one-year term, [the proposal] would be preempted by N.J.S.A. 18A:16-17.2 from July 1, 2014 to June 30, 2015, the final year of employee contributions at Tier 4 levels. However, it would not be preempted in the "next" agreement when employee contribution levels become negotiable. Alternatively, if the parties agree to a multi-year successor agreement, the express language of N.J.S.A. 18A:16-17.2 would preempt [the proposal] for the first year of the successor agreement as well as any additional years in the agreement until the "next" agreement when employee contribution levels would become negotiable.

3/ Chapter 78's enabling statutes include: N.J.S.A. 52:14-17.28d for State government employee contributions and premiums; N.J.S.A. 18A:16-17.2 for school district employee contributions and premiums; and N.J.S.A. 40A:10-21.2 for local government employee contributions and premiums.

The terms of N.J.S.A. 40A:10-21.2 are identical to N.J.S.A. 18A:16-17.2. Therefore we apply existing Commission case law correspondingly. The parties' CNA expired on December 31, 2014 and Tier 4 employee contribution levels were completed as of August 1, 2015. Accordingly, to the extent that the parties are negotiating a multi-year successor agreement that encompasses the period January 1, 2015 to August 1, 2015, the PBA's proposal to negotiate over the payment schedule for health insurance premiums is preempted by N.J.S.A. 40A:10-21.2 and is not mandatorily negotiable. To the extent that the parties are negotiating a one-year successor agreement for 2015 and a subsequent multi-year successor agreement, the PBA's proposal to negotiate health insurance premiums is preempted by N.J.S.A. 40A:10-21.2 for the one-year agreement but would not be preempted in the next agreement when employee contributions become negotiable.

ORDER[4/]

A. The PBA's proposal under Article XVII, Section C. is preempted by N.J.S.A. 40A:14-132 given the Borough's adoption of Ordinance 2-10(f) and is not mandatorily negotiable.

B. The PBA's proposal under Article XIX, Section B. is not mandatorily negotiable to the extent the PBA seeks to participate in the selection of a health insurance carrier absent a change in the level of benefits or administration of the plan; the proposal would be mandatorily negotiable to the extent it is construed to be a request for information in the Borough's possession regarding the benefits and administration of the insurance plan under consideration or selected by the Borough.

C. The PBA's proposal under Article XIX, Section C. is preempted by N.J.S.A. 40A:10-21.2 for year one of the successor agreement between the parties and, if applicable, any additional years for the successor agreement until the next agreement when employee contribution levels become negotiable.

P. Kelly Hatfield
Chair

ISSUED: July 14, 2016

Trenton, New Jersey

4/ Paragraphs G and H of the pilot program description read:

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

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

2018 BIENNIAL REPORT

TAB 12

P.E.R.C. NO. 2015-63

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF ATLANTIC CITY,

Petitioner,

-and- Docket No. SN-2015-051

ATLANTIC CITY PROFESSIONAL FIREFIGHTERS INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS LOCAL NO. 198,

Respondent.

Appearances:

For the Petitioner, Cleary, Giacobbe, Alfieri & Jacobs, LLC, attorneys (Matthew J. Giacobbe and Gregory J. Franklin, of counsel and on the brief)

For the Respondent, O'Brien, Belland & Bushinsky, LLC, attorneys (Mark E. Belland, of counsel and on the brief; David F. Watkins and Lisa Leshinski, on the brief)

DECISION

This decision is issued under the Commission's Pilot Program to make expedited scope of negotiations rulings on disputed proposals in a pending interest arbitration proceeding.[1/]

1/ N.J.A.C. 19:16-5.7(i) gives interest arbitrators jurisdiction to make negotiability determinations in their awards, "[u]nless the Commission Chair directs otherwise." See State of New Jersey, P.E.R.C. No. 2014-21, 40 NJPER 210 (¶81 2013). The exception allows expeditious resolution of negotiability disputes that are unresolved at the start of interest arbitration, under a pilot program described at: http://www.perc.state.nj.us/perc/Pilot_Program_Notice.pdf

On February 20, 2015, the City of Atlantic City (City) submitted a petition to initiate compulsory interest arbitration to resolve a negotiations impasse with Atlantic City Professional Firefighters International Association of Fire Fighters Local No. 198 (IAFF) over the terms of a successor collective negotiations agreement (CNA) between the parties and also filed a petition for scope of negotiations determination. On March 9, the City filed an amended petition for scope of negotiations determination along with a brief and requested to have the issues decided on an expedited basis pursuant to the Pilot Program. The request was granted on March 11, and on March 19, after an extension, the IAFF filed its brief in opposition.

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

> First, it must be determined whether the particular item in dispute is controlled by a specific statute or regulation. If it is, the parties may not include any inconsistent term in their agreement. If an item is not mandated by statute or regulation but is within the general discretionary powers of a public employer, the next step is to determine whether it is a term and condition of employment as we have defined that phrase. An item that intimately and directly affects the work and welfare of police and fire fighters, like any other public employees, and on which negotiated agreement would not significantly interfere with the exercise of inherent or express management prerogatives is mandatorily negotiable. In a case involving police and fire fighters, if an

> item is not mandatorily negotiable, one last determination must be made. If it places substantial limitations on government's policymaking powers, the item must always remain within managerial prerogatives and cannot be bargained away. However, if these governmental powers remain essentially unfettered by agreement on that item, then it is permissively negotiable.

In cases involving collective negotiations and/or interest arbitration, we consider only whether contract language or contract proposals are mandatorily negotiable. Town of West New York, P.E.R.C. No. 82-34, 7 NJPER 594 (¶12265 1981).

The parties' CNA expired on December 31, 2014. The City has identified specific language in numerous clauses in the expired CNA that it asserts are in dispute and are not mandatorily negotiable. The disputed/proposed language appears below and is underlined.

> **Article 23 - Transfers and Assignments**
>
> **Article 23A - (page 46)**
>
> Transfers and assignments shall provide the highest degree of efficiency in every unit of the Fire Department by assigning a combination of experienced and less experienced personnel. Whenever possible each unit shall consist of the following balance. One (1) Company Officer. One (1) Senior Firefighter. Two (2) Journeyman Firefighters. One (1) Apprentice Firefighter.

The City asserts that the above language is not mandatorily negotiable because it creates a minimum staffing provision. The IAFF responds that the qualifying language "whenever possible"

allows the City to determine the size of is workforce and how to deploy its personnel. The Commission has consistently held that staffing and manning levels are a managerial prerogative and not mandatorily negotiable. See City of Plainfield, P.E.R.C. No. 2015-40, 41 NJPER 272 (¶91 2014); Nutley Tp., P.E.R.C. No. 2012-25, 38 NJPER 207 (¶71 2012); North Hudson Regional Fire and Rescue, P.E.R.C. No. 2000-78, 26 NJPER 184 (¶31075 2000); City of Long Branch, P.E.R.C. No. 92-102, 18 NJPER 175 (¶23086 1992); E. Orange and Local 23, E. Orange Firemen's Mutual Benev. Ass'n, P.E.R.C. No. 81-11, 6 NJPER 378 (¶11194 1980), aff'd NJPER Supp.2d 100 (¶82 App. Div. 1981), certif. denied 88 N.J. 476 (1981). Based on the above precedent, I conclude that Article 23A. is not mandatorily negotiable and may not be submitted to interest arbitration.

Article 23J - (pages 47-49)

J. Posting Procedure and Selection Criteria:

1. When a vacancy or new position occurs within the bargaining unit, it shall be filled temporarily by the Chief of the Department. The City shall immediately post notices on the bulletin boards in all fire stations setting forth the classification, job duties and requirements, hours and days of work, starting time and wage rate of the job to be filled permanently. Employees desiring to apply for the job shall make application to the Chief of the Department setting forth their qualifications, seniority, etc. Copies of these applications and of the notices are to be filed with the Secretary of the Union. Notices shall remain posted for ten (10) days. Employees who do

> not make application within the period of the posting shall have no right to consideration for the job, with the exception that employees (who) are not at work during the entire posting period and who have sufficient qualifications and seniority shall be considered for the job.
>
> 2. In filling vacancies by promotion or transfer, where ability and other qualifications are equal, seniority within the Fire Department shall control. The term "ability and other qualification" used herein shall include observing the rules and regulations of the Fire Department. The Chief of the Department shall define and determine the standards of "ability and other qualifications", which cannot be arbitrarily or selectively established.
>
> 4. The Chief of the Department may deny placement of an applicant possessing ability and other qualifications to the vacant or new position, should the Chief of the Department determine, exercise bona fide discretion, that such individual is needed more in the position already assigned.

The City asserts that the underlined language is a non-negotiable managerial prerogative because it requires the City to fill vacant or new positions and requires the City to define standards for assignments and promotions. The IAFF responds that the proposed language is mandatorily negotiable because it concerns promotional procedures and criteria and that it does not require the City to make a promotion if the applicant is needed more in the position already assigned.

An employer cannot be required to fill a vacant or new position since it is a managerial prerogative. Provisions

allocating work assigned in temporarily vacant higher titles to qualified public safety employees are permissively negotiable but not mandatorily negotiable. See, e.g., City of Camden, P.E.R.C. No. 93-43, 19 NJPER 15 (¶24008 1992), aff'd 20 NJPER 319 (¶25163 App. Div. 1994); City of Atlantic City, P.E.R.C. No. 90-125, 16 NJPER 415 (¶21172 1990). Commission case law does not, however, permit a union to enforce an agreement to fill a vacant position should the employer decide not to do so. See City of Atlantic City, P.E.R.C. No. 2001-56, 27 NJPER 186 (¶32061 2001); Newark and Newark FMBA, Local No. 4, P.E.R.C. No. 82-39, 7 NJPER 606 (¶12270 1981), aff'd NJPER Supp.2d 134 (¶115 App. Div. 1983). Therefore, the underlined portion of Article 23J.1. is not mandatorily negotiable because the language "shall be filled" would require the employer to make temporary appointments to fill vacancies.

Additionally, criteria for selection and to fill positions are managerial prerogatives:

> It is well-established that proposals relating to the criteria for promotion are non-negotiable because they concern matters of managerial prerogatives. An employer's judgment as to which, if any, of the candidates are qualified for promotion is also non-negotiable. On the other hand, procedures, including announcements of promotional vacancies, information concerning the employer-established qualifications and criteria, the opportunity to be considered for promotion and feedback to unsuccessful candidates are mandatorily negotiable promotional procedures. See Dept. of Law &

> Public Safety, Div. of State Police v. State Troopers NCO Ass'n of N.J., supra.; North Bergen Tp. Bd. of Ed. v. North Bergen Fed. Teachers, 141 N.J. Super. 97, 103 (App. Div. 1976).
>
> [State of N.J. and Division of Criminal Justice NCOA, SOA and FOP Lodge No. 91, P.E.R.C. No. 2014-50, 40 NJPER 346 (¶126 2014), app. pending]

Article 23J.2., as written, is not mandatorily negotiable because the language "which cannot be arbitrarily or selectively established" would allow the criteria established by the employer to be second-guessed by an arbitrator. Article 23J.4. similarly infringes on the managerial prerogative to make assignments under particular circumstances by limiting them to situations in which the Chief exercises "bona fide discretion."

Accordingly, I find that the underlined provisions in Article 23J.1., 2., and 4. are not mandatorily negotiable and may not be submitted to interest arbitration.

Article 23C, G, H and I - (pages 46-47)

> C. A higher seniority vacancy may be covered by a firefighter with a lower service time. However, a lower seniority vacancy may not be covered by a firefighter with higher service time. Exception: Journeyman Firefighters may cover when no apprentice is available.
>
> G. Personnel may transfer by mutual agreement with personnel of equal rank and seniority with approval of the Platoon Commander and the Chief of the Fire Department.
>
> H. All personnel may request a transfer by opening his/her assignment to bids by other

> personnel of equal rank and seniority, with the approval of the Platoon Commander and the Chief of the Fire Department. The individual's new assignment would be determined by the vacancy created by the successful bidder to his/her position.
>
> I. Mutual transfer and initiated transfers shall be limited to one (1) per year.

The City asserts that the underlined language is a non-negotiable managerial prerogative because the language substantially interferes with an employer's unfettered prerogative to choose employees for specific assignments as it deems necessary and it allows employees to initiate transfers. The IAFF responds that the proposed language is mandatorily negotiable because an employer may legally agree to assign fire or police personnel in accordance with contractual seniority provisions where all qualifications are equal and that the transfer clauses require City approval and as a result, do not significantly interfere with the City's managerial responsibilities.

As set forth above, the filling of vacancies is a managerial prerogative. Transfers and reassignments are also managerial prerogatives. See Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978); Local 195, IFPTE v. State, 88 N.J. 393 (1982); Butler Boro., P.E.R.C. No. 87-121, 13 NJPER 292 (¶18123 1987). However, Article 23G. and H. do not require the City to make transfers as approval is required by the Platoon

Commander and the Chief of the Fire Department. The Commission has distinguished between cases in which employers were required to honor requests for transfer, rather than merely to consider them and explain any denials. See Ridgefield Park; Rockaway Tp. Bd. of Ed. and Rockaway Tp. Ed. Ass'n, P.E.R.C. No. 90-107, 16 NJPER 321 (¶21132 1990), aff'd NJPER Supp.2d 250 (¶209 App. Div. 1991); Piscataway Tp. Bd. of Ed., P.E.R.C. No. 87-151, 13 NJPER 508 (¶18189 1987; National Park Bd. of Ed., P.E.R.C. No. 87-102, 13 NJPER 194 (¶18082 1987); Edison Tp. Bd. of Ed., P.E.R.C. No. 83-100, 9 NJPER 100 (¶14055 1983). Similarly, Article 23I., based on the language in Article 23G. and H., does not require the City to make transfers as approval is still required by the Platoon Commander and the Chief of the Fire Department; the City still has the right to make involuntary transfers as a managerial prerogative.

Based on the above, I find that the provision in Article 23C. is not mandatorily negotiable and may not be submitted to interest arbitration, while the provisions in Article 23G., H. and I. are mandatorily negotiable and may be submitted to interest arbitration.

Article 18 - Acting Out of Title

Article 18A - (pages 33-35)

A.2. In the event an employee is assigned to act out-of-title, he/she shall be selected from an existing promotional list of eligible employees. If no existing list is current

such employee shall be selected from the rank next preceding the vacated position.

A.2.(c). If there is an existing Civil Service list the higher rank, the number one person on the list shall be placed in the vacancy.

A.2.(d). In the absence of an existing Civil Service list, the senior person who is qualified shall be placed in the vacancy for ninety (90) working days and receive the pay at the higher rank. After these ninety (90) working days, the next senior person with qualifications shall replace that person and the same conditions will prevail. In the event of a two-part promotional examination, in which an interim list is issued, only personnel on the interim list will be deemed "qualified" to act out-of-title in the higher position.

B.2.(c). Acting Captain will be performed by journeymen firefighters in the same company, if possible.

B.2.(d). Acting Battalion Chief will be performed by Captains on the same platoon.

B.2.(e). Acting Deputy Chief will be performed by Battalion Chiefs on the same platoon.

B.2.(f). In the event of a promotional list, only personnel on the list will act out-of-title in the higher position. In the event there is no individual on the list permanently assigned to a Company, pursuant to Civil Service Commission regulations, personnel on the list will be reassigned to perform the acting out-of-title work. If there is no promotional list, then the acting out-of-title position will be performed by a journeyman assigned by seniority. At the company level, the acting out-of-title position will be rotated on a four (4) day working basis. In the event of a two-part promotional examination, in which an interim

> list is issued, only personnel on the interim list will be deemed "qualified" to act out-of-title in the higher position.
>
> Article 18A-(page 35)
>
> A.2.(g). When a promotional vacancy is created due to the terminal leave provision, and where there is an existing promotional list, such promotion shall be made within fifteen (15) consecutive days of the vacancy. In the event there is no existing list, Section A. 2.(d) will prevail.

The City asserts that the underlined language is non-negotiable because the language impermissibly requires the City to set promotional criteria and qualifications, removes its discretion to determine which employees are best suited for assignments, and impinges on its discretion to set staffing levels and to fill vacancies. The IAFF responds that the proposed language is negotiable because the above clauses touch upon procedural and reassignment decisions which are mandatorily negotiable and nothing in the language infringes on the City's right to determine when to fill a vacancy or to select promotional criteria.

The proposed language in Article 18A.2., A.2.(c), B.2.(c), B.2.(d), B.2.(e), and B.2.(f) refers to acting (temporary) and not permanent promotions. The Commission has held that it is mandatorily negotiable for the employer to agree to make promotional assignments based on an existing promotional list of eligible employees. In Tp. of Wall and Wall Tp. PBA Local 234,

P.E.R.C. No. 2002-22, 28 NJPER 19 (¶33005 2001), aff'd 29 NJPER 279 (¶83 App. Div. 2003), the Commission stated:

> Promotional criteria are not mandatorily negotiable while promotional procedures are. State v. State Supervisory, 78 N.J. at 90. Absent preemption, an employer may normally agree to promote employees in the order they are listed on a promotional list developed by applying its own unilaterally-set criteria to the eligible candidates. Id. at 92; see also Department of Law & Public Safety, Div. of State Police v. State Troopers NCO Ass'n of N.J ., 179 N.J. Super. 80 (App. Div. 1981). Unless an employer has announced a change in its promotional criteria, it may remain obligated to fill positions from that list. Howell Tp., P.E.R.C. No. 96-59, 22 NJPER 101 (¶27052 1996).

Further, the first sentence in Article 18A.2 presupposes that the employer has exercised its prerogative and has decided to make an out-of-title assignment. Thus the language does not interfere with the decision whether to fill a temporary vacancy and the fact that there is a civil service list means that the employees eligible to be assigned to the temporary vacancy are qualified.

The first two sentences in Article 18A.2.(d) as written, however, and the language in Article A.2.(g) both require the City to fill a promotional vacancy. As set forth above, that is a managerial prerogative. Paterson; See also City of Clifton, P.E.R.C. No. 92-25, 17 NJPER 426 (¶22205 1991). I find that the proposed language in Article 18A.2., A.2.(c), B.2.(c), B.2.(d), B.2.(e), and B.2.(f) and the third sentence in Article A.2.(d) are mandatorily negotiable and may be submitted to interest

arbitration. I find that in the above provisions, the first two sentences in Article 18A.2.(d) and the language in Article 18A.2.(g) are not mandatorily negotiable and may not be submitted to interest arbitration.

Article 16 - Leaves; Article 17 - Vacations

Article 16C - (pages 21 and 22); Article 17D - (page 31) (Second Sentence)

C. Illness and Injury

1. In the event that an employee suffers an illness or injury in the line of duty, in the course of employment, or as a result of his/her employment, he/she shall be. compensated at full pay for a period not to exceed one (1) year. A Medical Review Board shall be created for the purpose of examining all matters pertaining to sick and/or injured members of the Atlantic City Fire Department. Any employee may be required to present to this Board a doctor's certificate to the effect that the illness or injury specified above required extended convalescence.

2. In the event that any illness or injury sustained by an employee is not service connected, said employee shall have his/her injury or illness reviewed by the Medical Review Board for the purpose of determining whether or not such occurrence is of a major nature, thereby rendering the employee eligible for additional sick leave compensation in excess of the yearly one hundred forty (140) hours, or accumulate sick leave which he/she may have exhausted. However, in no event shall any firefighter who shall have attained the commencement of his/her fourth year of employment not be compensated if he/she is sick or injured and requires convalescence, notwithstanding the nature of the illness or injury or whether or

not said employee has exhausted his/her yearly or cumulative sick time.

3. All excuses and notification of illness or injury shall be submitted to the Medical Review Board for its determination. The Medical Review Board shall consist of the Mayor, or his/her designate, either of whom may act as chairperson; the Fire Surgeon or his/her medical designate; and one (1) superior officer selected by the Union or his/her designate. The Personnel Officer or his/her designate shall be an ex-officio, non-voting member of the Medical Review Board.

Article 17D

All personnel who are in the negative shall be docked pay for sick time unless they are convalescing from a sickness approved by the Medical Review Board.

The City asserts that the underlined language is non-negotiable because the language concerns the formulation and implementation of sick leave policy, and verification procedures relating to sick leave are managerial prerogatives. The IAFF responds that the application of sick leave policy is a mandatory subject of negotiation and the City's right to verify illness is not circumscribed by the proposed language.

Sick leave verification is a managerial prerogative. The Commission has held in City of East Orange, P.E.R.C. No. 84-68, 10 NJPER 25 (¶15015 1983): "In In re Piscataway Twp. Bd. of Ed., P.E.R.C. No. 82-64, 8 NJPER 95 (13039 1982), the Commission determined that "the mere establishment of a verification policy is the prerogative of the employer. See also, Bd. of Ed. of

Woodstown-Pilesgrove v. Woodstown-Pilesgrove Ed. Ass'n, 81 N.J. 582 (1980)." The proposed language in the first sentence of Article 16C.1. allows the Medical Review Board to examine "all matters pertaining to sick/and/or injured members..." This proposed language impinges on the City's managerial prerogative to verify sick leave since it delegates that authority to a joint employer/employee committee. Similarly, the second underlined sentence Article 16C.1. concerns sick leave verification for extended convalescence and the proposed language in Article 16C.3. and Article 17D. also impact on the City's managerial prerogative to verify sick leave and are non-negotiable.

The Commission has held, however, that the establishment of sick leave verification policies, is separate from issues involving the application of those policies, and is even more distinct from the negotiable issue of the decision to grant or deny a request for sick leave. In Piscataway Tp. Bd. of Ed. and Piscataway Tp. Ed. Ass'n, P.E.R.C. No. 82-64, 8 NJPER 95 (¶13039 1982), the Commission stated, "The mere establishment of a verification policy is the prerogative of the employer. The application of the policy, however, may be subject to contractual grievance procedures." Article 16C.2. concerns the application of the sick leave verification policy since the Medical Review Board is reviewing sick leave that has already been verified as not service connected.

I find that the above underlined provisions in Article 16C.1. and 3. and Article 17D. are not mandatorily negotiable and may not be submitted to interest arbitration. I find that the proposed language in Article 16C.2. concerns the application of the sick leave policy and is mandatorily negotiable and may be submitted to interest arbitration.

Article 17D - (page 31) (First Sentence)

A maximum of four (4) vacation days may be converted to sick days per year with approval of the Medical Review Board.

The City asserts that the above provision is not mandatorily negotiable because it is preempted by N.J.S.A. 11A:6-2(f). The IAFF responds that the provision is not preempted because N.J.S.A. 11A:6-2(f)[2/] only applies to New Jersey State employees and that N.J.S.A. 11A:6-9 provides that leaves of absence for police officer and fire fighter titles are governed by Title 40A

2/ N.J.S.A. 11A:6-2. Vacation leave; full-time State employees, provides in pertinent part:

"Vacation leave for full-time State employees in the career and senior executive service shall be at least:

f. Vacation not taken in a given year because of business demands shall accumulate and be granted during the next succeeding year only; except that vacation leave not taken by an employee in the career and senior executive service in a given year because of duties directly related to a state of emergency declared by the Governor shall accumulate until, pursuant to a plan established by the employee's appointing authority and approved by the commission, the leave is used or the employee is compensated for that leave, which shall not be subject to collective negotiation or collective bargaining."

of the New Jersey Statutes. However, N.J.S.A. 11A:6-3 [3/] applies to political subdivision employees as well as N.J.A.C. 4A:6-1.2(g) for New Jersey Civil Service employees.

Where a statute or regulation is alleged to preempt an otherwise negotiable term or condition of employment, it must do so expressly, specifically and comprehensively. Bethlehem Tp. Bd. of Ed. v. Bethlehem Tp. Ed. Ass'n, 91 N.J. 38, 44-45 (1982). If a particular item in dispute is controlled by a specific statute or regulation, the parties may not include any inconsistent term in their agreement. State v. State Supervisory Employees Ass'n, 78 N.J. 54, 80-82 (1978).

I find that the above underlined provision in Article 17D. is not preempted by N.J.S.A. 11A:6-3(e) since the proposed language is not expressly, specifically and comprehensively preempted by the statute; the provision may be submitted to interest arbitration.

3/ N.J.S.A. 11A:6-3. Vacation leave; full-time political subdivision employees provides in pertinent part:

"e. Vacation not taken in a given year because of business demands shall accumulate and be granted during the next succeeding year only; except that vacation leave not taken in a given year because of duties directly related to a state of emergency declared by the Governor may accumulate at the discretion of the appointing authority until, pursuant to a plan established by the employee's appointing authority and approved by the commission, the leave is used or the employee is compensated for that leave, which shall not be subject to collective negotiation or collective bargaining."

Article 16.F(3)(e) - (page 25)

F. Terminal Leave Options - 3. Terminal Leave shall be amended to provide for a maximum monetary payment as follows:

(e) Employees hired after January 1, 2012 will receive a maximum payout cap of $15,000.00.

Next, the City asserts that the above provision is not mandatorily negotiable because it is preempted by N.J.S.A. 11A:6-19.2.[4/] The IAFF responds that the provision is not preempted because the statute was enacted effective May 21, 2010 and did not affect the CNA that was in force at that time. And, since the parties' CNA expired on December 31, 2011, the statue does not preempt negotiations. The Commission recently decided this issue in Howell Tp. Bd. of Ed., P.E.R.C. No. 2015-58, __ NJPER __

4/ N.J.S.A. 11A:6-19.2. Cap on compensation for unused sick leave under Title 11A, provides:

"Notwithstanding any law, rule or regulation to the contrary, a political subdivision of the State, or an agency, authority or instrumentality thereof, that has adopted the provisions of Title 11A of the New Jersey Statutes, shall not pay supplemental compensation to any officer or employee for accumulated unused sick leave in an amount in excess of $15,000. Supplemental compensation shall be payable only at the time of retirement from a State-administered or locally-administered retirement system based on the leave credited on the date of retirement. This provision shall apply only to officers and employees who commence service with the political subdivision of the State, or the agency, authority or instrumentality thereof, on or after the effective date [May 21, 2010] of P.L.2010, c.3. This section shall not be construed to affect the terms in any collective negotiations agreement with a relevant provision in force on that effective date."

(¶__ 2015) in the context of board of education employees under N.J.S.A. 18A:30-3.6.[5/] The CNA in Howell was effective from July 1, 2008 through June 30, 2011, with amendments through a Memorandum of Understanding (MOA) effective through June 30, 2012. The Commission held in Howell that the provision in question was not mandatorily negotiable for employees hired May 21, 2010 or later, but was mandatorily negotiable for employees hired prior to May 21, 2010. Article 16F.3.(e), as written, effectively allows employees hired on or after May 21, 2010 through January 1, 2012 to be paid for accumulated sick leave in excess of $15,000 in contravention of N.J.S.A. 11A:6-19.2. I find that the above provision in Article 16F.3.(e)[6/] is preempted

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5/ N.J.S.A. 18A:30-3.6. Cap on compensation for unused sick leave from board of education provides:

> "Notwithstanding any law, rule or regulation to the contrary, a board of education, or an agency or instrumentality thereof, shall not pay supplemental compensation to any officer or employee for accumulated unused sick leave in an amount in excess of $15,000. Supplemental compensation shall be payable only at the time of retirement from a State-administered or locally-administered retirement system based on the leave credited on the date of retirement. This provision shall apply only to officers and employees who commence service with the board of education, or the agency or instrumentality thereof, on or after the effective date [May 21, 2010] of P.L.2010, c.3. This section shall not be construed to affect the terms in any collective negotiations agreement with a relevant provision in force on that effective date."

6/ The underlined language in 16F.3. is not preempted.

by N.J.S.A. 11A:6-19.2 and the provision may not be submitted to interest arbitration.

Article 24 - Health and Safety

Article 24A, D, E and F - (pages 50 and 51)

A. The general safety and health for members of the Atlantic City Fire Department is the responsibility of the Chief of the Department. The Joint Labor/Management Safety and Health Advisory Committee shall have the responsibility for making recommendations on safely and health matters impacting members of the Atlantic City Fire Department. Such safety and health considerations shall include protective equipment and technological innovations. The Committee shall meet at the call of the Chairman, or upon majority vote of its members, but at least quarterly.

D. Unresolved safety and health issues after recommendations by the Committee shall be subject to the grievance procedure.

E. Both parties agree that the Union and/or Union Safety Committee can make nonbinding recommendations to the Chief of the Fire Department to set safety manning standards for (fire) engines and trucks.

F. The City pledges to do whatever is economically feasible regarding increased staffing levels to ensure continued safe fire protection of its citizens and a Continued safe working environment for members of the bargaining unit.

The City asserts that the above underlined language creates a "Health and Safety Committee" which places extraordinary restrictions on its ability to staff its Fire Department and, as a result, the language is non-negotiable. The IAFF responds that

the creation and composition of a health and safety committee are mandatorily negotiable, and in the case of the proposed language above, the committee merely makes nonbinding recommendations.

Regarding the relationship between staffing levels and employee safety, the Commission has held in North Hudson Regional Fire and Rescue, supra,:

> Public employers are not required to negotiate about overall staffing levels or how many firefighters or fire officers will be on duty at a particular time, even where staffing decisions may affect employee safety. Paterson; Local 195; West New York; Linden; City of Long Branch, P.E.R.C. No. 92-102, 18 NJPER 175 (¶23086 1992); City of Union City, P.E.R.C. No. 91-87, 17 NJPER 225 (¶22097 1991); City of East Orange, P.E.R.C. No. 81-11, 6 NJPER 378 (¶11195 1980), aff'd NJPER Supp.2d 100 (¶82 App. Div. 1981), certif. den., 88 N.J. 476 (1981); compare City of Newark, P.E.R.C. No. 76-40, 2 NJPER 139 (1976) (suggesting safety protections that would not significantly interfere with the employer's authority to set overall staffing levels).

The Commission has also held in Union Cty., P.E.R.C. No. 84-23, 9 NJPER 588 (¶14248 1983) that the creation and composition of a police department health and safety committee are mandatorily negotiable subjects. The Commission held regarding the specific proposal, "[B]ut that the instant proposal goes too far to the extent it invests that committee with binding authority to determine such managerial prerogatives as minimum manning levels, assignments, the purchase and use of certain types of weapons, vehicles, and equipments, and issues of

prisoner and public safety." The Commission held the union, "[M]ay not submit this proposal, as now worded, to interest arbitration." See also In re City of East Orange, supra; Middlesex Cty. and PBA Local 152 Correction Officers of Middlesex Cty. Workhouse, P.E.R.C. No. 79-80, 5 NJPER 194 (¶10111 1979), aff'd in pt., rev'd in pt. 6 NJPER 338 (¶11169 App. Div. 1980).

Based on the above, I find that the underlined provisions in the third sentence of Article 24A., as written, is not mandatorily negotiable because it contains the language "Such safety and health considerations shall include protective equipment and technological innovations." As a result, the third sentence involves the potential purchase and use of certain equipment and the provision may not be submitted to interest arbitration. The second sentence in Article 24A. is mandatorily negotiable because it concerns recommendations regarding health and safety may be submitted to interest arbitration. Article 24D. is mandatorily negotiable because it refers to unresolved "safety and health issues after recommendations by the Committee" and may be submitted to interest arbitration. If the IAFF uses Article 24D. to submit to binding grievance arbitration any issues unresolved by this Committee which the City believes are not actually mandatorily negotiable safety or health issues, then the City may seek to restrain arbitration by filing a scope of negotiations petition with the Commission to determine

arbitrability based on the specific facts presented in that grievance.

Article 24E. is mandatorily negotiable because it only concerns nonbinding recommendations from the Union and/or Union Safety Committee and may be submitted to interest arbitration. Article 24F. is not mandatorily negotiable as written and may not be submitted to interest arbitration because this article refers to "safety manning standards" and requires the City to make a "pledge" to do "[W]hatever is economically feasible regarding increased staffing levels." See North Hudson Regional Fire and Rescue, supra.

Article 24G, (page 51)

> G. First level supervisors shall be trained by the Department at a level equal to or better than standards described in N.F.P.A. Standard No. 1021 Fire Officer.

The City asserts that the proposed language is not mandatorily negotiable because training has long been recognized as a managerial prerogative. The City has cited, City of Elizabeth, P.E.R.C. No. 92-106, 18 NJPER 262 (¶23109 1992)[7/],

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7/ In Elizabeth, the Commission restrained arbitration of a union grievance where the employer was mandating that the fire fighters wear "bunker pants" in compliance with N.F.P.A standards and the union claimed that their members did not require this extra protection. The Commission found that the grievance sought to prevent the City from implementing a decision to increase employee safety. The Commission did not state that the N.F.P.A standards were non-negotiable.

arguing that Commission opined that the National Fire Protection Association (N.F.P.A.) Standards are not negotiable. The IAFF responds that the specific N.F.P.A. training in the proposed language is mandatorily negotiable because it involves training that is separate from and in addition to the City's mandatory training requirements. In City of Orange Tp., P.E.R.C. No. 2005-31, 30 NJPER 457 (¶151 2004) held the following regarding training:

> An employer has a prerogative to decide which employees will be trained, how they will be trained, and how long they will be trained. See Wayne Tp., P.E.R.C. No. 98-85, 24 NJPER 71, 73 (¶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). However, an employer may agree to reimburse employees for tuition payments for work-related courses. Wayne; Dunellen; Hackettstown; Burlington Cty. College, P.E.R.C. No. 90-13, 15 NJPER 513 (¶20213 1989).

The proposed language in City of Orange Tp.[8/] involved, in pertinent part, the ability of union members to attend three training courses to be paid by the employer and who could pick the courses. The proposed language in Article 24G. is different

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8/ The proposed language stated:

> "Employees shall be allowed to attend any three New Jersey Police Training Commission courses, to be paid by the City, each calendar year. The City may pick no more than two of the three courses, with the employee choosing at least one course. The course selections must be chosen prior to the calendar year of attendance."

because it mandates the level of training that the City must provide to its employees. I find that the proposed language in Article 24G. improperly infringes upon the City's managerial prerogative to set the training standards for its employees and is not mandatorily negotiable and may not be submitted to interest arbitration.

Article 2 - Interpretation

Article 2C - (page 2)

C. The City agrees that the Union has the right to negotiate as to rates of pay, hours of work, fringe benefits, working conditions, safety or personnel and equipment, procedures for adjustment of disputes and grievances and all other related matters.

The City asserts that the proposed underlined language[9/] is non-negotiable because "personnel" implicates staffing levels and the determination of what "equipment" to purchase and utilize are managerial prerogatives, citing Middlesex Cty. and PBA Local 152 Correction Officers of Middlesex Cty. Workhouse, supra. The IAFF responds that the proposed language is mandatorily negotiable because it relates to employee health, safety, and comfort which are working conditions.

As set forth above, manning and staffing levels of personnel is a managerial prerogative as well as the purchase and use of

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9/ It is not clear from the parties' submissions what "all other related matters" refers to. As a result, I decline to make a determination on that specific phrase in Article 2C.

equipment. See City of Plainfield; North Hudson Regional Fire and Rescue; Union Cty. I find that Article 2C., with respect to "personnel and equipment," is not mandatorily negotiable as written and may not be submitted to interest arbitration because these provisions refer to manning and staffing levels of personnel as well as the purchase and use of equipment.

Article 27 - Personnel Committee

Article 27B-(page 58)

> A. For the purposes of this Agreement, a Personnel Committee shall be created consisting of the Mayor or his/her designate, who shall act as Chairman; the Chief of the Department or his/her designate; the President of Local 198 or his/her designate; and, one superior officer assigned by the Union or his/her designate. The Personnel Officer or his/her designate shall be an ex-officio nonvoting member of the Committee.
>
> B. The Personnel Committee, in addition to other duties provided within the Agreement shall determine:
>
> 1. The amount of sick leave for each firefighter accumulated up to and including the present Contract:
>
> 2. Whether or not an employee is eligible for an incentive pay increase as a result of any special training and/or college credits.
>
> 3. Whether or not a particular employee is suited for special training available to the members of the Atlantic City Fire Department.

Last, the City asserts that the above underlined language is non-negotiable because the City has a managerial prerogative to

unilaterally formulate and implement a sick leave verification policy[10/] and to determine education incentive pay for college credits/training and whether or not an employee is suited for special training. The IAFF responds that sick leave accumulation, incentive pay and whether an employee is suitable for special training are all mandatorily negotiable.[11/] Both parties have cited Rutgers, The State University and Rutgers Council of AAUP Chapters, P.E.R.C. No. 91-44, 16 NJPER 593 (¶21261 1990), aff'd in pt, rev'd in pt 256 N.J. Super. 104 (App. Div. 1992), aff'd 131 N.J. 118 (1993). The IAFF specifically cites the following, "[D]ecisions on matters such as compensation, hours, workloads, sick leaves, physical accommodation and grievance procedures are, unless preempted by statute or regulation, mandatorily negotiable." Id. at 115-116.

The proposed language in Article 27B., B.1., B.2. and B.3. is mandatorily negotiable. B.1. does not involve sick leave verification but rather the mandatorily negotiable issue of

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10/ Regarding sick leave verification, the City has cited City of East Orange; In re Piscataway Twp. Bd. of Ed.

11/ The IAFF argues that the City has not presented any case law precedent to indicate that the proposed language in Article 27 (B)1 and 2 are not negotiable and cites Essex Cty. and AFSCME Council 52, Local 1247, P.E.R.C. No. 86-149, 12 NJPER 536 (¶17201 1986) and Essex Cty. and Essex Cty. Local Unit of JNESO, P.E.R.C. No. 87-48, 12 NJPER 835 (¶17321 1986), aff'd NJPER Supp.2d 182 (¶158 App. Div. 1987); Willingboro Board of Ed., P.E.R.C. No. 80-46, 5 NJPER 475 (¶10240 1979).

compensation for accumulated sick leave time; B.2. involves the mandatorily negotiable issue of compensation/incentive pay for special training or college credits; and B.3. concerns which employees are best suited for specialized training but does not impinge on management rights since the language, as written, does not require the City to assign particular employees to the specialized training. I find that the proposed language in Article 27B., B.1., B.2. and B.3. is mandatorily negotiable and may be submitted to interest arbitration.

ORDER [12/]

The following provisions are mandatorily negotiable may be included in a successor collective negotiations agreement:

> Articles: 23G., H. and I.; 18A.2., A.2.(c), B.2.(c), B.2.(d), B.2.(e), and B.2.(f) and the third sentence in A.2.(d); 16.C.2.; the first sentence of 17D.; 16F.3.; the second sentence of 24A.; 24D. and E.; 27B., B.1., B.2. and B.3.

12/ Paragraphs G and H of the pilot program description read:

> G. Any contract language or proposals that are determined to be not mandatorily negotiable shall not be considered by the interest arbitrator. If time permits, and in accordance with the rules governing interest arbitration proceedings, the interest arbitrator may allow the parties to amend their final offers to take into account the negotiability determination.
>
> H. A decision issued by the Commission or Chair pursuant to this process shall be a final Agency decision. Any appeal must be made to the Superior Court, Appellate Division.

The following provisions are not mandatorily negotiable and may not be included in a successor collective negotiations agreement:

> Articles: 23A.; underlined portions of 23J.1., 2., and 4.; 23C.; the first two sentences in 18A.2.(d); 18A.2.(g); 16C.1. and 3. and the second sentence of 17D.; 16F.3.(e); the third sentence of 24A.; 24F.; 24G.; and "personnel and equipment" in 2C.

P. Kelly Hatfield
Chair

ISSUED: April 8, 2015

Trenton, New Jersey

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3817-14T2

IN THE MATTER OF

CITY OF ATLANTIC CITY,

Petitioner-Respondent/
Cross-Appellant,

and

ATLANTIC CITY PROFESSIONAL FIREFIGHTERS INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, LOCAL NO. 198,

Respondent-Appellant/
Cross-Respondent.

Submitted October 25, 2016 – Decided September 20, 2017

Before Judges Messano and Espinosa.

On appeal from the Public Employment Relations Commission, Docket No. 2015-051.

O'Brien, Belland & Bushinsky, LLC, attorneys for appellant/cross-respondent (Mark E. Belland and David F. Watkins, Jr., on the briefs).

Cleary, Giacobbe, Alfieri & Jacobs, LLC, attorneys for respondent/cross-appellant City of Atlantic City (Matthew J. Giacobbe and Gregory J. Franklin, of counsel and on the briefs).

Robin T. McMahon, General Counsel, attorney for respondent New Jersey Public Employment Relations Commission (David N. Gambert, Deputy General Counsel, on the brief).

PER CURIAM

Atlantic City Professional Fire Fighters IAFF Local 198 (the Union) and the City of Atlantic City (the City) were parties to a collective negotiations agreement (CNA) that expired on December 31, 2014. After the parties reached an impasse during negotiations for a successor contract, the City filed a petition with the Public Employment Relations Commission (PERC) to initiate compulsory interest arbitration and later amended that petition to seek a scope of negotiations determination.

The petition targeted thirty-five provisions under seven articles of the expired CNA, asking PERC to determine the provisions were non-negotiable matters that could not be submitted to interest arbitration. Following PERC's final decision, the Union appeals, challenging PERC's determination that fourteen provisions were not mandatorily negotiable. The City cross-appeals, challenging PERC's determination that four of the provisions were mandatorily negotiable. We affirm in part and reverse in part.

I.

"[T]he scope of public employment negotiation is divided, for purposes of analysis, into two categories of subject matter comprised of mandatorily negotiable subjects and nonnegotiable matters of governmental policy." Robbinsville Twp. Bd. of Educ. v. Washington Twp. Educ. Ass'n, 227 N.J. 192, 198 (2016). N.J.S.A. 34:13A-5.4(d) vests PERC with "primary jurisdiction" for the determination "of whether the subject matter of a particular dispute is within the scope of collective negotiations." Ridgefield Park Educ. Ass'n. v. Ridgefield Park Bd. of Educ., 78 N.J. 144, 154 (1978). If PERC determines that a disputed subject matter is negotiable, "the matter may proceed to arbitration." Ibid. In contrast, a matter will not be arbitrable where PERC concludes the "particular dispute is not within the scope of collective negotiations." Ibid. A party that disagrees with PERC's decision regarding the scope of negotiations may appeal to this court. N.J.S.A. 34:13A-5.4(d); see Ridgefield, supra, 78 N.J. at 155.

A three-part test is employed to determine when a subject is negotiable between public employers and employees: "(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." City of Jersey City v. Jersey City Police Officers Benevolent Ass'n, 154 N.J. 555, 568 (1998) (quoting In re Local 195, IFPTE, 88 N.J. 393, 404-05 (1982). As to the last of these criteria, "it is necessary to balance the interests 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." Ibid. (quoting IFPTE, supra, 88 N.J. at 404-05). This test must be applied on a "case-by-case basis." Troy v. Rutgers, 168 N.J. 354, 383 (2001).

Substantial deference is accorded to PERC's exercise of its authority in making a scope of negotiations determination. Twp. of Franklin v. Franklin Twp. PBA Local 154, 424 N.J. Super. 369, 377 (App. Div. 2012); see City of Jersey City, supra, 154 N.J. at 567. PERC's decision regarding negotiability is to be upheld unless "it was arbitrary, capricious or unreasonable"; "lacked fair support in the evidence"; or "violated a legislative policy expressed or implicit in the governing statute." Twp. of Franklin, 424 N.J. Super. at 377 (quoting Commc'ns Workers of Am., Local 1034 v. N.J. State Policemen's Benev. Ass'n, Local 203, 412 N.J. Super. 286, 291 (App. Div. 2010)).

II.

We first address the Union's challenges to PERCs findings that certain provisions could not be submitted to interest arbitration because they were not mandatorily negotiable.

A.

Article 2.C, "Interpretation," provides a general statement of what categories of issues the City agrees the Union has the right to negotiate:

> The City agrees that the Union has the right to negotiate as to rates of pay, hours of work, fringe benefits, working conditions, safety or personnel and equipment, procedures for adjustment of disputes and grievances and all other related matters.

PERC found "personnel and equipment" was not mandatorily negotiable "because these provisions refer to manning and staffing levels of personnel as well as the purchase and use of equipment." The Union argues that PERC erred in finding the disputed language was not mandatorily negotiable because it "directly implicates matters of employee safety."

The Union's argument fails because the disputed language concerns issues separate from "safety." When that language is deleted from the text, PERC's decision leaves the following intact: "The City agrees that the Union has the right to negotiate as to . . . safety . . . ."

PERC interpreted the disputed language as concerning only manning and staffing levels of personnel, issues that fall within the inherent power and authority of public employers. See Jersey City, supra, 154 N.J. at 571-73; Paterson Police PBA Local No. 1 v. City of Paterson, 87 N.J. 78, 97(1981); see also In re North Hudson Reg'l Fire and Rescue, P.E.R.C No. 2000-78, 26 NJPER 31,075 (2000) (a public employer is "not required to negotiate about overall staffing levels . . . even when staffing decisions may affect employee safety").

Similarly, an employer may make unilateral decisions regarding the purchase of equipment unless it directly relates to employee safety. See In re Twp. of Union, P.E.R.C. No. 87-119, 13 NJPER P18,121 (1987) ("The negotiability of a demand for equipment turns upon whether the item is predominately concerned with employee safety or comfort rather than the method and means of delivering police services to the community which is a non-negotiable governmental policy determination."); see, e.g., In re Borough of Ringwood, P.E.R.C. No. 87-118, 13 NJPER P18,120 (1987) (holding a contract proposal that pertained to type and quantity of ammunition to be supplied to police officers was not mandatorily negotiable, because it pertained to matters of governmental policy); In re Twp. of South Brunswick, P.E.R.C. No. 86-115, 12 NJPER P17,138 (1986) (finding that employer's decision "to equip

police vehicles or officers with certain specified guns, other weapons and quantities of ammunition" was not mandatorily negotiable because it was "more closely related to matters of governmental policy than employee safety").

In sum, PERC's decision that "personnel and equipment" in 2.C pertains to the managerial prerogatives of manning and staffing levels, and the purchasing of equipment is not arbitrary, capricious or unreasonable.

B.

The next provisions at issue are Article 16, "Leaves," and Article 17, "Vacations."

Article 16.C.1 states:

> In the event that an employee suffers an illness or injury in the line of duty, in the course of employment, or as a result of his/her employment, he/she shall be compensated at full pay for a period not to exceed one (1) year. A Medical Review Board shall be created for the purpose of examining all matters pertaining to sick and/or injured members of the Atlantic City Fire Department. Any employee may be required to present to this Board a doctor's certificate to the effect that the illness or injury specified above required extended convalescence.
>
> [(Emphasis added).]

Article 17.D states:

> A maximum of four (4) vacation days may be converted to sick days per week with approval of the Medical Review Board. All personnel

> who are in the negative shall be docked pay for sick time unless they are convalescing from a sickness approved by the Medical Review Board.
>
> [(Emphasis added).]

The City argued the first sentence of Article 17.D was not negotiable because it was preempted by N.J.S.A. 11A:6-3(e). It has not appealed, however, from PERC's determination that the issue may be submitted to interest arbitration.

PERC determined the underlined portions of 16.C.1 and 17.D were not mandatorily negotiable because "[s]ick leave verification sis a managerial prerogative." The Union acknowledges that sick leave verification is a non-negotiable managerial prerogative but contends it is only a "narrow managerial prerogative." The Union casts 16C.1 and 17D as involving the "application of a verification policy [which] is subject to negotiation" and does not involve the City's abdication of any managerial rights.

PERC noted the distinction between the establishment of a verification policy, which is the prerogative of the employer, In re Piscataway Twp. Bd. of Educ. & Piscataway Twp. Educ. Ass'n, P.E.R.C. No. 82-64, 8 NJPER 95 (1982), and issues involving the application of those policies, which may be subject to contractual grievance policies. Ibid.

PERC concluded the underlined portion of Article 16.C.1 impinged on the City's managerial prerogative regarding the verification of sick leave because "it delegates that authority to a joint employer/employee committee," and concluded the underlined language in Article 17D was also not mandatorily negotiable because it had a similar impact on the City's managerial prerogative to verify sick leave.

By its plain language, Article 16.C.1 "create[s]" a Medical Review Board "for the purpose of examining all matters pertaining to sick and/or injured members of the Atlantic City Fire Department." It was, therefore, not arbitrary or unreasonable for PERC to conclude that the breadth of this delegation "impinge[d] on the City's managerial prerogative to verify sick leave since it delegates that authority to a joint employer/employee committee."

The following sentence of Article 16.C.1, which states an employee "may be required" to present a doctor's certificate to the Board to justify "extended convalescence" further supports the conclusion that the Medical Review Board would play a role in verifying sick leave that lies within the employer's prerogative. The methods the City can utilize to implement its policy are also non-negotiable. See e.g., Piscataway Twp. Bd. of Educ., supra (ruling that public employer "has a managerial right to utilize

reasonable means to verify employee illness or disability"). The fact that there is an existing procedure with the stated purpose to regulate and monitor the use of sick leave does not, as the Union contends, render PERC's conclusion unreasonable.

Moreover, the disputed language does not concern issues that would be subject to interest arbitration such as the allocation of the cost for providing necessary documentation, see Elizabeth v. Elizabeth Fire Officers Assn., Local 2040, etc., 198 N.J. Super. 382, 386-87 (App. Div. 1985), or a grievance and disciplinary procedure related to the use of sick leave.

The disputed language in 17.D conditions a determination regarding sick leave upon approval by the Medical Review Board. Accordingly, PERC's determination that the language "impact[s] on the City's managerial prerogative to verify sick leave" is not arbitrary, capricious or unreasonable.

C.

Article 16.F, "Terminal Leave Options," states in pertinent part:

> Terminal leave shall be amended to provide for a maximum monetary payment as follows:
>
> . . . .
>
> (d) Employees hired after October 16, 2006, but before January 1, 2012, shall have maximum accumulation time of six (6) months;

> (e) Employees hired after January 1, 2012 will receive a maximum payout cap of $15,000.00.
>
> [(Emphasis added).]

The issue regarding this provision is whether it is preempted by N.J.S.A. 11A:6-19.2, which establishes a cap on compensation for unused sick leave under Title 11A.

Unless preempted by a statute or regulation, vacation and sick leave are mandatorily negotiable subjects. In re Howell Twp. Bd. of Educ., P.E.R.C No. 2015-58, 41 NJPER P131 (2015). "Negotiation on terms and conditions of employment will be preempted by a statute or regulation if the provision addresses the particular term or condition 'in the imperative and leave[s] nothing to the discretion of the public employer.'" Old Bridge Bd. of Educ. v. Old Bridge Educ. Ass'n., 98 N.J. 523, 529 (1985) (quoting IFPTE, supra, 88 N.J. at 403-04).

The cap established by N.J.S.A. 11A:6-19.2 applies to employees who commence service on or after May 21, 2010.[1] N.J.S.A.

[1] N.J.S.A. 11A:6-19.2 states:

> Notwithstanding any law, rule or regulation to the contrary, a political subdivision of the State, or an agency, authority or instrumentality thereof, that has adopted the provisions of Title 11A of the New Jersey Statutes, shall not pay supplemental compensation to any officer or employee for

11A:6-19.2 does not, however, "affect the terms in any collective negotiations agreement with a relevant provision in force on that effective date."

PERC found Article 16.F.3(e) was preempted by N.J.S.A. 11A:6-19.2 because it "effectively allows employees hired on or after May 21, 2010 through January 1, 2012 to be paid for accumulated sick leave in excess of $15,000 in contravention of N.J.S.A. 11A:6-19.2." This reasoning ignores the proviso that the statute is not to affect the terms of a CNA in force on its effective date. Because the CNA in force on May 21, 2010 did not expire until December 31, 2012, the exclusion of employees who commenced service during the interim period from May 21, 2010 through December 31, 2012 was sanctioned by N.J.S.A. 11A:6-19.2. We therefore conclude

---

> accumulated unused sick leave in an amount in excess of $15,000. Supplemental compensation shall be payable only at the time of retirement from a State-administered or locally-administered retirement system based on the leave credited on the date of retirement. This provision shall apply only to officers and employees who commence service with the political subdivision of the State, or the agency, authority or instrumentality thereof, on or after the effective date [May 21, 2010] of P.L.2010, c.3. This section shall not be construed to affect the terms in any collective negotiations agreement with a relevant provision in force on that effective date.
>
> [N.J.S.A. 11A:6-19.2 (emphasis added).]

that PERC erred in its interpretation of the law and that Article 16.F(3)(e) is mandatorily negotiable.

D.

Article 18, "Acting Out Of Title," includes the following:

> 18.A.2(d) In the absence of an existing Civil Service list, the senior person who is qualified shall be placed in the vacancy for ninety (90) working days and receive the pay at the higher rank. After these ninety (90) working days, the next senior person with qualifications shall replace that person and the same conditions will prevail. In the event of a two-part promotional examination, in which an interim list is issued, only personnel on the interim list will be deemed "qualified" to act out-of-title in the higher position. Aa9-13, 82.
>
> 18.A.2(g) When a promotional vacancy is created due to the terminal leave provision, and where there is an existing promotional list, such promotion shall be made within fifteen (15) consecutive days of the vacancy. In the event there is no existing list, Section [A].2(d) will prevail. Aa83.
>
> [(Emphasis added).]

PERC found the underlined sentences of 18.A.2(d) and all of 18.A.2(g) were not mandatorily negotiable because "both require the City to fill a promotional vacancy," which is a managerial prerogative. The Union contends these provisions are mandatorily negotiable because "nothing in the CNA infringes on the City's right to determine when to fill a vacancy or select promotional

criteria," and the provisions at issue address procedural rather than substantive matters. (emphasis in original). We disagree.

A public employer has a non-negotiable, managerial prerogative to determine the manning levels necessary for the efficient delivery of governmental services. Irvington PBA Local 29 v. Town of Irvington, 170 N.J. Super. 539 (App. Div. 1979), certif. den. 82 N.J. 296 (1982); see also, Jersey City, supra, 154 N.J. at 571-73; Paterson, supra, 87 N.J. at 97. This managerial prerogative includes the right to decide not to staff a position. See, e.g., In re City of Long Branch, P.E.R.C No. 83-15, 8 NJPER P13,211 (1982). PERC's conclusion that these provisions tread upon the City's managerial prerogative is reasonable and will not be disturbed.

E.

The Union challenges PERC's determinations regarding several provisions of Article 23, "Transfers and Assignments."

> 23.A. Transfers and assignments shall provide the highest degree of efficiency in every unit of the Fire Department by assigning a combination of experienced and less experienced personnel. Whenever possible, each unit shall consist of the following balance:
>
> One (1) Company Officer
> One (1) Senior Firefighter
> Two (2) Journeymen Firefighters
> One (1) Apprentice Firefighter.
>
> [(Emphasis added).]

PERC determined 23.A was not mandatorily negotiable based on the principle that "staffing and manning levels are a managerial prerogative." The Union contends that as a result of the qualifying language "whenever possible," the provision does "not restrict the City's ability to direct staffing in any way." In addition, the Union asserts "[t]his clause speaks to the safety goals . . . and operations of the department."

In short, the provision states "each unit shall consist of" a specific balance "whenever possible." It sets a specific standard that would deprive the City of its discretion to direct staffing, allowing for the limited exception when to do so is not possible. The provision thus establishes a presumptive staffing level, which conflicts with the City's managerial prerogative. The exception affords no remedy for this because the presumptive requirement remains. Even if "whenever possible" were considered to have some ameliorative effect, it ultimately fails to do so because that question is not left to the sole discretion of the City.

"Public employers are not required to negotiate about overall staffing levels or how many firefighters or fire officers will be on duty at a particular time, even where staffing decisions may effect [sic] employee safety." In re City of Plainfield,

P.E.R.C No. 2015-40, 41 NJPER P91 (2014). Therefore, the argument that this provision "speaks to . . . safety goals" fails to remove this provision from the City's prerogative to determine its minimum staffing levels. PERC correctly determined that Article 23.A is not mandatorily negotiable.

> 23.C. A higher seniority vacancy may be covered by a firefighter with a lower service time. However, a lower seniority vacancy may not be covered by a firefighter with a higher service time. Exception: Journeyman firefighters may cover when no apprentice is available.

In determining that 23.C was also not mandatorily negotiable, PERC reasoned that "the filling of vacancies," "[t]ransfers and reassignments" are all non-negotiable managerial prerogatives. Aa8. The Union argues 23.C pertains to the procedures for transfers and reassignments, and thus is a negotiable matter.

Contrary to the Union's argument, 23.C pertains to substantive policy determinations rather than mere procedures. The consideration of seniority in making temporary assignments has been found to "relate[] to the substantive criteria for reassignment." IFPTE, supra, 88 N.J. at 418. This provision limits the City in its decision to transfer and assign its employees by restricting what firefighter can provide coverage for another firefighter based on seniority. Therefore, PERC correctly found that 23.C was not mandatorily negotiable.

Paragraph 23.J addresses "Posting Procedure and Selection Criteria."

> 23.J.1. When a vacancy or new position occurs within the bargaining unit, it shall be filled temporarily by the Chief of the Department. The City shall immediately post notices on the bulletin boards in all fire stations setting forth the classification, job duties and requirements, hours and days of work, starting time and wage rate of the job to be filled permanently. Employees desiring to apply for the job shall make application to the Chief of the Department setting forth their qualifications, seniority, etc. Copies of these applications and of the notices are to be filed with the Secretary of the Union. Notices shall remain posted for ten (10) days. Employees who do not make application within the period of the posting shall have no right to consideration for the job, with the exception that employees (who) are not at work during the entire posting period and who have sufficient qualifications and seniority shall be considered for the job. Aa95-96; Aa4-5.
>
> 23.J.2. In filling vacancies by promotion or transfer, where ability and other qualifications are equal, seniority within the Fire Department shall control. The term "ability and other qualifications" used herein shall include observing the rules and regulations of the Fire Department. The Chief of the Department shall define and determine the standards of "ability and other qualifications," which cannot be arbitrarily or selectively established. Aa96.
>
> 23.J.4. The Chief of the Department may deny placement of an applicant possessing ability and other qualifications to the vacant or new position, should the Chief of the Department determine, exercise bona fide discretion, that

such individual is needed more in the position already assigned.

[(Emphasis added).]

The Union argues that PERC erred in finding the underlined sections of 23.J.1, 23.J.2, and 23.J.4 were not mandatorily negotiable because they "relate to transfer procedures and do not improperly restrict the City's ability to make personnel decisions."

PERC determined that the first sentence of 23.J.1 was not mandatorily negotiable because "[a]n employer cannot be required to fill a vacant or new position since it is a managerial prerogative." PERC reasoned the language "shall be filled" requires the employer to make temporary appointments to fill vacancies. The Union contends this provision "does not restrict the ability of the Fire Chief to determine when to fill a position."

As previously discussed, "[t]he decision whether to fill a vacant position is a governmental policy one. Thus, an agreement that forces an employer to fill a vacant position substantially limits that governmental policymaking determination." In re City of Atlantic City, P.E.R.C No. 2001-56, 27 NJPER P32,061 (2001). PERC has consistently held that a union is not permitted "to

enforce an agreement to fill a vacant position should the employer decide not to do so." Ibid.

Contrary to the Union's argument, the first sentence of 23.J.1 requires that a vacancy or new position "shall" be filled "[w]hen" it occurs without any limitation. It thus encroaches upon managerial prerogatives not to fill such positions and is not mandatorily negotiable.

PERC determined the third sentence in 23.J.2 and all of 23.J.4 concerned "criteria for selection" that were managerial prerogatives. Specifically, PERC found the language "which cannot be arbitrarily or selectively established" in 23.J.2 allowed the criteria established by the employer to be second-guessed by an arbitrator. PERC found that 23.J.4 similarly "infringe[d] on the managerial prerogative to make assignments under particular circumstances by limiting them to situations in which the Chief exercises 'bona fide discretion.'"

PERC's reasoning and conclusions are sound and will not be disturbed.

F.

The Union challenges PERC's determinations regarding three provisions of Article 24, "Health and Safety."

> 24.A. The general safety and health for members of the Atlantic City Fire Department is the responsibility of the Chief of the

> Department. The Joint Labor/Management Safety and Health Advisory Committee shall have the responsibility for making recommendations on safety and health matters impacting members of the Atlantic City Fire Department. Such safety and health consideration shall include protective equipment and technological innovations. The Committee shall meet at the call of the Chairman, or upon majority vote of its members, but at least quarterly.

PERC determined the second sentence of 24.A was mandatorily negotiable because it concerns recommendations regarding health and safety and that the third sentence of 24.A was not mandatorily negotiable because it "involves the potential purchase and use of certain equipment." The Union argues PERC erred because the language only grants the Joint Labor/Management Safety and Health Advisory Committee the responsibility to make recommendations; it does not vest the Committee with binding authority regarding the purchase and use of equipment.

Provisions regarding specific equipment "predominantly related to employee safety or comfort" are mandatorily negotiable. In re Cty. of Union (Union County), P.E.R.C No. 84-23, 9 NJPER P14,248 (1983). In finding that 24.A was not mandatorily negotiable, PERC relied on its decision in Union County where it found a proposed provision that established a "Police Department Safety Committee," and vested it with binding authority on issues

that included the purchase of equipment was not mandatorily negotiable.

The provision at issue here does not endow the Joint Labor/Management Safety and Health Advisory Committee with authority to make the decision, let alone binding authority. The responsibilities are clearly delineated. The Committee is tasked with "the responsibility for making recommendations on safety and health matters," including "protective equipment and technological innovations." But the authority to make decisions regarding the "general safety and health for members of the Atlantic City Fire Department" resides with the Chief of the Department. As a result, we conclude PERC's reliance upon its decision in Union County is misplaced and that it erred in finding this provision was not mandatorily negotiable.

> 24.F. The City pledges to do whatever is economically feasible regarding increased staffing levels to ensure continued safe fire protection of its citizens and a continued safe working environment for members of the bargaining unit.

PERC found 24.F was not mandatorily negotiable because it "refers to 'safety manning standards' and requires the City to make a 'pledge' to do 'whatever is economically feasible regarding increased staffing levels.'" The Union argues 24.F was mandatorily negotiable because it "concerns a non-binding safety pledge

undertaken by the City regarding increased staffing levels." It asserts a "non-binding pledge does not impose a significant limitation on the City's managerial prerogative to make staffing decisions."

The Union attempts to cast the pledge "to do whatever is economically feasible" as merely aspirational. We disagree. The statement establishes a presumptive standard "regarding increased staffing" that is external to the City's exercise of its discretion in staffing and therefore impinges upon the City's managerial prerogative. PERC's conclusion that the subject was not mandatorily negotiable was, therefore, not arbitrary, capricious or unreasonable.

> 24.G. First level supervisors shall be trained by the Department at a level equal to or better than standards described in N.F.P.A. Standard No. 1021 Fire Officer.

PERC found this provision improperly "mandates the level of training the City must provide to its employees," because training has long been recognized as a managerial prerogative. PERC concluded that 24.G "improperly infringes upon the City's managerial prerogative to set the training standards for its employees." The Union argues 24.G is mandatorily negotiable because it "does not seek to set the baseline training

requirement," and instead "seeks greater training than that required."

A public employer has the prerogative to require employee training, In re Twp. of Lower, P.E.R.C No. 2014-74, 40 NJPER P167 (2014), and to "decide which employees will be trained, how they will be trained, and how long they will be trained." In re City of Orange Twp., P.E.R.C No. 2005-31, 30 NJPER P151 (2004). In contrast, a matter is negotiable "to the extent it concerns course work separate from and in addition to the employer's mandatory training courses." Ibid. For example, "additional compensation for education or training that is not a job requirement is mandatorily negotiable." In re Twp. of Teaneck, P.E.R.C No. 2000-33, 25 NJPER P30,199 (1999).

24.G sets forth the basic standard for how first level supervisors will be trained (i.e., at minimum, equal to the identified standard). It does not "address[] additional training above the mandated requirement," as the Union contends. Because 24.G infringes upon the employer's managerial prerogative to decide how to train its employees, PERC correctly found that this provision was not mandatorily negotiable.

III.

In its cross-appeal, the City challenges PERC's determinations regarding several provisions of Article 18, "Acting

out of Title," contending PERC erred in finding that the following provisions were mandatorily negotiable: 18.A.2; 18.A.2(c); 18.A.2(d) (underlined sentence); and 18.B.2(f) (underlined sentences).

> 18.A.2. Regulations for Class A: In the event an employee is assigned to act out-of-title, he/she shall be selected from an existing promotional list of eligible employees. If no existing list is current, such employee shall be selected from the rank next preceding the vacated position. . . .
>
> 18.A.2(c) If there is an existing Civil Service list the higher rank, the number one person on the list shall be placed in the vacancy.
>
> 18.A.2(d) In the absence of an existing Civil Service list, the senior person who is qualified shall be placed in the vacancy for ninety (90) working days and receive the pay at the higher rank. After these ninety (90) working days, the next senior person with qualifications shall replace that person and the same conditions will prevail. In the event of a two-part promotional examination, in which an interim list is issued, only personnel on the interim list will be deemed "qualified" to act out-of-title in the higher position.
>
> 18.B.2(f) In the event of a promotional list, only personnel on the list will act out-of-title in the higher position. In the even [sic] there is no individual on the list permanently assigned to a Company, pursuant to Civil Service Commission Regulations, personnel on the list will be reassigned to perform the acting out-of-title work. If there is no promotional list, then the acting out-of-title position will be performed by a

> journeyman assigned by seniority. At the company level, the acting out-of-title position will be rotated on a four (4) day working basis. In the even [sic] of a two-part promotional examination, in which an interim list is issued, only personnel on the interim list will be deemed "qualified" to act out-of-title in the higher position.

The disputed provisions establish procedures for temporary "out-of-title" assignments. As PERC found, the provisions do not require the City to make any out-of-title assignment; they identify a procedure to be followed after the City has exercised its prerogative to make such an assignment. PERC reasoned, "Thus, the language does not interfere with the decision whether to fill a temporary vacancy and the fact that there is a civil service list means that the employees eligible to be assigned to the temporary vacancy are qualified."[2]

Citing its prior decisions, PERC noted "it is mandatorily negotiable for the employer to agree to make promotional assignments based on an existing promotional list of eligible employees." In Township of Wall, PERC stated:

> Promotional criteria are not mandatorily negotiable while promotional procedures are. Absent preemption, an employer may normally

[2] Notably, PERC concluded the first two sentences in Article 18.A.2(d) and language in Article 18.A.2(g) were not mandatorily negotiable because they would require the City to fill a promotional vacancy, treading upon a managerial prerogative. The Union appealed from those determinations and we have affirmed PERC's rulings.

> agree to promote employees in the order they are listed on a promotional list developed by applying its own unilaterally-set criteria to the eligible candidates. Unless an employer has announced a change in its promotional criteria, it may remain obligated to fill positions from that list.
>
> [In re Twp. of Wall, P.E.R.C No. 2002-22, 28 NJPER P33,005 (2001), (citations omitted) aff'd, No. A-1640-01 (App. Div. Jan. 6, 2003).]

The City argues the authorities relied upon by PERC are distinguishable and afford no support for PERC's conclusion because they concerned circumstances in which the public employer had established its own promotional criteria for filling vacancies and making personnel assignments, where in this case, the promotional criteria is established by the fact the City is a civil service jurisdiction. However, to the extent that promotional criteria are established by Title 11A, the City lacks any managerial prerogative to deviate from mandated procedures. We are therefore unpersuaded by this argument.

In sum, on the Union's challenges to the following provisions or portions thereof, 2.C, 16.C.1, 17.D, 18.A.2(d) and (g), 23.A, 23.C, 23.J.1, 23.J.2, 23.J.4, 24.F and 24.G, we affirm PERC's determinations that the disputed language constitutes terms that are not mandatorily negotiable. We reverse PERC's determinations that the disputed language in 16.F.3(e) and 24.A refers to terms

that are mandatorily negotiable. On the City's appeal, we affirm PERC's determinations that the disputed language in 18.A.2, 18.A.2(c), 18.A.2(d) and 18.B.2(f) refer to subjects that are mandatorily negotiable.

Affirmed in part, reversed in part. We do not retain jurisdiction.

2018 BIENNIAL REPORT

TAB 13

NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION
INTEREST ARBITRATION SALARY INCREASE ANALYSIS

	INTEREST ARBITRATION AWARDS & AVERAGE ANNUAL SALARY INCREASES							APPEALS OF IA AWARDS (TO PERC)			VOLUNTARY IA SETTLEMENTS & AVERAGE ANNUAL SALARY INCREASES						VOLUNTARY NON-IA SETTLEMENTS & AVERAGE ANNUAL SALARY INCREASES	
CALENDAR YEAR	TOTAL	Total Pre-2011	Avg. % Awards Pre-2011	Total Post-2011 Non-2%	Avg. % Awards Post-2011 Non-2%	Total Post-2011 2%	Avg. % Awards Post-2011 2%	TOTAL	Total Pre-2011	Total Post-2011	TOTAL	Total Pre- & Post-2011 Non-2%	Avg. % Pre- & Post-2011 Non-2%	Total Post-2011 2%	Avg. % Post-2011 2%	Avg. % IA Settlements Combined Non-2% & 2%	TOTAL	Avg. % Non-IA Settlements
2017	4	1	1.56%[1]	2	1.68%[1]	1	2.05%[2]	2	0	2	5[3]	0	N/A	5	1.86%[1]	1.86%[1]	86[4]	3.53%[2]
2016	8	2	5.03%[1]	1	1.43%[1]	5	1.94%[2]	6	2	4	7[3]	0	N/A	7	2.69%[1]	2.69%[1]	7[4]	3.16%[2]
2015	6	0	N/A	0	N/A	6	1.71%[2]	3	0	3	9[3]	0	N/A	9	1.73%[1]	1.73%[1]	N/A	N/A
2014	12	1	1.69%[1]	5	1.74%[1]	6	1.69%[2]	5	1	4	16[3]	5	1.93%[1]	11	1.47%[1]	1.61%[1]	N/A	N/A
2013	27	15	1.87%[1]	1	1.16%[1]	11	1.89%[2]	9	3	6	8[3]	5	1.85%[1]	3	2.13%[1]	1.96%[1]	N/A	N/A
2012	37	20	1.85%[1]	9	1.59%[1]	8	1.99%[2]	22	5	17	29[3]	13	1.86%[1]	16	1.78%[1]	1.82%[1]	N/A	N/A
TOTAL / AVG.	94	39	2.01%	18	1.61%	37	1.86%	47	11	36	74	23	1.87%	51	1.86%	1.86%	93	3.50%

All calculations are based on actual awards or settlements received.

CHART KEY:

Pre 2011: IA petitions filed prior to January 1, 2011 are not subject to fast track resolution or 2% annual base salary increase cap.
Post 2011: IA petitions filed after December 31, 2010 are subject to fast track resolution.
Post 2011 2%: IA petitions filed after December 31, 2010 for contracts expired after December 31, 2010 are subject to fast track resolution and 2% salary cap.

1 - May or may not include increases due to increments/steps or longevity.

2 - These Average Annual Salary Increase Percentages include any increases due to increments/steps, longevity, and other raises.

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

4 - Includes only settlements made without filing for interest arbitration and submitted on fully completed 2016 revised Summary Form.

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TAB 14

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

1/1/1993 -12/31/2011

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

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

2018 BIENNIAL REPORT

TAB 15

P.E.R.C. NO. 2016-69

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY
(DIVISION OF STATE POLICE),

Respondent/Cross-Appellant,

-and- Docket No. IA-2016-003

STATE TROOPERS FRATERNAL
ASSOCIATION OF NEW JERSEY,

Appellant.

SYNOPSIS

The Public Employment Relations Commission remands an interest arbitration award to the arbitrator for reconsideration and issuance of a new award establishing the terms of a successor agreement between the State and STFA. The Commission finds that the arbitrator did not follow the New Milford standard for compliance with the statutory salary cap because he relied on the State's calculations without placing the calculations in the body of the decision. Therefore, the award is remanded for the arbitrator to demonstrate how the base year and salary increase calculations meet the requirements of N.J.S.A. 34:13A-16.7. The Commission also finds that on remand the arbitrator should clarify where he addressed the statutory 16g(9) factor with respect to the transportation allowance and education incentive proposals. The Commission determines that the arbitrator was correct in deciding to include maintenance pay as part of base salary, to exclude retroactive payments from the base year salary calculation, and to include acting sergeant's pay in the base year salary calculation.

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

P.E.R.C. NO. 2016-69

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY
(DIVISION OF STATE POLICE),

Respondent/Cross-Appellant,

-and- Docket No. IA-2016-003

STATE TROOPERS FRATERNAL
ASSOCIATION OF NEW JERSEY,

Appellant.

Appearances:

For the Petitioner, Ballard Spahr, attorneys (Steven W. Suflas, of counsel; Bradley J. Betack, on the brief)

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

DECISION

This case comes to us by way of an appeal and cross-appeal[1/] from an interest arbitration award pertaining to the State Troopers Fraternal Association Of New Jersey ("STFA") and the State of New Jersey, Division of State Police ("State" or "Division"). The award involves a negotiations unit of approximately 1643 troopers.[2/3/]

1/ The STFA filed its appeal on February 16, 2016, the State filed its cross-appeal and opposition brief to the STFA's appeal (after an extension was granted) on March 8, and the STFA filed its brief in opposition to the City's cross-appeal on March 11.

2/ The STFA contended that there were 1650 unit members; the (continued...)

The arbitrator conducted one mediation session and four days of hearings. On February 1, 2016, he issued a 54 page decision and award. The award was conventional as required by P.L. 2014, c. 11 (amending N.J.S.A. 34:13A-16d). A conventional award is crafted by an arbitrator after considering the parties' final offers in light of statutory factors. The parties' final offers are set forth on pages three to eight of the arbitrator's decision.

As pertinent to the appeal and cross-appeal, the award consisted of the following:

> Wages
> There will be a 1.25% increase across the board for all ranks and steps, commencing with the first pay period after July 1, 2016. Increments will be frozen as of Pay Period 21 in 2015. As of July 1, 2016 the maintenance allowance shall be $13,819.64.
>
> Term
> The CNA shall have a term of July 1, 2012 to June 30, 2017.
>
> Transportation Allowance
> Commencing with the Academy class of 2017, the transportation allowance shall be eliminated except in situations where the trooper is required to drive to an emergency muster point or to some assignment other than his or her regular assignment in excess of twenty miles from his or her permanent

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2/ (...continued)
State maintained that there were 1636 members.

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

> residence. In those cases, the trooper will be entitled to the transportation allowance.
>
> Education Incentive
> Commencing with the Academy class of 2017, the education incentive of $500 for employees who have sixty credits or an associate's degree shall be eliminated.
>
> Other Proposals
> All proposals by the STFA and the State not awarded herein are denied and dismissed. All provisions of the existing CNA shall be carried forward except for those which have been modified by the terms of the Award and any prior agreements between the parties.

The STFA appealed the following issues, as set forth in its brief:

> The Arbitrator's Award Should Be Vacated as Violative of N.J.S.A. 34:13a-16(g)and Controlling Case Law
>
> The Arbitrator Failed to Properly Calculate Base Salary for the Final Twelve (12) Months of the Expired Contract
>
> The Arbitrator Failed to Calculate and Provide an Analysis in Any of the Years of the Award
>
> The Arbitrator Failed to Show His Methodology as to How He Calculated Base Salary or the Aggregate Cost for the Base Year
>
> The Arbitrator Failed to Establish Information and Base Salary Calculations in an Acceptable and Legible Format
>
> The Arbitrator Failed to Make a Final Calculation of the Total Economic Award
>
> The Arbitrator Improperly Included Maintenance in Base Salary

> The Arbitrator Incorrectly Excluded Base Salary Amounts Expended by the Employer in Fiscal Year 2012 Which Were Paid as a Result of the [Previous Interest] Arbitration [Award]
>
> The Complete Lack of Opportunity for the STFA to Respond and Address the Calculations Submitted by the Employer
>
> The Arbitrator Improperly Eliminated Transportation Allowance and Education Incentive Without the Proper Discussion of the Factors
>
> The Arbitrator Improperly Included Promotions Based upon Acting Assignments into His Base Salary Calculations.

The State cross-appealed the following issues, as set forth in its brief:[4/]

> The Arbitrator's Award of a Five-year Term Did Not Comport with the 2% Cap Limitations of the Act
>
> The Arbitrator's Award of a Five-year Term Results in a Wage Award That Does Not Meet the 2% Cap
>
> The Only Option to Comply with the 2% Cap Is to Apply the Division's Wage Proposal to a Six-year Award
>
> The Arbitrator's Justification for the Five-year Term Is Inadequate.

We remand the award to the arbitrator for reconsideration because he did not show the methodology as to how "base salary"

4/ The State also opposed the STFA's appeal, asserting among other things, that the arbitrator "accurately identified the base year salary" and "properly found the division's cost out of a six-year contract as trustworthy."

was calculated or cost out his award.[5/] We will provide the arbitrator guidance with respect to the remand, including how to address maintenance payments, retroactive payments made during the "base year" based on the previous CNA, and "acting status" pay as part of the base salary calculation and on the last day of the base year (in this case, June 30, 2012).

Standard of Review

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

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

5/ Costing out the award may impact other aspects of the award appealed by the STFA (the transportation allowance and the education incentive). Subject to the arbitrator's judgment, discretion, and expertise, he may modify those aspects of the initial award as a result of his cost analysis.

> (c) in public employment in the same or comparable jurisdictions;
>
> (3) the overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received;
>
> (4) Stipulations of the parties;
>
> (5) The lawful authority of the employer . . .;
>
> (6) The financial impact on the governing unit, its residents and taxpayers . . .;
>
> (7) The cost of living;
>
> (8) The continuity and stability of employment including seniority rights . . .; and
>
> (9) Statutory restrictions imposed on the employer. . . .
>
> [N.J.S.A. 34:13A-16g.]

The standard for reviewing interest arbitration awards is well established. We will not vacate an award unless the appellant demonstrates that (1) the arbitrator failed to give "due weight" to the subsection 16g factors judged relevant to the resolution of the specific dispute; (2) the arbitrator violated the standards in N.J.S.A. 2A:24-8 and -9; or (3) the award is not supported by substantial credible evidence in the record as a whole. In re State and New Jersey Law Enforcement Supervisors Association, 443 N.J. Super. 380, 385 (App. Div. 2016) (citing

Hillsdale PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71, 82 (1994)); Teaneck Tp. v. Teaneck FMBA, Local No. 42, 353 N.J. Super. 289, 299 (App. Div. 2002), aff'd o.b. 177 N.J. 560 (2003) (citing Cherry Hill Tp., P.E.R.C. No. 97-119, 23 NJPER 287 (¶28131 1997)). Within the parameters of our review standard, we will defer to the arbitrator's judgment, discretion and labor relations expertise. City of Newark, P.E.R.C. No. 99-97, 25 NJPER 242 (¶30103 1999). However, an arbitrator must provide a reasoned explanation for an award and state what statutory factors he or she considered most important, explain why they were given significant weight, and explain how other evidence or factors were weighed and considered in arriving at the final award. N.J.S.A. 34:13A-16g; N.J.A.C. 19:16-5.9; Borough of Lodi, P.E.R.C. No. 99-28, 24 NJPER 466 (¶29214 1998).

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

> PERC is empowered to "make policy and establish rules and regulations concerning employer-employee relations in public employment relating to dispute settlement, grievance procedures and administration including . . . to implement fully all the provisions of [the] act." N.J.S.A. 34:13A-5.2. These manifestations of legislative intent indicate not only the responsibility and trust accorded to PERC, but also a high degree of confidence in the ability of PERC to use expertise and

> knowledge of circumstances and dynamics that are typical or unique to the realm of employer-employee relations in the public sector.
>
> [Id. at 328.]

P.L. 2010, c. 105 amended the police and fire interest arbitration act by, among other things, imposing a 2% "Hard Cap" on annual base salary increases in an interest arbitration award. P.L. 2014, c. 11, signed June 24, 2014 and retroactive to April 2, 2014, amended the interest arbitration act and extended the 2% salary cap, along with other changes, to December 31, 2017.

The 2% cap language of P.L. 2014, c. 11, codified at N.J.S.A. 34:13A-16.7, provides:

> Definitions relative to police and fire arbitration; limitation on awards
>
> a. As used in this section:
>
> "Base salary" means the salary provided pursuant to a salary guide or table and any amount provided pursuant to a salary increment, including any amount provided for longevity or length of service. It also shall include any other item agreed to by the parties, or any other item that was included in the base salary as understood by the parties in the prior contract. Base salary shall not include non-salary economic issues, pension and health and medical insurance costs.
>
> "Non-salary economic issues" means any economic issue that is not included in the definition of base salary.
>
> b. An arbitrator shall not render any award pursuant to section 3 of P.L. 1977, c. 85 (C.34:13A-16) which, in the first year of the

> collective negotiation agreement awarded by the arbitrator, increases base salary items by more than 2.0 percent of the aggregate amount expended by the public employer on base salary items for the members of the affected employee organization in the twelve months immediately preceding the expiration of the collective negotiation agreement subject to arbitration. In each subsequent year of the agreement awarded by the arbitrator, base salary items shall not be increased by more than 2.0 percent of the aggregate amount expended by the public employer on base salary items for the members of the affected employee organization in the immediately preceding year of the agreement awarded by the arbitrator.
>
> The parties may agree, or the arbitrator may decide, to distribute the aggregate monetary value of the award over the term of the collective negotiation agreement in unequal annual percentage increases, which shall not be greater than the compounded value of a 2.0 percent increase per year over the corresponding length of the collective negotiation agreement. An award of an arbitrator shall not include base salary items and non-salary economic issues which were not included in the prior collective negotiations agreement.

Costing Out of the Award

The arbitrator awarded a five-year contract effective July 1, 2012 through June 30, 2017. On page 25 of his decision, the arbitrator explained his award with regard to salary and the contract term as follows:

> Having reviewed the competing economic proposals, I have decided to accept as correct the data provided by the Division. Accordingly, I conclude that the total base salary for the STFA unit as of June 30,

> 2013[6/] is one hundred and fifty million, eight hundred and two thousand, four hundred and eight dollars and fifty-four cents ($150,802,408.54). I base this conclusion on the fact that the Division has properly included maintenance in its calculation of the base salary number. I also conclude that the Division's census is more trustworthy than the material relied upon by the STFA. In addition, I find that the Division is correct and that the retroactive payments made pursuant to the [prior] Award should not be added to base salary, because those payments are already reflected in the salary guide.
>
> Having determined the base salary, and having reviewed the testimony and record evidence, I conclude that I am compelled by the exigencies of the Police and Fire Public Interest Arbitration Reform Act to award the Division's economic proposal. However, as will be discussed below, I will award the STFA's proposal regarding the termination of this agreement.

The State had proposed a six-year contract terminating June 30, 2018. The figures provided by the State to the arbitrator regarding the cost out to comply with the 2% Hard Cap were based on its proposed six-year contract.

As noted above, the STFA disputes the arbitrator's determination of the base year salary and maintains that he failed to make a final calculation of the total economic award.

6/ It appears from other parts of the arbitrator's decision where he discusses base salary, for example, on page 20 of the decision, that rather than "June 30, 2013," he meant to say in the quote above "June 30, 2012," which was the end date of the base year.

The State asserts that the arbitrator-awarded five-year term violates the 2% Hard Cap.

In New Milford, P.E.R.C. No. 2012-53, 38 NJPER 340 (¶116 2012), we addressed what an arbitrator was required to show in his or her opinion regarding the calculation of the base year and the cost out of the total economic award:

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

> base salary by more than 2% per contract year or 6% in the aggregate.[7/]

Thus, the determination of compliance with N.J.S.A. 34:13A-16.7 involves two distinct calculations. The first calculation uses the "base year salary" from the employer's aggregate expenditures in the 12 months preceding the new award to derive the 2% cap number. That base year salary figure uses raw, actual salary expenditure numbers, so it would include, for example, the partial salaries for unit members who retired or were hired at some point during the base year. The second calculation looks at the salary guide level, or scattergram[8/] placement, of unit members on the last day before the new award, and determines whether the projected increases to those unit members' base salary items exceed the 2% cap.

The arbitrator did not comply with the approach set forth in New Milford, but merely relied on the State's calculations; those calculations were based on a six-year term, but he awarded a

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7/ The 2014 amendment to the interest arbitration act changed the allowable aggregate base salary increase. Now, the total economic award in such a case must not be greater than the compounded value of a 2% increase per year over the corresponding length of the contract.

8/ A "scattergram" is simply a chart showing where employees are currently situated on the salary guide, thus providing a snapshot of the current total cost of the unit. For police and fire units, a scattergram would typically show how many employees are at each step/increment of the guide, and might also include a column indicating their placement on any applicable longevity pay guide.

five-year contract. It is incumbent on arbitrators to place the appropriate calculations, as set forth in New Milford, in the body of the decision. As we stated in Point Pleasant Bor., P.E.R.C. No. 2013-28, 39 NJPER 203 (¶65 2012), a case where the award was vacated:

> There was no detailed analysis of the costs of the base year, including increments and longevity. There was no analysis as to how these costs would be calculated in any of the years of the four years awarded, nor was there a calculation demonstrating how the award met the 2% salary cap requirements of N.J.S.A. 34:13A-16.7.

Accordingly, this case must be remanded to the arbitrator to comply with New Milford.

Maintenance

As set forth above, the arbitrator adopted the State's position and included "maintenance" payments as part of the base salary. The arbitrator referenced the maintenance issue at pages 19 to 20 of his decision:

> In addition to their salaries and commencing with the third year of employment, each member of the Division, including the Superintendent, receives a "maintenance" payment of thirteen thousand six hundred and forty-nine dollars and three cents ($13,649.03) annually. This maintenance payment is phased-in. Troopers in their first year of employment receive a third of the maintenance amount. Troopers in their second year receive two thirds of the maintenance amount. Troopers in their third year receive the full amount. The Division contends that this sum should be included in the base pay calculations. The Division notes that

> maintenance is used for the calculation of overtime pay, and the payments are included in calculating a pension. (Division Brief at 22-24). The STFA contends that maintenance is not included in base pay. The STFA characterizes maintenance as "a separate calculation of a common benefit paid to all sworn members of the Division."

The STFA cites Paterson Police PBA Local 1 v. City of Paterson, 433 N.J. Super. 416 (App. Div. 2013) for the proposition that base salary should be based on "pensionable salary," and it claims that the New Jersey State Treasury, Division of Pensions and Benefits, does not include maintenance as part of base salary for pension contribution purposes. Paterson was a case that determined what base salary is with respect to employee contributions for health insurance coverage under P.L. 2010, c. 2, and not under P.L. 2014, c. 11, regarding limits on interest arbitration awards. Moreover, maintenance is included in determining a trooper's final compensation for pension purposes pursuant to N.J.S.A. 53:5A-3 and N.J.A.C. 17:5-1A.1.

In addition, the record indicates (Pa215, Pa219) that under the prior CNA, overtime rates and other premium pay for STFA members was based on a member's salary "plus maintenance." It also reflects that for at least 30 years, base salary and maintenance payments have been included when calculating percentage increases. We find it clear from the negotiated compensation system that maintenance was understood by the

parties to be part of a trooper's salary and that the arbitrator was correct in including it as part of base salary.

Retroactive Payments Made in the Base Year

The arbitrator adopted the State's position and did not include in the base year salary calculation retroactive payments made that year pursuant to the prior interest arbitration award. The State argued that retroactive payments "should not be added to base salary, because those payments are already reflected in the salary guide." (Decision at 25). The STFA argues that based on a plain reading of N.J.S.A. 34:13A-16.7, retroactive payments should be included in "[T]he aggregate amount expended by the public employer on base salary items for the members of the affected employee organization in the twelve months immediately preceding the expiration of the collective negotiation agreement subject to arbitration." Under our interpretation of the Act, we find that the arbitrator was correct in excluding the retroactive payments from the base salary. Those payments were based on earnings from prior years and would have artificially increased the base salary; the inclusion of the retroactive pay would have improperly skewed the projections for the remaining years of the CNA when calculating the 2% Hard Cap and the rest of the award.

Acting Status Pay as Part of the Base Salary Calculation

The arbitrator adopted the State's position and included acting sergeant's pay in the base salary calculation. He stated on page 19 of the decision, "Senior members of the STFA unit are occasionally asked to serve as Acting Sergeants. After eight pay periods, Acting Sergeants are paid at the higher Sergeant rate. However, until they are promoted, Acting Sergeants remain in the STFA unit."

The record on appeal includes the parties' CNA that was in effect from July 1, 2008 through June 30, 2012. Article XXII, Out-of-title-work provides in pertinent part:

> This Article governs out-of-title work issues and compensation for time served in a formally designated acting assignment at a higher rank for greater than eight (8) bi-weekly pay periods and is applicable to all enlisted members of the Division of State Police. When the Superintendent initiates a 369A or otherwise designates in writing that a member will be assigned to serve in an acting assignment at a higher rank, the member will be eligible to receive the rate of pay of the higher rank upon completion of eight (8) bi-weekly pay periods of continuous service. The rate of pay of the higher rank will be effective and payable to the member for service in the higher rank subsequent to the completion of the eight (8) bi-weekly pay periods. Following completion of the eight (8) bi-weekly pay periods, the member shall receive the rate of pay of the higher rank until either promoted according to the procedures adopted by the Superintendent or the acting assignment is terminated.

As set forth above, N.J.S.A. 34:13A-16.7 states, "'Base salary' means the salary provided pursuant to a salary guide or table and any amount provided pursuant to a salary increment . . . ." Based upon the prior award, which included the STFA and the units for sergeants and other superior officers, we understand that employees in all three units are paid pursuant to salary schedules. The members serving as acting sergeants during the base year were, after (8) bi-weekly pay periods, compensated pursuant to a salary guide, albeit that applicable to sergeants. Therefore, and given the prolonged nature of the assignments, we find that the arbitrator was correct in including those payments as part of the base salary. On remand, as part of the requisite cost-out calculation, STFA members who were being compensated at the acting sergeant pay rate as of the last day of the previous CNA (June 30, 2012) will be moved forward through the newly awarded salary guides or raises from that pay rate.

Other Guidance

As noted above, an arbitrator is required to address all nine N.J.S.A. 34:13A-16g factors and "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... ." N.J.S.A. 34:13A-16g; See e.g., Hillsdale, 137 N.J. at 84; In re State, 443 N.J. Super. 380, 385 (App. Div. 2016); Burlington County Prosecutor's Office and PBA

Local 320, P.E.R.C. No. 2012-61, 39 NJPER 20 (¶4 2012), rem'd 40 NJPER 41 (¶17 2013), certif. den. 217 N.J. 287 (2014). On remand, the arbitrator should clarify where in his initial decision he addressed subsection 16g(9), statutory restrictions upon the employer, or otherwise supplement his analysis in that regard. Likewise, he must provide this information with respect to his award on the transportation allowance and education incentive proposals, whether or not he modifies his award as to them.

Lastly, we find that the STFA was not denied the opportunity to address the State's calculations. Although the parties agreed at the outset of proceedings that they could change their final offers at any time before the close of the record, the STFA waited until the end of the last day of the hearing, after the last witness had testified, to modify its final offer, which it did not cost out.[9/] The information the State provided to the arbitrator after the hearing was partially in response to the

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9/ In light of what occurred here, we remind the arbitrator and the parties what we said in Atlantic City, P.E.R.C. No. 2014-3, 40 NJPER 140 (¶53 2013): "At the outset of being assigned to a case, the interest arbitrator should set a schedule for the public employer to provide the required base salary information and calculations, and another date for the union to respond to that information. The arbitrator should have the parties' positions regarding the base salary information and calculations prior to the arbitration hearing date. The arbitration hearing is the proper forum to address any dispute and/or confusion over the base salary information and calculations."

STFA's new offer and an attempt to reconcile the parties' differences over the roster of troopers serving as acting sergeants. The STFA had also waited until the final day of the hearing to provide the State with the STFA's base year roster even though the arbitrator had urged the parties to meet before the hearing to discuss the base year roster. As reflected in the hearing transcript, the new information and the State's revised wage proposal were submitted to the arbitrator after the hearing with the arbitrator's permission and on notice to the STFA.

Nevertheless, since we are remanding the award to the arbitrator, the parties may request the arbitrator's permission to supplement the record with additional information and/or argument regarding the calculations to be made pursuant to this decision.

ORDER

The Award is remanded to the arbitrator for reconsideration and issuance of a new award within 90 days that complies with the guidance set forth in this decision.

BY ORDER OF THE COMMISSION

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

ISSUED: April 14, 2016

Trenton, New Jersey

P.E.R.C. NO. 2017-20

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY
(DIVISION OF STATE POLICE),

Appellant,

-and- Docket No. IA-2016-003

STATE TROOPERS FRATERNAL
ASSOCIATION OF NEW JERSEY,

Respondent/Cross-Appellant.

SYNOPSIS

The Public Employment Relations Commission affirms in part, and modifies in part, an interest arbitration award on remand establishing the terms of a successor collective negotiations agreement between the State of New Jersey, Division of State Police (State), and the State Troopers Fraternal Association of New Jersey (STFA). The State appealed and the STFA cross-appealed. The State argued that the arbitrator's award of step movement on the last day of the successor contract (June 30, 2017) as though increment movement had not been frozen in 2015 did not comply with the 2% cap, was not calculated for compliance with the 2% cap, and attempts to side-step the limitations of the compulsory interest arbitration law. The STFA responded that the resumption of step movement on the last day of the successor contract did not violate the law. The STFA also argued that the arbitrator did not consider all of the 16g statutory factors in analyzing the transportation allowance and education incentive proposals.

The Commission finds that the resumption of salary increments on the last day of the award circumvents the legislative purpose of the 2% cap by allowing a significant salary increment that is not accounted for in this award or in the next contract. The Commission holds that the arbitrator's grant of increments on the last day of the award violates the Act because it handicaps the next round of negotiations, undermines the legislative intent to control costs, and disregards the financial impact of the step movement on the taxpayer. Accordingly, the Commission modifies the arbitrator's remand award to remove the granting of increments on the last day. With respect to the transportation allowance and education incentive, the Commission finds that the arbitrator appropriately considered each of the 16g statutory factors and based his award on substantial credible evidence in the record.

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

P.E.R.C. NO. 2017-20

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY
(DIVISION OF STATE POLICE),

Appellant,

-and- Docket No. IA-2016-003

STATE TROOPERS FRATERNAL
ASSOCIATION OF NEW JERSEY,

Respondent/Cross-Appellant.

Appearances:

For the Petitioner, Ballard Spahr, attorneys (Steven W. Suflas, of counsel; William K. Kennedy II, on the briefs)

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

DECISION

This case comes to us by way of an appeal and cross-appeal[1/] from a remand interest arbitration award pertaining to the State of New Jersey, Division of State Police ("State" or "Division") and the State Troopers Fraternal Association Of New Jersey

1/ The State filed its appeal on July 27, 2016, the STFA filed its cross-appeal and opposition brief to the State's appeal (after an extension was granted) on August 10, and the STFA filed its response brief in opposition to the City's cross-appeal on August 15.

("STFA").[2/] The award involves a negotiations unit of approximately 1633 troopers.

The arbitrator issued an initial opinion and award on February 1, 2016. After an appeal by the STFA and cross-appeal by the State, the Commission remanded the award to the arbitrator on April 14, 2016 with guidance for reconsideration as set forth in that decision. State of New Jersey (Division of State Police), P.E.R.C. No. 2016-69, 42 NJPER 505 (¶141 2016). In order to comply with New Milford Boro., P.E.R.C. No. 2012-53, 38 NJPER 340 (¶116 2012), we stated:

> We remand the award to the arbitrator for reconsideration because he did not show the methodology as to how "base salary" was calculated or cost out his award. We will provide the arbitrator guidance with respect to the remand, including how to address maintenance payments, retroactive payments made during the "base year" based on the previous CNA, and "acting status" pay as part of the base salary calculation and on the last day of the base year (in this case, June 30, 2012).
>
> [Footnote omitted.]

Additionally, under "Other Guidance" we stated:

> On remand, the arbitrator should clarify where in his initial decision he addressed subsection 16g(9), statutory restrictions upon the employer, or otherwise supplement his analysis in that regard. Likewise, he must provide this information with respect to his award on the transportation allowance and

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

> education incentive proposals, whether or not he modifies his award as to them.

Following remand, the arbitrator conducted a mediation session on April 28, 2016 and a hearing on June 14. The arbitrator issued a 45-page remand award on July 12, which the parties received on July 14.

The remand award was conventional as required by P.L. 2014, c. 11 (amending N.J.S.A. 34:13A-16d). A conventional award is crafted by an arbitrator after considering the parties' final offers in light of statutory factors. The parties' final offers for the remand award are set forth on pages 10 and 11 of the arbitrator's remand decision.

As pertinent to the initial appeal and cross-appeal, the initial award consisted of the following:

> Wages
> There will be a 1.25% increase across the board for all ranks and steps, commencing with the first pay period after July 1, 2016. Increments will be frozen as of Pay Period 21 in 2015. As of July 1, 2016 the maintenance allowance shall be $13,819.64.
>
> Term
> The CNA shall have a term of July 1, 2012 to June 30, 2017.
>
> Transportation Allowance
> Commencing with the Academy class of 2017, the transportation allowance shall be eliminated except in situations where the trooper is required to drive to an emergency muster point or to some assignment other than his or her regular assignment in excess of twenty miles from his or her permanent

residence. In those cases, the trooper will be entitled to the transportation allowance.

Education Incentive
Commencing with the Academy class of 2017, the education incentive of $500 for employees who have sixty credits or an associate's degree shall be eliminated.

Other Proposals
All proposals by the STFA and the State not awarded herein are denied and dismissed. All provisions of the existing CNA shall be carried forward except for those which have been modified by the terms of the Award and any prior agreements between the parties.

The remand award consisted of the following:

Wages
There will be a 1.25% increase in the annual maintenance payments effective the first full pay period after July 1, 2016. Maintenance payments will be increased to $13,819.64. All increments will be suspended from pay period 21 of 2015 through June 29, 2017. After June 29, 2017, Troopers will be placed at the Step and Range they would have been eligible for as if there had been no suspension after pay period 20 in 2015. (There will be no retroactive pay as a result). Effective June 30, 2017, Troopers will resume their normal progression pending the parties' negotiation of a successor CNA. I make no finding regarding the legal requirements governing step movement at the end of the CNA.

Term
The CNA shall have a term of July 1, 2012 to June 30, 2017.

Transportation Allowance
For Troopers entering the Academy after January 1, 2017, the transportation allowance provided for at Article X § B (7) of the CNA shall be eliminated except in situations where the Trooper is required to drive to an emergency muster point or to some assignment

> other than his or her regular assignment in excess of twenty miles from his or her permanent residence. In those cases, the Trooper will be entitled to the transportation allowance.
>
> Education Incentive
> For Troopers entering the Academy after January 1, 2017, the education incentive of five hundred dollars ($500) for employees who have sixty credits or an associate's degree provided for at Article X § I (1) shall be eliminated.
>
> Other Terms
> All proposals by the State Troopers Fraternal Association of New Jersey, Inc. and the State of New Jersey Division of State Police not awarded herein are denied and dismissed. All provisions of the existing Collectively Negotiated Agreements shall be carried forward except for those which have been modified by the terms of this Remand Award, my Initial Award dated January 31, 2016 and any prior agreements between the parties. Except as modified by the terms of this Remand Award, my Initial Award dated January 31, 2016 remains in effect.

The State appealed the following issues, as set forth in its brief:

> A. THE ARBITRATOR FAILED TO MAKE A FINAL CALCULATION OF THE ECONOMIC AWARD TO ENSURE COMPLIANCE WITH THE 2% CAP STATUTE
>
> B. THE ARBITRATOR'S REINSTITUTION OF AUTOMATIC INCREMENTS RESULTS IN A WAGE AWARD THAT DOES NOT COMPLY WITH THE 2% CAP
>
> 1. THE ARBITRATOR'S AWARD OF THE DIVISION'S PROPOSAL COMPRISED THE MAXIMUM ALLOWED UNDER THE CAP
> A. THE DIVISION'S CALCULATION OF BASE YEAR SALARY
> B. THE DIVISION'S CALCULATION OF THE EXPENDITURE RATE

C. THE DIVISION'S PROPOSAL COMPLIED WITH THE CAP

2. THE IMPLEMENTATION OF AUTOMATIC INCREMENTS ON JUNE 30, 2017 RESULTS IN AN ECONOMIC AWARD EXCEEDING THE 2% CAP

C. THE ARBITRATOR'S ATTEMPT TO SIDE-STEP THE LIMITATIONS OF THE ACT SETS A DANGEROUS PRECEDENT

D. THE DIVISION REQUESTS THAT PERC ISSUE A MODIFIED AWARD

The STFA opposed the State's appeal and cross-appealed the following issues, as set forth in its brief:

THE ARBITRATOR DID NOT CONSIDER ALL OF THE 16G FACTORS AS REQUIRED BY THE REMAND DECISION CONCERNING THE TRANSPORTATION ALLOWANCE OR THE EDUCATION INCENTIVE

THE TRANSPORTATION ALLOWANCE WAS NOT PROPERLY ANALYZED BY THE ARBITRATOR

EDUCATIONAL INCENTIVE WAS NOT PROPERLY ANALYZED BY THE ARBITRATOR

THE RESUMPTION OF STEP MOVEMENT ON THE LAST CONTRACT DAY DID NOT VIOLATE THE TWO PERCENT (2%) HARD CAP AND DID NOT VIOLATE THE STATUTE AS THE EMPLOYER HAS ASSERTED IN ITS APPEAL

THE ARBITRATOR AND THE COMMISSION ARE STATUTORILY REQUIRED TO PROVIDE STEP MOVEMENT TO STEP TROOPERS PURSUANT TO *TITLE* 53

THE ARBITRATOR AND THE COMMISSION ARE STATUTORILY REQUIRED TO PROVIDE STEP MOVEMENT TO STEP TROOPERS PURSUANT TO *TITLE* 52 AND *TITLE* 11

THE SALARY STEP INCREASES MANDATED BY *TITLE* 53 ARE PRE-EMPTIVE OF ANY LAW TO THE CONTRARY

THE ARBITRATORS METHODOLOGY IN AWARDING A *DE MINIMIS* COST WAS A PROPER EXERCISE OF HIS DISCRETION

THE ARBITRATOR'S AWARD OF STEP MOVEMENT ON THE LAST DAY OF THE CONTRACT INCURS ZERO COST TO THE 2% SALARY CAP BASED UPON CIVIL SERVICE PAYROLL REGULATIONS AND POLICY

AN ARBITRATOR MAY PROPERLY PROVIDE FOR STEP MOVEMENT UPON THE EXPIRATION OF A CONTRACT

MODIFICATION IS NOT AN AVAILABLE REMEDY WHERE THE ISSUE IN QUESTION IS SALARY INCREASES

Standard of Review

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

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

> direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received;
>
> (4) Stipulations of the parties;
>
> (5) The lawful authority of the employer ...;
>
> (6) The financial impact on the governing unit, its residents and taxpayers ...;
>
> (7) The cost of living;
>
> (8) The continuity and stability of employment including seniority rights ...; and
>
> (9) Statutory restrictions imposed on the employer.
>
> [N.J.S.A. 34:13A-16g.]

The standard for reviewing interest arbitration awards is well established. We will not vacate an award unless the appellant demonstrates that (1) the arbitrator failed to give "due weight" to the subsection 16g factors judged relevant to the resolution of the specific dispute; (2) the arbitrator violated the standards in N.J.S.A. 2A:24-8 and -9; or (3) the award is not supported by substantial credible evidence in the record as a whole. In re State and New Jersey Law Enforcement Supervisors Association, 443 N.J. Super. 380, 385 (App. Div. 2016) (citing Hillsdale PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71, 82 (1994)); 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)).

Arriving at an economic award is not a precise mathematical process. Given that N.J.S.A. 34:13A-16g 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. 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.

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

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

P.L. 2010, c. 105 amended the police and fire interest arbitration act by, among other things, imposing a 2% "Hard Cap" on annual base salary increases in an interest arbitration award. P.L. 2014, c. 11, signed June 24, 2014 and retroactive to April 2, 2014, amended the interest arbitration act and extended the 2% salary cap, along with other changes, to December 31, 2017.

The 2% cap language of P.L. 2014, c. 11, codified at N.J.S.A. 34:13A-16.7, provides:

> Definitions relative to police and fire arbitration; limitation on awards
>
> a. As used in this section:
>
> "Base salary" means the salary provided pursuant to a salary guide or table and any amount provided pursuant to a salary increment, including any amount provided for longevity or length of service. It also shall include any other item agreed to by the parties, or any other item that was included in the base salary as understood by the

parties in the prior contract. Base salary shall not include non-salary economic issues, pension and health and medical insurance costs.

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

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

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

Implementation of Automatic Increments on June 30, 2017

We begin by addressing the State's appeal regarding the arbitrator's award of increments on June 30, 2017, the last day of the CNA. The arbitrator stated the reason he was awarding the increments at pages 31 to 32 of his decision:

> However, I am modifying my earlier award in which I froze increments as of pay period 21 in 2015. The STFA proposed that there be a nine-month delay in step movement, and that Troopers would move to the next step at the conclusion of the nine-month period. (Tr. 6-14-16 at 153-154 (Labruno)). As I noted above, this proposal cannot be accommodated under the 2% Hard Cap. However, I am amending my previous award to provide that all increments will be suspended from pay period 21 of 2015 through June 29, 2017. Troopers will unfortunately have a delay in their step movement until June 29, 2017. After June 29, 2017, Troopers will be placed at the Step and Range they would have been eligible for as if there had been no suspension after pay period 20 in 2015. (There will be no retroactive pay as a result of this change). Troopers will then resume their normal progression on the Step and Range Chart pending the negotiation of a successor CNA. I make no finding regarding the legal requirements governing step movement or the state of the law as of June 30, 2017, the date the CNA will expire. The STFA has argued that the effect of my Initial Award, were it to be implemented, would be to permanently freeze all step movement indefinitely. While the STFA notes that it could possibly negotiate the resumption of step movement going forward, at the present time there is no clear "career path for compensation." (STFA brief at 45). This would be an unjust result. In addition, especially as a result of the Appellate Division's decision in In the Matter of Atlantic County, 445 N.J. Super. 1 (App. Div.

> 2016) pet. for cert. pending,[3/] which restored the concept of the dynamic status quo to collective negotiations, the freeze in step movement may persist well after this five year CNA expires. Accordingly, it would be unjust to permit such an indefinite freeze. In addition, because the suspension will end the day before the last day of the contract's expiration the cost to the Division if any will be de minimis. Any additional costs will not occur during the term of this CNA. The parties will be free to negotiate changes to the compensation package especially step movement at the conclusion of this agreement.

The State argues that although the arbitrator was correct in complying with the 2% salary cap or "Hard Cap" under N.J.S.A. 34:13A-16.7 with respect to the five year CNA that was awarded, the arbitrator violated the statute by not costing out the effect of awarding the increments on the last day of the CNA and by only stating that the cost to the [State] if any will be "de minimis." The STFA asserts that the increment award was a proper exercise of his discretion and does comply with the 2% Hard Cap because employees will not receive pay increases resulting from the step movement on June 30, 2017 "until the next pay period following the pay adjustment."

In Borough of Tenafly and PBA Local 376, P.E.R.C. No. 2013-87, 40 NJPER 90 (¶34 2013), aff'd 41 NJPER 257 (¶84 App. Div.

3/ The New Jersey Supreme Court granted the petition for certification In re County of Atlantic, __ N.J. __ (2016), 2016 N.J. LEXIS 870, on August 3, 2016 (filed on August 5, 2016), after the remand award was issued.

2015), another case that concerned the 2% Hard Cap, the Appellate Division set forth the legislative intent regarding the statute:

> In 2010, legislation was passed directed at terminating abuses of the pension systems and controlling the cost of providing public employee retirement, health care, and other benefits. See Paterson Police PBA Local 1 v. City of Paterson, 433 N.J. Super. 416, 419-21, 80 A.3d 1152 (App. Div. 2013) (describing history of bills and provisions of Special Session Joint Legislative Committee on Public Employee Benefits Reform, Final Report (N.J. 2006)).
>
> As a result, N.J.S.A. 34:13A-16 was amended to prohibit an interest arbitration award from increasing public employer "base salary" costs by more than two percent per contract year. See N.J.S.A. 34:13A-16.7(b) (codifying L. 2010, c. 105, § 2). Base salary is a statutory term of art, defined as "salary provided pursuant to a salary guide or table and any amount provided pursuant to a salary increment, including any amount provided for longevity[.]" N.J.S.A. 34:13A-16.7(a).

In County of Warren and Warren County Corrections FOP Lodge 71, P.E.R.C. No. 2014-23, 40 NJPER 225 (¶86 2013), app. dism. (7/22/14), we addressed an appeal asserting that the arbitrator erred by not awarding salary step movement at the expiration of the contract. We affirmed the award and stated: "The arbitrator adequately explained her rationale for freezing step movement upon the expiration of the contract - - mainly to avoid handicapping negotiations for the next contract since it will be subject to the two percent base salary cap." Here, as will be discussed below, the State is charged with a sizable double

increment for a contract term that was not part of the interest arbitration, was not negotiated, and is not charged to either contract term.

The last day of this contract will be critical for determining how the Troopers advance through the salary guide in their next contract.[4/5/] Essentially, due to the award's double increment bump on the last day, the next contract's raises would be applied using that higher salary guide level as a starting point but the significant cost of that double increment would not be accounted for. For those 84 Troopers highlighted in the State's brief who were at Range T-17, Step 4 in 2015, their

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4/ As we stated in our initial decision referring to New Milford, P.E.R.C. No. 2012-53, 38 NJPER 340 (¶116 2012):

> Thus, the determination of compliance with N.J.S.A. 34:13A-16.7 involves two distinct calculations. The first calculation uses the "base year salary" from the employer's aggregate expenditures in the 12 months preceding the new award to derive the 2% cap number. That base year salary figure uses raw, actual salary expenditure numbers, so it would include, for example, the partial salaries for unit members who retired or were hired at some point during the base year. The second calculation looks at the salary guide level, or scattergram placement, of unit members on the last day before the new award, and determines whether the projected increases to those unit members' base salary items exceed the 2% cap.

5/ We note that the next CNA between the parties will be subject to the 2% Hard Cap if they proceed to interest arbitration since the expiration date is June 30, 2017 and the Legislature extended the 2% Hard Cap to December 31, 2017.

double increment up to Step 6 on the last day of the contract would result in a salary increase of $5,792.04 as they jump from $66,438.00 to $72,334.02. That $5,792.04 represents a salary increase of 8.72%. However, only 1 day of that increase is charged to this contract because the double increment was awarded for the last day. Thus, only $15.87 of the significant 8.72% increase was charged to this contract,[6/] while the remaining $5,776.17, or a raise of 8.69%, carries over into the next contract term that was not part of this interest arbitration and the opportunity to negotiate the salary for the next contract has been extinguished. Because those Troopers would already be at the higher salary guide level when negotiations and/or interest arbitration are being conducted for the next contract, that 8.69% of the double increment bump will not be accounted for as a new salary increase in the next contract. Thus, the bulk of the significant salary increment is not charged to either this contract or the next, effectively escaping the 2% Hard Cap. While the parties may mutually agree to salary increases in excess of the 2% Hard Cap if their negotiations are successful and interest arbitration is avoided for the next contract, the arbitrator's award of the double bump on the last day of this

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6/ 1 out of 365 days equals 0.274% of the year. So the $5,792.04 raise was only applicable to the contract for 0.274% of the year, yielding $15.87 chargeable to this contract and accounted for.

contract hamstrings the employer and union by baking in a carried over 8.69% raise, effectively taking those salary negotiations out of the parties' hands. Such an accounting maneuver in the interest arbitration process circumvents the legislative purpose of the 2% Hard Cap by permitting extreme, unaccountable raises in the transition between contracts. Accordingly, we find that the arbitrator's grant of double increments on the last day of the award handicaps the next round of negotiations, undermines the legislative intent to control costs, and disregards the financial impact of the step movement on the taxpayer. See N.J.S.A. 34:13A-16g(1) and -(6) and N.J.S.A. 34:13A-16. We therefore modify the arbitrator's remand award to remove the granting of increments on the last day of the CNA.

Although not appealed by the parties, we find that the arbitrator otherwise complied with our guidance (aside from the granting of increments on the last day of the CNA) regarding showing the methodology as to how base salary was calculated and to cost out his award. The arbitrator adopted the State's proposal for a five-year CNA and determined that the cost of the award was 10.24% over the five years, which is in compliance with the Hard Cap.[7/] The arbitrator addressed his methodology and cost out of the award on pages 26 to 31 of his decision.

7/ The STFA had proposed a five and one-half year CNA. The arbitrator determined that the STFA's proposal for that length of time exceeded the 2% Hard Cap. Award at 30 to 31.

Transportation Allowance and Educational Incentive

The STFA's cross-appeal asserts that the arbitrator did not consider all of the N.J.S.A. 34:13A-16g factors when rendering his remand award and did not cost out or make an economic analysis of these two items based on the speculative nature of new hires. We first note that the arbitrator discussed his analysis of the Transportation Allowance at pages 33 to 37 of his decision and discussed the Education Incentive at pages 38 to 42 of his decision. In both cases, the arbitrator set forth all nine of the N.J.S.A. 34:13A-16g factors and appropriately considered each factor in order. Regarding the Transportation Allowance the arbitrator stated at pages 35 to 36:

> With a slight modification, I reiterate my award. I am eliminating the transportation allowance only for Troopers who enter the Academy after January 1, 2017. If there is no Academy class in 2017, the award will not take effect until a new Academy class is admitted. The award maintains the transportation allowance for Troopers if they are required to drive to an emergency muster point, or to some assignment other than their regular assignments in excess of twenty miles from their permanent place of residence.

The arbitrator continued with his analysis of the statutory factors (footnote omitted):

> The Commission directed me to justify this aspect of my award by analyzing the nine subsections contained in N.J.S.A. 34:13-16(g).
>
> The first factor is the interest and welfare of the public §16(g)(1). Other than a slight

reduction in the costs to the Division, this award has only a limited impact on the public interest.

The second factor is a comparison of this benefit in the public and private sectors §16(g)(2). The Division has established that transportation allowances, such as the one at issue in this proceeding, are extremely rare. There are few, if any, private sector employers that pay its employees to commute. The Division has also established that the State of New Jersey has successfully eliminated this benefit where it previously existed or that it never existed in the vast majority of public sector bargaining units. Most importantly, the benefit has been eliminated for the NCOA unit. Therefore, this factor strongly supports the elimination of the benefit. However, Troopers will still be entitled to receive this benefit if they are asked to travel to an assignment other than their regular assignment. The entitlement to this benefit would be consistent with practices in the private sector.

The third factor is the overall compensation of the employees §16(g)(3). The elimination of this benefit would have a limited impact on the Troopers' compensation. Since the affected Troopers have not been called to service the effect of the elimination of this benefit is reduced.

The fourth factor is any stipulations of the parties §16(g)(4). There are no stipulations concerning this issue.

The fifth factor is the lawful authority of the employer §16(g)(5). This factor is not relevant to my analysis.

The sixth factor is the financial impact on the governing unit §16(g)(6). As the STFA points out, at this point, it is hard to quantify the precise financial impact the elimination of this benefit would produce.

> However, as time goes on, it will reduce costs for the Division.
>
> The seventh factor is the cost of living §16(g)(7). This factor will have an impact on the Troopers who will face increased commuting costs and who will not be compensated as a result of the elimination of the transportation allowance. New Jersey is a state with a high cost of living.
>
> The eighth factor is the continuing stability of employment §16(g)(8). This factor will have an impact on the Troopers. Creating a two-tier system, even with respect to this minor benefit is not conducive to maintaining employee morale.
>
> The ninth factor is statutory restrictions imposed on the employer §16(g)(9). There are no statutory restrictions which would affect this benefit.
>
> In sum, and balancing the factors mandated by N.J.S.A. 34:13-16(g), I conclude that the elimination of the transportation allowance is appropriate.

Similarly, with respect to the Education Incentive the arbitrator stated at page 40:

> With a slight modification, I reiterate my award. I am eliminating the $500 educational incentive only for Troopers who enter the Academy after January 1, 2017. If there is no academy class in 2017, the award will not take effect until a new academy class is admitted. The Division originally sought to eliminate this benefit for all Troopers who have an associate's degree. The Division only expended $108,500 in FY2015 on this benefit. In the overall context of the Division's budget this is a small sum. In light of the fact that there will be no wage increase, I conclude that it would be unjust to take this benefit away from Troopers already in service who have relied upon this stipend. On the

> other hand, the Division has established that, in order to enter the Academy, an associate's degree by itself is no longer sufficient. Accordingly, Troopers entering the Academy after January 1, 2017 will no longer be entitled to the five hundred dollar ($500) stipend for achieving an associate's degree.

The arbitrator again continued with his analysis of the statutory factors (footnote omitted):

> The Commission directed me to justify this aspect of my award by analyzing the nine subsections contained in N.J.S.A. 34:13-16(g).
>
> The first factor is the interest and welfare of the public §16(g)(1). Other than a slight reduction in the cost to the Division, this benefit has only a limited impact on the public interest. There is, of course, the important benefit to the state in having a well-trained educated police force. However, the Division has established that the vast majority of new hires enter service with at least a bachelor's degree. I conclude that the elimination of this benefit will not negatively impact the public welfare.
>
> The second factor is a comparison of this benefit in the public and private sectors §16(g)(2). As the Division has established there is little if any compensation for holders of Associate's degrees for employees of the State of New Jersey. There are is no evidence in the record concerning private sector employers and the provision of an incentive for an associates' degree. However, the Division has also established that within the State of New Jersey only one other bargaining unit has an education incentive, but that bargaining unit does not provide an incentive to employees with associate's degrees. Most importantly, the benefit has been eliminated for the NCOA

unit. Therefore, this factor strongly supports the elimination of this benefit.

The third factor is the overall compensation of the employees §16(g)(3). While some Troopers may be adversely affected by the elimination of this benefit, there will be a limited effect on overall compensation. As Director Dee testified, most Troopers enter service with at least a bachelor's degree. In addition, the award provides that Troopers who currently receive the education incentive will not lose it.

The fourth factor is any stipulations of the parties §16(g)(4). There are no stipulations of the parties concerning this issue.

The fifth factor is the lawful authority of the employer §16(g)(5). This factor is not relevant to my analysis.

The sixth factor is the financial impact on the governing unit §16(g)(6). As the STFA points out, at this point it is hard to quantify the precise financial impact the elimination of this benefit would produce. However, as time goes on, it will certainly reduce costs for the Division.

The seventh factor is the cost of living §16(g)(7). This factor will have an impact on the Troopers who will not be compensated as a result of the benefit's elimination. New Jersey is a state with a high cost of living.

The eighth factor is the continuing stability of employment §16(g)(8). This factor will have an impact on the Troopers. Creating a two-tier system, even for this minor benefit, is not conducive to morale. However, so few Troopers are eligible for this benefit, it will only have a de minimis effect on morale.

The ninth factor is statutory restrictions imposed on the employer §16(g)(9). There are no statutory restrictions which would affect this benefit.

> In sum and balancing the factors mandated by N.J.S.A. 34:13-16(g), I conclude that the elimination of the $500 Education Incentive for Troopers entering the Academy, after January 1, 2017, is appropriate.

Regarding the STFA's argument that the arbitrator did not cost out or make an economic analysis of these two items, the Appellate Division in Tenafly, supra, citing Ramsey Bor., P.E.R.C. No. 2012-60, 39 NJPER 17 (¶3 2012), discussed the speculative costs relating to new hires:

> PERC next addressed the statutory cap in Borough of Ramsey, which held that speculative costs relating to new hires "should not affect the costing out of the award [because] N.J.S.A. 34:13A-16.7(b) speaks only to establishing a baseline for the aggregate amount expended by the public employer on base salary items for the twelve months immediately preceding the expiration of the [CBA]."

We find that the arbitrator's decision and award was based on substantial credible evidence in the record and that he appropriately addressed all of the N.J.S.A. 34:13A-16g factors. Hillsdale, supra, 137 N.J. at 82.

STFA Cross-Appeal Arguments Regarding Statutory Preemption

The STFA asserts in its cross-appeal that the arbitrator's award of the automatic increments on the last day of the CNA must be upheld as a matter of law. This argument was not raised before the arbitrator or the Commission in the initial decision.

The STFA cites four New Jersey statues, N.J.S.A. 53:1-6;[8/] N.J.S.A. 53:1-7;[9/] N.J.S.A. 52:14-15.28;[10/] and N.J.S.A. 11A:3-

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8/ N.J.S.A. 53:1-6, Salaries of officers and troopers; increase for detective work provides:

"The personnel enumerated in section 53:1-5 of this Title shall receive salaries which shall be fixed by the superintendent according to salary ranges for the various positions designated in said section, from time to time established, by the Civil Service Commission.

Any person assigned to detective work in the department shall receive, while on such duty, an increase in salary in an amount to be fixed by the superintendent, subject to the approval of the head of the Department of Law and Public Safety, sufficient to defray the expenses for civilian clothing necessarily required in said assignment.

All of said salaries shall be payable semimonthly."

9/ N.J.S.A. 53:1-7, Salary increases for personnel provides:

"All persons holding positions enumerated in section 53:1-5 of this Title shall receive such increases in salaries, based upon length of service as the Civil Service Commission shall, from time to time, establish within the salary ranges."

10/ N.J.S.A. 52:14-15.28, Statutory increases in salaries abolished; Civil Service Commission to establish automatic salary increases provides:

"In every case in which specific statutory increases in the amount of any salary of the holder of any office, position or employment are provided, such specific statutory increases hereby are abolished and abrogated; provided, the Civil Service Commission shall establish automatic increases in such salary, based upon length of service, within the salary ranges established from time to time therefor, and such salary shall thereafter automatically be increased accordingly, unless the head of the department and the Civil Service Commission shall agree that the service record of the holder of such office, position or employment does not warrant any such increase in salary."

1(a).[11/] We do not find these new arguments persuasive. The Legislature was well aware of these statutes when P.L. 2014, c. 11 was enacted. The Legislature could have chosen to exempt STFA members and other State Police personnel, but it did not. We are charged with interpreting the Act and find, as set forth above, that the arbitrator's award of automatic increments on the final day of the CNA was improper. Hunterdon County, supra.

Additionally, we note that in support of its argument, the STFA also improperly relies on Matter of Boyan, 246 N.J. Super. 300 (App. Div. 1991), a case that concerned the granting of salary increases for workers' compensation judges. The New Jersey Supreme Court reversed the Appellate Division decision in In re Boyan, 127 N.J. 266 (1992). See Tenafly, supra, at footnote 2, where the appellant similarly relied on a case that was reversed, and the Court deemed such reliance to be improper given the reversal.

Modification of Awards Involving Salary Increases

In its final argument in support of it's cross-appeal, the STFA cites Bogota Bor., P.E.R.C. No. 99-20, 24 NJPER 453 (¶29210 1998) for the proposition that modification of an award is not

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11/ N.J.S.A. 11A:3-1(a), Classification provides:

> "a. Establish, administer, amend and continuously review a State classification plan governing all positions in State service and similar plans for political subdivisions."

appropriate if it concerns salary increases awarded by an arbitrator. We stated (footnote omitted):

> 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.

We reject the STFA's argument; Bogota involved the potential modification of a remand award regarding across the board salary increases. The instant matter only concerns the arbitrator's award of automatic increments on the last day of the CNA and our rationale for modifying the remand award is set forth above.

ORDER

The remand award is modified to exclude the automatic increments awarded on the last day of the collective negotiation agreement, effective June 30, 2017. All other aspects of the remand award are affirmed.

BY ORDER OF THE COMMISSION

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

ISSUED: September 22, 2016

Trenton, New Jersey

P.E.R.C. NO. 2017-13

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF ORANGE TOWNSHIP,

Appellant,

-and-

PBA LOCAL NO. 89 AND — Docket No. IA-2010-101

FMBA LOCAL 10 AND
FMBA LOCAL 210,
FIRE OFFICERS ASSOCIATION — Docket No. IA-2011-024

Respondents.

SYNOPSIS

The Public Employment Relations Commission remands an interest arbitration award to the arbitrator for a supplemental award. The City of Orange appealed from the award setting the terms of collective negotiations agreements for a police officer unit (PBA Local No. 89) and two fire fighter units (FMBA Local 10 and FMBA Local 210, Fire Officers Association). The Commission remands the award for explanation and clarification of the financial impact of the salary award, particularly to set forth calculations showing the total projected net economic changes for each year of the award resulting from all salary increases including salary guide advancement. The Commission also remands the award for specification of which evidence was relied upon and for a more thorough explanation of the statutory factors he considered relevant or not relevant.

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. 2017-13

STATE OF NEW JERSEY
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FIRE OFFICERS ASSOCIATION — Docket No. IA-2011-024

Respondents.

Appearances:

For the Appellant, Joseph M. Wenzel, Attorney at Law (Joseph M. Wenzel, of counsel)

For the Respondent PBA, Detzky, Hunter & DeFillippo, LLC (David J. DeFillippo, of counsel)

For the Respondent FMBA Local 10, Lindabury, McCormick, Estabrook & Cooper, P.C. (Eric B. Levine, of counsel)

For the Respondent FMBA Local 210, FOA, Law Offices of Feeley & LaRocca, L.L.C. (John D. Feeley, of counsel)

DECISION

The City of Orange Township (City) appeals from an interest arbitration award covering the following three collective negotiations units (one police officer and two firefighter units): PBA Local 89 (PBA); FMBA Local 10 (FMBA); and FMBA Local 210, Fire Officers Association (FOA).

On July 7, 2016, the arbitrator issued an 83-page conventional interest arbitration award setting the terms of

successor collective negotiations agreements for all three units. He awarded contract terms of seven years for the PBA and FMBA (from January 1, 2010 through December 31, 2016) and eight years for the FOA (from January 1, 2009 through December 31, 2016) so that all three units would have their contracts expire at the same time and be able to negotiate based on the same relevant evidence during the next round of negotiations (Award at 29-30). The arbitrator awarded across-the-board salary increases of 1.5% annually for all three units for the years 2010-2016, and retained the existing salary guide's annual step increases for those employees still moving up the salary guide towards the maximum step (Award at 74-75).

The City appeals arguing that the arbitrator failed to properly address the financial impact of the award as required by subsection N.J.S.A. 34:13A-16(g)(6), specifically by not calculating whether the 2% statutory cap was violated, not taking into consideration evidence of the City's financial circumstances and real expenses for the units for the years 2013-2016 after the record was closed, and not providing calculations of costs. The City also makes a general claim that the arbitrator failed to properly address the N.J.S.A. 34:13A-16(g) statutory factors (16(g) factors), but does not specifically argue regarding any factors other than the aforementioned subsection 16(g)(6) "financial impact" assertions.

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

Arriving at an economic award is not a precise mathematical process. The treatment of the parties' proposals involves judgment and discretion and an arbitrator will rarely be able to demonstrate that an award is the only "correct" one. See Borough of Lodi, P.E.R.C. No. 99-28, 24 NJPER 466 (¶29214 1998). Some of the evidence may be conflicting and an arbitrator's award is not necessarily flawed because some pieces of evidence, standing alone, might point to a different result. Lodi. Therefore, within the parameters of our review standard, we will defer to

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

The City's chief argument that the award's average annual salary increases were required to comply with the statutory 2% cap (N.J.S.A. 34:13A-16.7(b)) is without merit. P.L. 2010, c. 105 and its amended version, P.L. 2014, c. 11, specify the effective dates for the 2% cap provision of the Police and Fire Public Interest Arbitration Reform Act (the Act):

> This act shall take effect January 1, 2011; provided however, section 2 . . . [C.34:13A-16.7] shall apply only to collective negotiations between a public employer and the exclusive representative of a public police department or public fire department that relate to a negotiated agreement expiring on that effective date or any date thereafter [until the expiration of the 2% cap provision]. . .
>
> [N.J.S.A. 34:13A-16.9.]

In Borough of Bloomingdale, P.E.R.C. No. 2011-70, 37 NJPER 143 (¶43 2011), the Commission held that the 2% cap does not apply to interest arbitration awards when the prior contract expired on December 31, 2010 or earlier. In Burlington County Prosecutor's

Office and PBA Local 320, P.E.R.C. No. 2012-61, 39 NJPER 20 (¶4 2012), rem'd 40 NJPER 41 (¶17 App. Div. 2013), certif. den. 217 N.J. 287 (2014), after the Commission again held that the 2% statutory cap does not apply to interest arbitration awards when the prior contract expired prior to January 1, 2011, the Appellate Division affirmed that aspect of the decision, stating:

> On appeal, Burlington County argues . . . that the CBA expired on January 1, 2011, thereby implicating the two percent salary cap enacted pursuant to N.J.S.A. 34:13A-16.7. Based on our review of the record and the controlling legal principles, we conclude that defendant's two-percent argument is without sufficient merit to warrant extended discussion in a written opinion. R. 2:11-3(e)(1)(E).
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> [Burlington, 40 NJPER 41 at 42.]

In the instant case, the FOA's prior contract expired on December 31, 2008, while the prior PBA and FMBA contracts expired on December 31, 2009 (Award at 16). Therefore, as the prior agreements all expired prior to January 1, 2011, none are subject to the 2% statutory cap.[1/]

In its appeal, the City asserts that the arbitrator did not properly weigh the award's financial impact on the employer (as required by N.J.S.A. 34:13A-16(g)(6)) "for the years after the

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1/ Should the parties require an interest arbitration award to establish the terms of their next collective negotiations agreement after the December 31, 2016 expiration of the terms of this award, then that award would be subject to the 2% cap which is in effect until December 31, 2017. See N.J.S.A. 34:13A-16.9, as amended by P.L. 2014, c. 11.

record was essentially closed in 2012." (City brief at 2). It argues that because the record was closed for nearly four years before the issuance of the award, there was additional financial documentation about the City's financial circumstances and real expenses for each of the fire and police units that were not, but should be, considered in the final award.

The timeline of the interest arbitration proceedings can be summarized as follows. The unions filed interest arbitration petitions in 2010. The parties engaged in many mediation and arbitration sessions from October 18, 2010 through May 21, 2013 in which they submitted evidence and attempted to settle (Award at 17). The final hearing was held on July 28, 2013, and post-hearing briefs were filed in January 2014 (Award at 17-18). The arbitrator reopened the record from October 29, 2014 until December 18, 2014 to accept submissions by the PBA and FOA regarding the City's finances, as well as the City's response (Award at 3-4). The award was issued on July 7, 2016.

The City requests that the award at least be remanded for modification of the years 2013-2016; however, there is no claim or indication in the record that the City ever requested that the arbitrator reopen the record for the addition of new evidence regarding the City's financial condition in the years 2013-2016. Not only did the City not attempt to submit additional evidence for those years, but the arbitrator was under no obligation to

accept it. Although this award is unusual in that it was issued with approximately six months left until the expiration dates of the awarded contracts (meaning most of the award term has already passed and most of it is retroactive), there is nothing in the Act requiring the arbitrator to reopen the record following the completion of interest arbitration hearings to consider any additional evidence of personnel costs or economic conditions.

The conduct of the arbitration proceeding "shall be under the exclusive jurisdiction and control of the arbitrator." N.J.A.C. 19:16-5.7(a). It is the arbitrator's discretion to administer oaths, require witnesses, and require the production of documents "as he may deem material to a just determination of the issues in dispute." N.J.S.A. 34:13A-17. Typically, following the production of documents, submission of final offers, conduct of formal hearings, and submission of post-hearing briefs, the record is closed. See N.J.A.C. 19:16-5.7(a) et seq. "The parties shall not be permitted to introduce any new factual material in the post-hearing briefs, except upon special permission of the arbitrator." N.J.A.C. 19:16-5.7(k).[2/]

Furthermore, interest arbitration awards are expected to be prospective because they cover terms reaching several years into the future but are constructed based on evidence of financial

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2/ This section of the rules regarding post-hearing briefs is now contained in N.J.A.C. 19:16-5.7(l) per the 2012 rules.

conditions and personnel costs taken from a particular snapshot in time. We have consistently held that an award is not per se flawed in its assessment of financial impact for future years because the interest arbitration process contemplates awarding terms of employment for future years based on the record evidence. See, e.g., Union Cty. and PBA Local No. 108, P.E.R.C. No. 2013-4, 39 NJPER 83 (¶32 2012), aff'd 40 NJPER 453 (¶158 App. Div. 2014); Borough of Englewood Cliffs, P.E.R.C. No. 2012-35, 38 NJPER 273 (¶94 2012); Mercer Cty., Mercer Cty. Prosecutor and Prosecutor's Detectives and Investigators PBA Local 339; Prosecutor's SOA, P.E.R.C. No. 2012-15, 38 NJPER 183 (¶60 2011), aff'd 39 NJPER 112 (¶39 App. Div. 2012); and Town of Kearny, P.E.R.C. No. 2011-37, 36 NJPER 413 (¶160 2010). Even where a party requested, but the arbitrator declined, to reopen the record for submission of additional economic evidence prior to issuance of an award, the Commission affirmed the award, noting that future salary increases in multi-year awards are an inherent part of the interest arbitration process. See City of Asbury Park, P.E.R.C. No. 2011-17, 36 NJPER 323 (¶126 2010)[3/].

To require an arbitrator to indefinitely allow submissions impacting upon his economic award and analysis would unduly delay and complicate the process. In Burlington County Prosecutor's

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3/ Unlike the requesting party in Asbury Park, the City has not provided us the evidence it would have submitted to the arbitrator had the arbitration record been reopened.

Office and PBA Local 320, 41 NJPER 376 (¶118 App. Div. 2015), the Appellate Division agreed with the Commission's decision to affirm an arbitrator's remand award in which he did not allow the submission of additional documents after the award was remanded. The court found:

> As to the new documents submitted on remand, while N.J.A.C. 19:16-5.7(e) provides that an arbitrator may compel the production of evidence, "the arbitrator need not require the production of evidence on each factor." Hillsdale, supra, 137 N.J. at 84. "Such a requirement might unduly prolong a process that the Legislature designed to expedite collective negotiations . . . ." Ibid. . . . Our decision did not call for the Arbitrator to accept new evidence or expand the record previously submitted by the parties. . . . Accordingly, PERC's decision to uphold the Arbitrator's Remand Decision based on the existing record was not arbitrary, capricious or unreasonable.
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> [Burlington, 41 NJPER 376 at 377-378.]

Here, all parties submitted final offers prior to the hearing and presented revised final offers during the course of the proceedings (Award at 4). The City had its opportunities to submit all evidence it deemed relevant for the arbitrator's determination of financial impact. Other than its December 2014 response to the unions' supplemental submissions, which was accepted by the arbitrator and used to reject the unions' argument that new utility revenues should offset salary costs (Award at 25, 72), the City made no attempt to submit additional information to the arbitrator. Just because there was a lengthy

period between the closing of the record and award issuance does not entitle the City to belatedly attempt - through the appeal process - to supplement the record regarding the later years of the award, and is not a basis for finding that the award failed to adequately address the subsection 16(g)(6) factor of financial impact. Under these circumstances, we find no reason to require the arbitrator to reopen the record. Accordingly, the City's request for remand in order to submit additional evidence of its financial situation and salary expenditures is denied.

Subsection N.J.S.A. 34:13A-16(g)(6) requires that the arbitrator analyze:

> 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.[4/]

The arbitrator considered the record evidence regarding the City's revenue and expenditures and opined on its ability to afford the awarded salary increases without exceeding applicable spending caps or imposing an excessive financial burden on its taxpayers (Award at 18-26, 66-76).[5/] After setting forth the awarded step increases and annual 1.5% raises, the arbitrator explained:

> The costs of funding the terms of the award have been shown by the testimony and exhibits from the Union's financial expert to be within the City's ability to fund without creating adverse financial impact and within the City's statutory spending and tax levy limitations. While I do not agree that the City is capable of funding the costs of the Union's proposals, the costs of the award are less than half of what the Unions contend fall within the City's capability as

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4/ This is the language in the Act from P.L. 1995, c. 425 applicable to this case. P.L. 2010, c. 105, enacted after these petitions were filed, amended subsection 16(g)(6) to specifically reference the 2007 property tax levy cap statute. However, the version of the Act applicable here already references the property tax levy cap statutes in subsections 16(g)(1), 16(g)(5)(codified from P.L. 1995, c. 425), and 16(g)(9)(codified from P.L. 2007, c. 62).

5/ We note that the parties have not provided us with the entire evidential record on appeal, so we do not have the parties' exhibits or a hearing transcript of expert witness testimonies. However, counsel for the PBA included a copy of their Financial Expert's report (authored by Dr. Raphael J. Caprio, Ph.D.) in its appendix, and counsel for the FOA submitted a full copy of the report with exhibits with its response to the Commission's request for copies of the parties' post-hearing briefs.

> reflected in its comprehensive financial analysis. The terms of the Award have attempted to ease the cost impact of the wage changes on the City. There is no cost impact in contract year 2009 for the FOA until January 1, 2015. There is no retroactive cost impact for contract years 2010, 2011 and 2012 until 2016 (50%) and the end of the first pay period in 2017 (the remaining 50%). The funding for contract years 2013 and beyond have been shown to be within the City's means to fund due to several factors in the record that have not been rebutted, including: the City's unencumbered fund balance is increasing and approached $4,000,000 by the end of 2013; the City's tax collection rate rose significantly in 2013; there has been a substantial decrease in payroll costs in the PBA Local 89 and FMBA Local 10 bargaining units due to lower staffing levels.
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> [Award at 75-76.]

Although the arbitrator explained his salary award and determination of financial impact based largely on the report prepared by the unions' Financial Expert (Dr. Caprio), he failed to specifically include many of the relevant numbers concerning annual salary increases and projected salary expenditures in the body of the award itself. The arbitrator did not present calculations showing the total net economic change for each year of the award, and did not set out the total dollar costs of the step movement and the 1.5% annual raises over the term of the award. In Cumberland County Prosecutor, P.E.R.C. No. 2012-66, 39 NJPER 32 (¶10 2012), we held:

> The arbitrator did construct a new salary guide that reflects the salary increases that

> he awarded. However, the award does not set out the total dollar cost of the step movements over the term of the agreement. Interest arbitration awards filed with this agency must now include this information in a standard summary format to facilitate comparisons. Moreover, the Police and Fire Public Interest Arbitration Task Force is charged with studying the relative growth in total compensation rates for all interest arbitration awards. N.J.S.A. 34:13A-16.8(e)(2). Because the terms and spirit of the 2010 amendments to the interest arbitration law are aimed at transparency and consistency, we think it is appropriate for all interest arbitration awards to cost both step movement and percentage increases for each year of the contract. This explanation should be reflected in the interest arbitration award. It is not appropriate for us to perform those calculations for the first time in considering an appeal of an award. Therefore, we remand the award to provide such clarification. We expect that in future cases, interest arbitration awards will detail the dollar cost of awards, where the same or similar issues are present.
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> [Cumberland Cty. Pros., 39 NJPER 32 at 35; internal footnote omitted.]

Similarly, in other non-2% cap cases, the Commission has remanded interest arbitration awards in order to clarify the base year salary and the resulting total costs of step movement and salary increases annually and over the term of the award. See Morris County Sheriff's Office, P.E.R.C. No. 2013-3, 39 NJPER 81 (¶31 2012); and North Hudson Regional Fire and Rescue, P.E.R.C. No. 2013-25, 39 NJPER 193 (¶62 2012).

In the instant case, the Financial Expert's report provided cost-out projections using the unions' proposed 3% annual raises,

but instead of including a precise dollar amount costing out the lower salary increases awarded, the arbitrator simply noted that the award costs "less than half" of what the Financial Expert said the City could afford (Award at 75). Even if the Commission could marshal all the pertinent financial exhibits and perform its own cost-out calculations from the base salaries and scattergrams provided, Cumberland Cty. Pros., supra, specified that the arbitrator should express these figures in the award and that it is not appropriate for the Commission to attempt to make these calculations for the first time on appeal.

Furthermore, not only have we found such information necessary to comply with the spirit and terms of the 2010 Act for transparency, consistency, and purposes of comparison with other awards and agreements (whether subject to the 2% cap or not), but we have required such economic specifics based on the 1995 version of the Act under which these arbitrations were conducted based on their filing dates (Award at 17). In County of Passaic, P.E.R.C. No. 2010-42, 35 NJPER 451 (¶149 2009), a decision which pre-dated the enactment of P.L. 2010, c. 105 by over one year, the Commission held:

> 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[sic](2). The arbitrator did not make this calculation and must do so on remand.
>
> [Passaic Cty., 35 NJPER 451 at 455.]

Similarly, in Borough of Paramus, P.E.R.C. No. 2010-35, 35 NJPER 431 (¶141 2009), the Commission held:

> 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 economic changes for each year of the agreement are reasonable under the statutory factors. N.J.S.A. 34:13A-16b[sic](2). The arbitrator did not make this calculation and must do so on remand.
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> [Paramus Bor., 35 NJPER 431 at 433.]

The statute cited in Passaic Cty. and Paramus Bor., N.J.S.A. 34:13A-16d(2)[6/], was a part of the 1995 Interest Arbitration Reform Act, P.L. 1995, c. 425, that provided, in pertinent part:

6/ This provision was amended by P.L. 2010, c. 105 and retained in the following form, codified as N.J.S.A. 34:13A-16d:

> The arbitrator shall determine whether the total net annual economic changes for each year of the agreement are reasonable under the nine statutory criteria set forth in subsection g. of this section and shall adhere to the limitations set forth in section 2 of P.L.2010, c.104 (C.34:13A-16.7).

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

In County of Union, P.E.R.C. No. 2004-58, 30 NJPER 97 (¶38 2004), the Commission explained:

> An arbitrator satisfies N.J.S.A. 34:13A-16d(2) if he or she identifies what new costs will be generated in each year of the agreement; figures the change in costs from the prior year; and determines that the costs are reasonable. Rutgers, The State Univ., P.E.R.C. No. 99-11, 24 NJPER 421, 424 (¶29195 1998).
>
> [Union Cty., 30 NJPER 97 at 102.]

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

Next, we also remand for clarification of which specific evidence from Dr. Caprio's report, or from the City's Tax Collector and CFO testimonies, was relied upon or rejected in the arbitrator's determination that the terms of the award are within the City's ability to fund without creating adverse financial impact. We note that the arbitrator was quite clear on several points. For example, he specifically addressed the claims of Dr. Caprio and the unions that the increased employee health care contributions required by P.L. 2011, c. 78 should count as salary

reductions or savings to the City. The arbitrator correctly found that "[W]age increases must be awarded only as justified by the statutory criteria which do not include offsetting the cost contributions with salary increases." (Award at 72-73)[7/] The arbitrator also specifically addressed a revenue source (the City's water and sewer utility) identified by Dr. Caprio and the unions and concluded such revenues are not relevant to funding the costs of the salary proposals because they are unpredictable and beyond the City's control (Award at 72). However, there are other assumptions made in Dr. Caprio's report that must be clarified as to the arbitrator's reliance on them, if any, in determining financial impact and ability to pay. For instance, the award summarized Dr. Caprio's observation that "State aid has been consistent, stable and predictable" but the arbitrator's analysis did not address the City's State aid as a component of ability to pay (Award at 24). We remind the arbitrator on remand that while he may consider the historical facts regarding the levels of State aid to the City, State funds cannot be guaranteed as a revenue source because the City does not control the State's legislative or appropriations process and the State is not a party to these interest arbitrations. See City of Camden and

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7/ See County of Union, supra, 39 NJPER 83 (¶32 2012), aff'd 40 NJPER 453 (¶158 App. Div. 2014)(an arbitrator may not equate savings from Chapter 78 health benefits contributions with wages or credit the unit with higher salary increases to defray their increased contributions).

IAFF Local No. 788, 429 N.J. Super. 309, 329-331 (App. Div. 2013), certif. den. 215 N.J. 485 (2013).

Finally, we remand the award because it did not explain why some of the N.J.S.A. 34:13A-16(g) factors were either irrelevant or less relevant than those specifically identified as most relevant to resolving the dispute. As noted above, an arbitrator is required to address all nine 16(g) factors and "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... ." N.J.S.A. 34:13A-16(g). "The arbitrator need not rely on all factors, but must identify and weigh the relevant factors and explain why the remaining factors are irrelevant." City of Camden, supra, 429 N.J. Super. at 326; accord N.J.A.C. 19:16-5.9b.

In Hillsdale PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71 (1994), the Supreme Court held:

> 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. . . . 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.
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> [137 N.J. 71 at 84-85.]

In Burlington, supra, 40 NJPER 41 (¶17 App. Div. 2013), the Appellate Division applied Hillsdale in remanding an award for

failure to adequately indicate which factors he deemed relevant and explain why other 16(g) factors were irrelevant. Accord Union Beach Bor., P.E.R.C. No. 2014-4, 40 NJPER 150 (¶57 2013) (Commission remanded award for failure to explain which 16(g) factors were deemed relevant or not relevant and why).

In the instant case, the arbitrator listed the nine 16(g) factors but only specifically addressed the following five as those he deemed "most relevant": interests and welfare of the public (16(g)(1)); internal and external comparability (16(g)(2)); financial impact (16(g)(6)); and statutory limitations on the City (16(g)(5) and (9)) (Award at 26-28, 74). On remand, the arbitrator must explicate the relative weight and relevance, if any, he ascribed to the other 16(g) factors. If the parties failed to submit relevant evidence on a factor, that also needs to be stated in the award.

ORDER

A. The interest arbitration award is remanded for an explanation and clarification of the financial impact of the salary award. Such clarification shall take into account both the percentage increases awarded for the term of the successor agreement and the raises resulting from advancement on the salary guide. Such clarification shall also explain which specific evidence from the parties' experts/witnesses was relied upon.

B. The interest arbitration award is remanded for explanation regarding the relevance, if any, ascribed to the 16(g) factors not specifically identified in the award as being most relevant.

C. The arbitrator has the discretion to issue his explanation and clarification based upon the record created during interest arbitration, or, in his sole discretion, may solicit additional comment or argument from the parties based on matters already in the record.

D. The interest arbitrator shall provide the explanation and clarification described in Sections A. and B. of this Order within 60 days of receipt of this decision.

BY ORDER OF THE COMMISSION

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

ISSUED: September 8, 2016

Trenton, New Jersey

P.E.R.C. NO. 2017-69

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY TRANSIT,

Appellant,

-and- Docket No. IA-2017-004

PATROLMEN'S BENEVOLENT ASSOCIATION
LOCAL 304,

Respondent.

SYNOPSIS

The Public Employment Relations Commission affirms an interest arbitration award establishing the terms of a successor agreement between the Association and New Jersey Transit. New Jersey Transit appealed, arguing that an ex parte communication to the arbitrator after the record closed tainted the award. The Commission holds that the arbitrator addressed all of the N.J.S.A. 34:13A-16g statutory factors, adequately explained the relative weight given, analyzed the evidence on each relevant factor, and did not violate N.J.S.A. 2A:24-8 and -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. 2017-69

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY TRANSIT,

Appellant,

-and- Docket No. IA-2017-004

PATROLMEN'S BENEVOLENT ASSOCIATION
LOCAL 304,

Respondent.

Appearances:

For the Appellant, McElroy, Deutsch, Mulvaney & Carpenter, attorneys (John J. Peirano, of counsel and on the brief, David M. Alberts on the brief)

For the Respondent, D. John McAusland, of counsel and on the brief

DECISION

New Jersey Transit (NJT) appeals from an interest arbitration award involving a unit of approximately 173 NJT police officers and detectives in ranks below sergeant represented by Patrolmen's Benevolent Association Local 304 (PBA).

On January 13, 2017, the PBA filed a Petition to Initiate Compulsory Interest Arbitration. Following three days of hearings and the submission of post-hearing briefs, on April 18, the arbitrator issued a conventional award as she was required to do pursuant to P.L. 2010, c. 105 effective January 1, 2011. A

conventional award is crafted by an arbitrator after considering the parties' final offers in light of statutory factors.

NJT appeals the award asserting that it was tainted by an ex parte (and initially anonymous) e-mail sent by the PBA's counsel to the arbitrator after the record closed on April 7, 2017. The e-mail attached an April 12, 2017 announcement purportedly issued by NJT's Executive Director advising that, effective retroactively to January 1, 2017, non-agreement employees, with some exceptions, would receive a salary increase of 1.9 percent. NJT asserts the purpose of the e-mail was to influence the arbitrator's analysis of salaries and pay raises applicable to other NJT employees.

The same day the e-mail was received, the arbitrator sent the following e-mail to the parties:

> I wanted you both to know that today I received an anonymous email from the address below. No subject line; no text. Just the image attached. While I have no idea whether the image is real or fake, it does not matter. I consider the direct communication to the arbitrator is highly inappropriate and unethical. Further the document cannot be treated as "evidence" in any way as the hearing record closed in this matter on March 31. Please be advised that I will not consider this emailed "image" in any way in deciding an award in this matter.

The next day the PBA's counsel sent another ex parte e-mail to the arbitrator apologizing for sending the first message and taking full responsibility for his actions. He admitted that he

did not use appropriate and professional judgment. The arbitrator sent a copy of both e-mails to NJT's counsel and directed that there be no further ex parte communications with her.

In its appeal, NJT states that the e-mail may have had a "subliminal" effect on the arbitrator, asserting, "Of the . . . issues in dispute, the arbitrator awarded in the PBA's favor on all of them."

The PBA denies that the award adopted its position on all the issues in dispute. It further asserts that based on Commission, state, and federal case law, the facts and circumstances of the ex parte communications do not constitute grounds to overturn the award.

For the reasons discussed below we find that the ex parte e-mails, while inappropriate, did not taint the proceedings or the award. We further hold, applying the applicable criteria and standard of review, that the award should be affirmed.

The arbitrator issued a 95-page Decision and Award. After summarizing the proceedings, quoting from the parties' arguments and proposals from their post-hearing briefs, and addressing the required statutory factors, the arbitrator awarded an eight-year contract effective January 1, 2010 through December 31, 2017. The Award addressed several issues that were raised by the parties during the proceedings. Our decision focuses on the ex

parte issue raised in NJT's appeal and substantive challenges to the issues raised in its appeal: salaries, premium contributions, paid injury leave, vision care, and free ridership on NJT vehicles.

I. Standard of Review

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

> (1) The interests and welfare of the public . . .;
>
> (2) Comparison of the wages, salaries, hours, and conditions of employment of the employees with the wages, hours and conditions of employment of other employees performing the same or similar services and with other employees generally:
>
> (a) in private employment in general . . .;
>
> (b) in public employment in general . . .;
>
> (c) in public employment in the same or comparable jurisdictions;
>
> (3) the overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received;
>
> (4) Stipulations of the parties;

> (5) The lawful authority of the employer . . .;
>
> (6) The financial impact on the governing unit, its residents and taxpayers . . .;
>
> (7) The cost of living;
>
> (8) The continuity and stability of employment including seniority rights . . .; and
>
> (9) Statutory restrictions imposed on the employer. . . .
>
> [N.J.S.A. 34:13A-16g]

The standard for reviewing interest arbitration awards is well-established. We will not vacate an award unless the appellant demonstrates that (1) the arbitrator failed to give "due weight" to the subsection 16g factors judged relevant to the resolution of the specific dispute; (2) the arbitrator violated the standards in N.J.S.A. 2A:24-8 and -9; or (3) the award is not supported by substantial credible evidence in the record as a whole. Teaneck Tp. v. Teaneck FMBA, Local No. 42, 353 N.J. Super. 289, 299 (App. Div. 2002), aff'd o.b., 177 N.J. 560 (2003) [citing Cherry Hill Tp., P.E.R.C. No. 97-119, 23 NJPER 287 (¶28131 1997)]. Within the parameters of our review standard, we will defer to the arbitrator's judgment, discretion, and labor relations expertise. City of Newark, P.E.R.C. No. 99-97, 25 NJPER 242 (¶30103 1999). However, an arbitrator must provide a reasoned explanation for an award and state what

statutory factors he or she considered most important, explain why they were given significant weight, and explain how other evidence or factors were weighed and considered in arriving at the final award. N.J.S.A. 34:13A-16g; N.J.A.C. 19:16-5.9; Borough of Lodi, P.E.R.C. No. 99-28, 24 NJPER 466 (¶29214 1998).

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

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

> of the affected employee organization in the immediately preceding year of the agreement awarded by the arbitrator.
>
> The parties may agree, or the arbitrator may decide, to distribute the aggregate monetary value of the award over the term of the collective negotiation agreement in unequal annual percentage increases, which shall not be greater than the compounded value of a 2.0 percent increase per year over the corresponding length of the collective negotiation agreement. An award of an arbitrator shall not include base salary items and non-salary economic issues which were not included in the prior collective negotiations agreement.[1/]

Salaries

NJT proposed 1% increases effective July 1, 2014, 2015, 2016, and 2017. The PBA proposed 1.9% increases effective July 1 for all eight years of the new CNA.

The arbitrator extensively analyzed salary data for the 25 largest New Jersey municipal police departments as well as the police department of New York's Metropolitan Transportation

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1/ Because the prior agreement expired on June 30, 2010 the contract awarded by the arbitrator is not subject to the 2% "Hard Cap" on annual base salary increases for arbitration awards imposed, effective January 1, 2011, by P.L. 2010, c. 105 and continued by P.L. 2014, c. 11, until December 31, 2017. According to a letter written by the then-Attorney General to the United States Department of Labor, NJT is not subject to the P.L. 2011, c. 78 health insurance premium contribution requirements. (Award at 76). In addition as NJT is not a municipal body, statutory limits on tax levy and spending increases do not apply to it.

Authority.[2/] Finding that the starting salary and the lower steps of the guide for NJT officers were higher than normal, no increases were awarded in the first six years of the agreement. In contrast, the arbitrator determined that more experienced NJT officers were underpaid. Effective July 1 of each of the first six years, percentage increases in salary were awarded on Steps 5 to 10 only.[3/] For the seventh and eighth years of the agreement, all steps were increased by 1.9%, again effective July 1 of both years. The raises were made retroactive to July 1, 2013.

Paid Injury Leave

The parties' most recent CNA provided 18 months of such leave. NJT argued that the benefit should be eliminated. The PBA proposed the limit be cut to 12 months which would be consistent with the benefit enjoyed by large New Jersey municipal police departments. The arbitrator capped the benefit at nine months.

2/ NJT maintains that the arbitrator should have given more weight to salary data for police employed in State-wide units. The award (at 49 to 52) responds to this argument.

3/ In years one through three, the affected steps were increased by 1.5%. These increases to Steps 5 to 10 were awarded in the succeeding years: Year four, 1.6%; Year five, 1.7%; Year six, 1.8%; Years seven and eight 1.9% to all steps.

Health Insurance Premiums

NJT proposed that unit employees pay premiums in accordance with Chapter 78.[4/] It sought 30% of premium cost contributions for all types of coverage except family coverage, which would be 29%. The expired CNA had PBA unit members paying, regardless of the type of coverage, a monthly fee of $40.00. The PBA sought to maintain a uniform dollar amount except that the monthly contribution would be increased to $169.00 effective July 1, 2017. Noting that virtually every public employee is required to contribute toward the cost of health insurance coverage, the arbitrator awarded a 15% contribution toward the cost of health insurance premiums, effective July 1, 2017, (a figure matching the percentages paid by the NJT superior officers unit and the bus operations unit).

Vision Care

NJT asserts that the arbitrator should have granted its proposal to eliminate vision care coverage because that benefit had been eliminated for the superior officers' unit. In rejecting the proposal the arbitrator noted that no other negotiations unit had been asked to give up the benefit, the cost of which to NJT is $1,350 per year. However, we note that the 2016 interest arbitration award establishing a CNA between NJT

4/ NJT is self-insured.

and the superior officers unit for July 1, 2010 through June 30, 2017 ended the vision care benefit as of June 30, 2016.

Free Ridership on NJT Vehicles

NJT asserts that the arbitrator rejected its proposal to eliminate this benefit "out of hand." The arbitrator said this:

> I find that the presence of police officers on trains and buses, especially in uniform, furthers one of the stated goals of NJ Transit police department; that is, to have as much police presence as possible in its facilities and on its carriers. For the very reasons that led NJT's Director to "temporarily" return free ridership to police management employees after the Paris bombings - to be the additional "eyes and ears" - provides a good rationale for maintaining this benefit for patrolmen. A police officer on a train or bus commuting to work acts as an additional resource to deter crime on the train or bus, and enhances public safety - all in the public interest. On the other hand, savings to the Company has not been established by the record and therefore, the Employer has not provided sufficient justification for the elimination of this benefit.
>
> [Award at 92]

We concur that the award articulates a sufficient rationale to maintain this benefit.[5/]

5/ A 2016 interest arbitration award covering the superior officers declined to eliminate the same benefit for that unit.

Law Governing Ex Parte Communications

Given NJT's assertion that the award was tainted by an ex parte communication, we will consider the pertinent sections of N.J.S.A. 2A:24-8 providing:

> The court shall vacate the award in any of the following cases:
>
> a. Where the award was procured by corruption, fraud or undue means;
>
> b. Where there was either evident partiality or corruption in the arbitrators, or any thereof;
>
> c. Where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause being shown therefor, or in refusing to hear evidence, pertinent and material to the controversy, or of any other misbehaviors prejudicial to the rights of any party;
>
> d. Where the arbitrators exceeded or so imperfectly executed their powers that a mutual, final and definite award upon the subject matter submitted was not made.

After reviewing the cases cited and discussed by the parties, we discern the following principles governing the impact of ex parte communications on the validity of an arbitration award:

- An ex parte communication initiated by a party, rather than the arbitrator, does not, in and of itself, provide grounds to invalidate an arbitration award;
- The party seeking to vacate the award has the burden of demonstrating misconduct by the arbitrator that prejudices its rights;

- An in-depth analysis of the evidence and an award which grants in part and denies in part the proposals of each party tends to show that the arbitrator was not partial to the party making the ex parte communication.

See Risco, Inc. v. N.J. Natural Gas Co., 2015 N.J. Super. Unpub. LEXIS 1785; Mutual Fire, Marine & Inland Ins. Co. v. Norad Reinsurance Co., 868 F.2d 52, 57 (3rd Cir 1989).[6/]

For the following reasons we determine that the ex parte communication to the arbitrator has not been shown to have influenced her award and her rulings do not show evident partiality towards the PBA. The rulings challenged on appeal did not adopt the PBA proposals in almost all respects.

NJT suggests that because the arbitrator awarded 1.9% increases in the last two years of the agreement, the same percentage raise contained in the Executive Director's announcement, she may have been "subliminally" influenced to award that percentage increase.

The PBA responds, and the record shows, that it proposed a 1.9% increase to all steps for each of the eight years of the agreement.

Thus, the PBA proposal, filed well before the submission of the Executive Director's notice, had already identified 1.9% as a

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6/ Despite citing these cases, NJT argues, contrary to their holdings, that it should not be required to demonstrate prejudice. Its point is not supported with legal authority.

desired annual salary increase. And, as discussed in her award at 65 to 69, the arbitrator, finding that the starting and low step salaries for NJT police were above average when compared with comparable departments, froze salaries for steps one through four in the first six years of the agreement and awarded percentage increases lower than 1.9 for the higher steps for that same period of time.[7/] The percentage increases show a yearly progression in increments of 0.1% from 1.5% in year 3 to 1.8% in year 6 and then 1.9% in years seven and eight. In addition, the arbitrator declined to award full retroactivity for the raises as had been proposed by the PBA. The salary award was preceded by a 22-page discussion (Award at 43 to 64) of the factors bearing on salary issues set forth in N.J.S.A. 34:13A-16g.

We conclude that there is no evidence that the 1.9% increase for non-unionized employees persuaded the arbitrator to award that same raise in the final two years of the NJT-PBA agreement. While the salary award may be viewed as more favorable to the PBA than to NJT, the salary award is not the product of evident partiality, improper conduct by the arbitrator, or the ex parte

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7/ In years one through three, higher steps were increased by 1.5%. These increases to Steps 5 to 10 were awarded in the next years: Year four, 1.6%; Year five, 1.7%; Year six, 1.8%; Years seven and eight 1.9% to all.

communication received six days prior to the release of her comprehensively analyzed and lengthy award.[8/]

Additionally, we find that the other challenged aspects of her award were the product of reasoned and well-documented application of the required statutory criteria and have not been demonstrated to be the result of evident partiality. The maximum amount of paid injury leave, which had been 18 months, was reduced by the arbitrator to nine months. The arbitrator ended the nominal payments of $40.00 per month toward health insurance premiums and awarded a contribution rate of 15%, which matched the percentage paid by the superior officers and members of the bus operations unit. The arbitrator provided reasonable justifications for her resolution of the vision care and ridership on NJT vehicles issues.

ORDER

The interest arbitration award is affirmed.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson, Jones and Voos voted in favor of this decision. None opposed.

ISSUED: June 29, 2017

Trenton, New Jersey

8/ We note that the standard set by N.J.S.A. 2A:24-8.b. for vacating an award is "evident partiality" by the arbitrator. Synonyms for "evident" include "observable," "detectable," "perceptible," and "noticeable." NJT's assertion that the ex parte communication "subliminally" influenced the arbitrator to be partial toward the PBA does not equate to evident partiality.

P.E.R.C. NO. 2018-22

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF JERSEY CITY,

Petitioner,

-and- Docket No. IA-2017-012

JERSEY CITY POLICE OFFICERS
BENEVOLENT ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission affirms an interest arbitration award establishing the terms of a successor agreement between the POBA and the City. The POBA appealed the award, arguing that with respect to longevity, contract duration, compensatory time, tour exchanges, vacation deferral, and injury and sick leave, the arbitrator did not require the City to satisfy the burden necessary to justify modification of existing terms and conditions of employment and placed almost exclusive reliance on internal comparability while ignoring the other statutory factors. The Commission holds that the arbitrator's award addressed all of the N.J.S.A. 34:13A-16g factors, adequately explained the relative weight given, was based on sufficient evidence, analyzed the evidence on each relevant factor, and did not violate N.J.S.A. 2A:24-8 and -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. 2018-22

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF JERSEY CITY,

Petitioner,

-and- Docket No. IA-2017-012

JERSEY CITY POLICE OFFICERS
BENEVOLENT ASSOCIATION,

Respondent.

Appearances:

For the Petitioner, Apruzzese, McDermott, Mastro & Murphy, P.C., attorneys (Arthur R. Thibault, Jr., of counsel and on the brief)

For the Respondent, Detzky, Hunter & DeFillippo, LLC, attorneys (Stephen B. Hunter, of counsel and on the brief)

DECISION

On October 25, 2017, the Jersey City Police Officers Benevolent Association (POBA) filed an appeal[1/] of an interest arbitration award involving a unit of approximately 685 police officers employed by the City of Jersey City (City). On May 18 and June 13, 2017, the parties engaged in mediation sessions with a Commission-appointed mediator but did not reach an agreement. On June 27, the City filed a petition to initiate compulsory interest arbitration. On August 3 and 7 and September 5, the

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

parties engaged in mediation sessions with the arbitrator but again did not reach an agreement. On August 31 the parties submitted final offers to the arbitrator.

On September 6 and 11, 2017, the arbitrator held two days of hearings during which the parties presented evidence in support of their positions. The parties also submitted stipulations regarding various issues including a base salary calculation of $61,786,921. On October 4, the arbitrator issued a 144-page Decision and Award covering the period January 1, 2017 through December 31, 2020.[2/] The arbitrator issued a conventional award, as he was required to do pursuant to P.L. 2010, c. 105, after considering the parties' final offers in light of the statutory factors. See N.J.S.A. 34:13A-16.

The POBA appeals the arbitrator's award, requesting that it be vacated in its entirety and that this matter be reassigned to another arbitrator. Alternatively, the POBA requests that the award be modified to include the following:

> (1) a two-year contract as proposed by the POBA;
>
> (2) the maintenance of existing contract language regarding tour exchanges, all summer vacation deferral policies, compensatory time procedures delineated in Article 17, and the existing injury and sick leave article; and

2/ We will use "Award" when referencing specific pages.

> (3) the POBA's longevity proposals and proposed changes regarding the tour exchange policy.

Our decision focuses only on those issues raised in the POBA's appeal. We affirm the arbitrator's award as set forth below.

STANDARD OF REVIEW

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

> (1) The interests and welfare of the public . . .
>
> (2) Comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally:
>
> > (a) In private employment in general . . . .
> >
> > (b) In public employment in general . . . .
> >
> > (c) In public employment in the same or similar comparable jurisdictions . . . .
>
> (3) The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received.

> (4) Stipulations of the parties.
>
> (5) The lawful authority of the employer . . . .
>
> (6) The financial impact on the governing unit, its residents, the limitations imposed upon the local unit's property tax levy[,] and taxpayers . . . .
>
> (7) The cost of living.
>
> (8) The continuity and stability of employment . . . .
>
> (9) Statutory restrictions imposed on the employer . . . .
>
> [N.J.S.A. 34:13A-16g.]

The standard for reviewing interest arbitration awards is well-established. The Commission will not vacate an award unless the appellant demonstrates that:

> (1) the arbitrator failed to give "due weight" to the subsection 16g factors judged relevant to the resolution of the specific dispute;
>
> (2) the arbitrator violated the standards in N.J.S.A. 2A:24-8 and -9; or
>
> (3) the award is not supported by substantial credible evidence in the record as a whole.

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

Within the parameters of our review standard, the Commission will defer to the arbitrator's judgment, discretion, and labor relations expertise. See City of Newark, P.E.R.C. No. 99-97, 26

NJPER 242 (¶30103 1999). However, an arbitrator must provide a reasoned explanation for an award and state what statutory factors he or she considered most important, explain why they were given significant weight, and explain how other evidence or factors were weighed and considered in arriving at the final award. See N.J.S.A. 34:13A-16g; N.J.A.C. 19:16-5.9; Lodi Bor., P.E.R.C. No. 99-28, 24 NJPER 466 (¶29214 1998).

We note that P.L. 2010, c. 105, effective January 1, 2011, amended the interest arbitration law to impose a 2% cap on annual base salary increases for arbitration awards where the preceding collective negotiations agreement (CNA) or award expired after December 31, 2010 through April 1, 2014. P.L. 2014, c. 11, effective June 24, 2014 and retroactive to April 2, 2014, amended the interest arbitration law and extended the 2% cap to December 31, 2017. See N.J.S.A. 34:13A-16.7.

GENERAL ISSUES

A. Modification of Existing Terms & Conditions

The POBA argues that the arbitrator did not require the City to satisfy the burden necessary to justify modification of existing terms and conditions of employment with respect to compensatory time, tour exchange policies, summer vacation deferral, and injury and sick leave particularly given the City's "extremely low salary proposals" and "numerous proposed compensation 'give backs.'" The POBA cites In the Matter of the

Interest Arbitration between Burlington County Dep't of Corrections and PBA Local No. 249, IA-2013-005 (November 26, 2012) in support of its position that the arbitrator conducted a perfunctory analysis of these operational issues.

The City responds that the evidence it submitted (i.e., the testimony of Public Safety Director James Shea (Director Shea) and hundreds of pages of exhibits including voluntarily negotiated agreements with the City's other public safety units) clearly met the requisite burden to modify existing terms and conditions of employment. The City argues that the POBA failed to submit sufficient evidence to warrant any deviation from the pattern of settlement. The City maintains that Burlington County Dep't of Corrections is distinguishable from the instant matter because pattern of settlement was not analyzed in that case.

We find that the POBA has failed to demonstrate that the award should be vacated or modified based upon the arbitrator's determinations regarding the sufficiency of the evidence presented by the City.[3/] The arbitrator acknowledged that "[t]he party seeking to modify an existing term and condition of employment has the burden to prove the basis for the contractual change with sufficient evidentiary support" and that "[a]

3/ A more detailed analysis regarding compensatory time, tour exchange policies, summer vacation deferral, and injury and sick leave is set forth below.

proposed issue cannot be deemed presumptively valid without being supported by credible evidence." See Award at 57; accord City of Trenton, P.E.R.C. No. 2010-73, 36 NJPER (¶50 2010). The POBA has not refuted the sum or substance of the voluminous documentary evidence submitted to the arbitrator by the City in support of its proposals. See City's Appendix Vols. II-IV; Award at 3-4, 19-22. Similarly, although the POBA argues that Director Shea's testimony was inadequate and/or inaccurate, it has not provided evidence that sufficiently contradicts testimony elicited by the City in support of its proposals. See Award at 1-144.

We find the case cited by the POBA distinguishable from the instant matter. Although Burlington County Dep't of Corrections provides one example of how an arbitrator can analyze operational issues, the arbitrator did not consider pattern of settlement in that case and the POBA has not cited any authority demonstrating that a specific methodology is dispositive. In this case, as set forth below, the arbitrator appropriately determined that internal comparability and/or pattern of settlement were relevant factors and gave them "due weight." Moreover, the Commission has held that there is "a strong governmental policy interest in ensuring appropriate discipline, supervision, and efficient operations in a public safety department." City of Trenton, P.E.R.C. No. 2010-73, 36 NJPER (¶50 2010); accord City of Clifton, P.E.R.C. No. 2002-56, 28 NJPER (¶33071 2002).

B. Internal Comparability

The POBA argues that the arbitrator placed almost exclusive reliance on internal comparability while ignoring the other statutory factors. The POBA also maintains that the arbitrator did not acknowledge that two of the other public safety units are comprised of supervisory personnel who work closely with Director Shea and have nothing in common with the POBA.

The City responds that the POBA wants to be treated differently than the other public safety units without providing any evidentiary basis to justify deviation from the pattern of settlement. The City argues that the arbitrator correctly placed considerable weight on internal comparability and pattern of settlement and that these factors implicate other statutory factors that were analyzed throughout the award. The City maintains that its final offer to the POBA included nearly identical terms and conditions of employment that were voluntarily accepted by the other public safety units.

N.J.S.A. 34:13A-16g(2)(c) "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." Union Cty., P.E.R.C. No. 2003-33, 28 NJPER 459 (¶33169 2002) (citing N.J.A.C. 19:16-5.14(c)(5)). "[I]nterest 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." Id.

The Commission has held that "[m]aintaining an established pattern of settlement promotes harmonious labor relations, provides uniformity of benefits, maintains high morale, and fosters consistency in negotiations." Somerset Cty. Sheriff's Office and Somerset Cty. Sheriff FOP, Lodge No. 39, P.E.R.C. No. 2007-33, 32 NJPER 372 (¶156 2006), aff'd, 34 NJPER 21 (¶8 App. Div. 2008); see also, Essex Cty. and Essex Cty. Sheriff and Essex Cty. Sheriff Officer's PBA Local 183, P.E.R.C. No. 2005-52, 31 NJPER 86 (¶41 2005), req. for stay den. P.E.R.C. No. 2005-56, 31 NJPER 103 (¶45 2005). "Pattern is an important labor relations concept that is relied on by both labor and management" (Madison Bor., P.E.R.C. No. 2013-5, 39 NJPER 93 (¶33 2012)) and "[i]nterest arbitrators have traditionally found that internal settlements involving other uniformed employees are of special significance" (Somerset Cty. Sheriff's Office; accord Ocean Cty. Prosecutor, P.E.R.C. No. 2012-59, 38 NJPER 363 (¶124 2012)).

Given these legal precepts, we find that the POBA has failed to demonstrate that the award should be vacated or modified based upon the arbitrator's reliance on internal comparability and/or pattern of settlement. The arbitrator referenced all of the statutory factors, considered the weight to be given to internal comparability and/or pattern of settlement, and evaluated the

merits of the evidence implicating this factor. See Award at 55-62. He noted that his "review . . . must be based on the evidence presented as well as an application of standards that have been established in interest arbitration." Id. at 57.

Further, it is undisputed that the arbitrator:

> -provided a detailed assessment of the parties' positions regarding internal comparability and/or pattern of settlement related to the City's three other public safety units in accordance with N.J.S.A. 34:13A-16g(2)(c) and N.J.A.C. 19:16-5.14 (see Award at 30-53; City's Appendix Vols. III-IV at Ra517-545, 713-719);
>
> -referenced and incorporated the parties' stipulations into his award in accordance with N.J.S.A. 34:13A-16g(4) (see Award at 3-4, 15-18);
>
> -noted that "while the lawful authority of the employer and the statutory restrictions on the employer" under N.J.S.A. 34:13A-16g(5) and (9) "are relevant criteria," they did not need to "undergo more extensive analysis" given that "[t]he costs of the parties' proposals can be accommodated within the spending and tax levy . . . and neither party contends otherwise" (see Award at 22, 54-55); and
>
> -noted that despite "stressing the need for fiscal prudence," the City was not relying on N.J.S.A. 34:13A-16g(6) to advance an argument regarding the award's potential adverse financial impact (see Award at 55).

Contrary to the POBA's assertion, the arbitrator assessed the overall compensation presently received by unit members in accordance with N.J.S.A. 34:13A-16g(3) given that he considered the parties' proposals in conjunction with their expired CNA.

See Award at 1-144; City's Appendix Vol. III at Ra435-508. More specifically, the arbitrator considered the issues raised by the parties including unit members' salaries (id. at 76-86), retirement benefits (id. at 86-89, 129-131), longevity benefits (see Award at 95-100), injury and sick leave (id. at 72-76), compensatory time (id. at 100-111), vacations (id. at 111-123), exchange of days off (id. at 123-127), health insurance (id. at 67-71, 131-132), overtime (id. at 132-135), and tuition reimbursement (id. at 135-137).

Also contrary to the POBA's assertion, the arbitrator accurately specified that "[i]nternal patterns of settlement have been found to implicate [N.J.S.A. 34:13A-16g(2)(c)] as well as N.J.S.A. 34:13A-16g(8) and N.J.S.A. 34:13A-16g(1)." See Award at 58-59. The Commission has held that "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." Union Cty., P.E.R.C. No. 2003-33, 28 NJPER 459 (¶33169 2002). The Commission has also held that the interests and welfare of the public (N.J.S.A. 34:13A-16g(1)) is "a statutory factor that implicates virtually all of the factors". International Ass'n of Firefighters Local 198, P.E.R.C. No. 2016-1, 42 NJPER 89 (¶24 2015). Accordingly, in addition to the subsection 16g factors noted above, the arbitrator's analysis of internal comparability

and/or pattern of settlement implicitly includes consideration of N.J.S.A. 34:13A-16g(1) and (8).

Finally, the POBA's assertions regarding the composition of the City's other public safety units and the nature of their relationship with Director Shea are inconsistent with the record. In its post-hearing brief to the arbitrator, the POBA raised its concern that "two of the three other Police/Firefighter Negotiations Units are units of supervisory personnel . . . who are often very closely aligned to the negotiations positions of City negotiators." See POBA's Appendix, Interest Arbitration Br. at 67, n.1. The arbitrator acknowledged receiving testimony from "Director of Public Safety James Shea" (see Award at 4) as well as the fact that the Jersey City Police Superior Officers Association (PSOA) is comprised of "approximately 200 superior officers" (see Award at 19). Moreover, the POBA's claim that it "has nothing in common" with the City's other public safety units is undermined by the fact that it sought an award based upon pattern of settlement with respect to retiree health benefits (see POBA's Appendix, Interest Arbitration Br. at 105-106, 113-114), work schedule (see POBA's Appendix, Interest Arbitration Br. at 109-112), and survivor benefits (see Award at 67-71).

ECONOMIC ISSUES

A. Longevity (Article 33)

The arbitrator only awarded the following aspects of the City's proposal regarding longevity:

> For officers
> (a) hired on or after January 1, 2017; and
> (b) those current officers not yet eligible for longevity, longevity will be paid as part of base pay in accordance with the following schedule:
>
> | | |
> |---|---|
> | First day of 10th year | $1,000.00 |
> | First day of 15th year | $2,000.00 |
> | First day of 20th year | $3,000.00 |
> | First day of 25th year | $4,000.00 |
>
> Add to paragraph B as follows: "Effective for persons hired as police officers on or after January 1, 2017, for the purpose of determining eligibility, longevity is defined as the number of years of actual work performed for the City of Jersey City as a police officer and is not dependent upon seniority date."

The POBA argues that the City did not present any evidence that would justify denying "Tier 2" longevity benefits to police officers who have been employed since 2012 and that the arbitrator "mistakenly included [this] expansive language." The POBA claims that the language at issue is inconsistent with the position that the City took when negotiating longevity benefits with the other public safety units. The POBA also argues that among the ten police departments listed in the City's exhibits, only four departments have three tiers of longevity benefits; and only three departments "provide lesser longevity benefits to

their new hires" than the City proposed for its new hires. If the Commission determines that a third tier of longevity benefits should be awarded, the POBA asserts that it should be effective as of January 1, 2018 in order to avoid reducing existing economic benefits for currently employed police officers.

The City responds that its final offer regarding longevity benefits was "fully consistent" with the longevity benefits voluntarily agreed to by the three other public safety units. The City maintains that the POBA offered insufficient evidence to justify deviation from the pattern of settlement.

We find that the POBA has failed to demonstrate that the award should be vacated or modified with respect to longevity benefits. The arbitrator considered the City's proposals, which included the language ultimately adopted by the arbitrator, and the parties' legal arguments. See Award at 9-10, 95-99. He also considered the testimony elicited by the parties, including POBA witnesses who testified that "as many as 75 [o]fficers . . . have been hired by the City during 2017." Id. at 98. The arbitrator also considered the documents submitted by the parties, including the voluntarily negotiated agreements between the City and its three other public safety units as well as longevity scales in other Hudson County municipalities. Id. at 33-34, 97-99; City's Appendix Vol. III at Ra509-545. The arbitrator analyzed the evidence with respect to the relevant 16g factors. Id. at 99-100.

The arbitrator determined that there was no basis "to convert longevity payments from percentages to dollars and to freeze longevity at the 2017 rates effective January 1, 2018" and denied these aspects of the City's proposals. See Award at 99-100. However, regarding other aspects of the City's proposals, he determined that the City had shown "a pattern of settlement among its public safety units . . . and insufficient evidence to warrant a deviation." Id.; City's Appendix Vol. III at Ra521-522, Ra528-529, Ra537-538. Specifically, the arbitrator found that "[a] common longevity payment that extends throughout public safety is in the public interest and supported by the statutory criteria as it concerns internal comparability" and that "the other units accepted . . . January 1, 2017 as the effective date and applied this date to employees similarly situated to the POBA."[4/] Id. The arbitrator also found that the POBA had not shown that there should be "a different relationship in either eligibility for, or the level of longevity payments, based upon length of service in Jersey City" between the POBA and the other public safety units. Id. Similarly, he found that the POBA's request to establish "a different date for eligibility for the third tier of longevity would alter the pattern and create [a]

4/ In fact, although immaterial to the award, all of the public safety units agreed to modify longevity benefits on or after the effective date of their respective successor agreements (i.e., January 1, 2016 for IAFF Local 1066, and January 1, 2017 for PSOA and IAFF Local 1064).

different level of benefits for the POBA . . . without convincing rationale to support more favorable treatment." Id.

We agree with the arbitrator's analysis. The POBA has not refuted the evidence submitted in support of the City's longevity proposals, nor has it demonstrated that there was a mistake in the language awarded or any divergence from the pattern of settlement among the City's other public safety units. Moreover, although evidence was presented regarding external comparability, the arbitrator appropriately found that internal comparability was more relevant and afforded it "due weight." Accordingly, and for the reasons set forth above regarding modification of existing terms and conditions, internal comparability and/or pattern of settlement, we affirm the arbitrator's award.

NON-ECONOMIC ISSUES

A. Contract Duration (Article 43)

The arbitrator awarded a four-year contract effective from January 2, 2017 through December 31, 2020 that is consistent with the City's proposal. The arbitrator did not award additional language proposed by the City that would freeze salary step movement in the event that a new agreement has not been negotiated prior to contract expiration.

The POBA argues that the award was not supported by substantial credible evidence and failed to give "due weight" to all of the statutory factors. The POBA maintains that a four-

year contract will have a detrimental impact on "younger" police officers and asserts that "the 'sunsetting' of the 2% cap [on December 31, 2017]" would provide a more attractive negotiating environment. The POBA cites In the Matter of the Interest Arbitration between County of Hudson and Hudson County Sheriff's Officers PBA Local 334, IA-2014-004 (December 30, 2013) in support of its position that all of the statutory factors – including possible changes to the 2% cap – should have been analyzed and considered.

The City responds that the POBA presented speculation and assumptions to support its two-year contract proposal and failed to justify a departure from the pattern of settlement. The City maintains that the arbitrator considered all of the statutory factors and appropriately gave "significant weight" to the fact that all of the City's other public safety units agreed to contracts that expire on December 31, 2020. The City asserts that despite claiming that the POBA has "nothing in common" with the City's other public safety units, the POBA relied upon pattern of settlement in support of other proposals.

We find that the POBA has failed to demonstrate that the award should be vacated or modified with respect to contract duration. The arbitrator considered the parties' proposals and legal arguments and analyzed the evidence with respect to the relevant 16g factors. See Award at 4, 9, 62-67.

The arbitrator determined that the City had established a pattern of settlement on the issue of contract duration based upon the voluntarily negotiated agreements between the City and its three other public safety units that contained a common expiration date of December 31, 2020. See Award at 64-67; City's Appendix Vols. III-IV at Ra523, 530-531, 713, 719. He found the POBA's speculation regarding expiration of the 2% cap to be insufficient evidence to justify deviation from the pattern, particularly given that "all four public safety unions . . . had [a] full opportunity to engage in negotiations under the existing law and reach agreements that extend over a common time period." Id. at 66.

The arbitrator also determined that the instant parties had "attempted to negotiate a four year contract with a common expiration date," that a common expiration date "would allow all bargaining units to negotiate successor agreements based upon the existing budgetary, financial, economic and legal framework that will exist at that time," and that "[l]abor relations stability would not be furthered by fragmenting expiration dates . . . ." See Award at 65; City's Appendix Vol. IV at Ra735-752. He found "[t]he fact that settlements were reached on more favorable salary terms for the other three pubic safety units [was] not persuasive evidence to award a two year contract given the fact . . . that more favorable salary terms were available here if a

voluntary settlement had been [reached]." Id. at 66; City's Appendix Vol. IV at Ra735-752; see also, Award at 32-33, 76-86.

We find the case cited by the POBA distinguishable from the instant matter. In County of Hudson, the arbitrator found that voluntary settlements with three of eight police units was "not necessarily a pattern that [she was] compelled to follow" and that it "would be unfair . . . to saddle [unit members]" with the limitations of the 2% cap "for a long period" given that it was set to expire in April 2014. In this case, given that all three of the City's other public safety units voluntarily agreed to a common expiration date of December 31, 2020 despite the fact that the 2% cap will expire on December 31, 2017 absent legislative action, we find that the arbitrator appropriately determined that internal comparability and/or pattern of settlement were relevant factors and gave them "due weight."

B. Compensatory Time (Article 17)

The arbitrator modified the City's proposals regarding compensatory time and awarded the following:

> No compensatory time off shall be granted during emergencies. Officers assigned to the patrol division shall be granted time off, whether through the use of compensatory days, sick leave, or vacation days, until the district in which the officer works reaches minimum manning, regardless of whether a substitute officer is available and willing to work overtime to cover the shift. Once a district reaches the minimum of patrol officers on the road, two additional officers only shall be granted time off through the

> use of compensatory days, sick leave or vacation days so long as the City can fill these two positions through overtime. Thereafter, after these two positions are filled, the City shall have no obligation to grant additional time off, but may do so in its sole discretion.
>
> The City shall have the right to record compensatory time electronically as the official means of maintaining compensatory time information. The City may continue the use and availability of the manual entry book.

The POBA argues that the City failed to provide sufficient evidence to demonstrate that it had issues maintaining staffing levels above minimum manning other than Director Shea's claim that the existing compensatory time policy "hindered" his ability to protect residents. The POBA maintains that existing policy includes restrictions on the use of compensatory time and has "always successfully balanced the interests between the City and the POBA." The POBA asserts that the award would result in a 40% reduction in the number of compensatory time requests granted by the City and is "patently illegal" because it means that sick leave requests would have to be denied once manning levels reached a certain level.

The City responds that it submitted sufficient evidence to justify the award including voluntarily negotiated agreements with other public safety units that demonstrated a pattern of "restrictions on the use of compensatory time," crime rate statistics, overtime costs incurred, and Director Shea's

testimony. The City argues that the only evidence submitted by the POBA was testimony that unit members "enjoyed the peace of mind knowing they could use a compensatory day without any restriction" without any demonstration that other public safety units have "the unrestricted right to take scheduled days off below minimum manpower." The City asserts that the award does not reduce any benefit; it simply ensures more than "minimum coverage" by establishing a reasonable limitation on the use of compensatory time while allowing the City discretion to grant additional requests.

We find that the POBA has failed to demonstrate that the award should be vacated or modified with respect to compensatory time. The arbitrator considered the City's proposals and the parties' legal arguments. See Award at 10, 100-107. He considered POBA President Carmen Disbrow's (POBA President) testimony that unit members enjoy the peace of mind of knowing they are guaranteed a day off whenever they need it. He also considered Director Shea's testimony that "the current ability of an officer to take time off has made it difficult to maintain staffing levels at or above minimum manning levels"; "examples and situations when the number of officers . . . deployed were not sufficient to provide the protections that the [D]epartment felt were necessary to react to those situations"; explanation that "each district normally schedules double the number of

officers above the minimum manning level but . . . is often faced with having to replace officers on overtime when the taking of time off causes staffing to fall below minimum staffing levels."[5/] Id. at 102-109. The arbitrator also considered the documents submitted by the parties, including the voluntarily negotiated agreements between the City and its three other public safety units as well as crime rate statistics and overtime costs incurred. Id. at 19-22, 102-111; City's Appendix Vols. III-IV at Ra367, 521, 528, 537, 572-598, 600-605, 716-717.

The arbitrator found that "[t]he interests and welfare of the public require the City be able to provide sufficient qualified plice officers on the ground to prevent crime, to apprehend those who violate the law and to adequately protect the public and the on-duty police officers who perform law enforcement duties." See Award at 107. He also found that "any award on this issue . . . [required] a balancing in the department's need to properly staff its patrol shifts with an officer's right to use contractual compensatory days, sick leave

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5/ The City also maintains that Director Shea explained "the difficulty in predicting spikes in crime"; the current compensatory time policy "which requires the City to grant patrol officers time off regardless of minimum levels so long as there is an officer available and willing to work overtime"; and his opinion "that the City should be permitted to decide to generate overtime for proactive policing above minimum manning levels . . . [rather than] be handcuffed to spend overtime dollars just to provide minimum police coverage, which is not safe for the officers working or the public." See City's Br. at 48.

or vacation days." Ibid. The arbitrator also found that "no other City bargaining units have an unrestricted right to time off when staffing levels are below minimum manning" and that "the two other firefighter units have agreed upon certain staffing restrictions in their voluntary agreements." Id. at 110-111.

While acknowledging the parties' respective positions, including the POBA's contention that "existing language provides sufficient protections to the department to insure that there are sufficient staffing levels," the arbitrator determined that "it is in the interests and welfare of the public to award a modification to Article 17 that, to the extent possible, provides police officers time off, that gives the City the ability to spend overtime money to fill overtime slots[,] and that conditions the City's obligation to grant all requests for time off on a clear standard of staffing that is understandable and known to all parties." See Award at 108-110. He determined that modifying Article 17 by "requir[ing] [the City] to grant two (2) additional officers with time off per district through the use of compensatory days, sick leave or vacation days so long as the City can fill these positions through overtime after it reaches the minimum number of patrol officers on the road" was a reasonable limitation. Id. at 110. The arbitrator also included a provision specifying that the City retained managerial

discretion to "grant more officers with additional time off . . . after these two positions are filled." Ibid.

We find that the arbitrator's analysis was based on substantial evidence and complies with N.J.S.A. 34:13A-16g. The POBA has not refuted the evidence submitted to the arbitrator in support of the City's proposal, nor has it demonstrated that the award is illegal[6/] or that there was any divergence from the pattern of settlement among the City's other public safety units. The arbitrator's award ensures efficient operations and affords "due weight" to the appropriate 16g factors including the financial impact on the City and its residents, the interests and welfare of the public, and internal comparability and/or pattern of settlement. Accordingly, and for the reasons set forth above regarding modification of existing terms and conditions and internal comparability and/or pattern of settlement, we affirm the arbitrator's award.

6/ The Commission has held that a public employer has managerial prerogative to determine minimum staffing for each shift, that scheduling leave is mandatorily negotiable so long as an agreed-upon system does not prevent an employer from fulfilling its staffing requirements, that the need to pay overtime to an employee so another employee may use earned compensatory time is not "unduly disruptive" as that term is used in the Fair Labor Standards Act and related regulations, and that a public employer has a reserved right to deny leave if granting a request would prevent it from deploying minimum manpower for a shift. See Howell Tp., P.E.R.C. No. 2017-31, 43 NJPER 229 (¶70 2016).

C. Exchange of Days Off (Article 15)

The arbitrator denied the City's proposal to eliminate tour exchanges.[7/] He also denied the POBA's "proposed guidelines seeking to retain [tour exchanges] in [their] present form" because they "contain[] no limitations on . . . use" and do not resolve "issues raised at hearing over whether an officer could refuse to work makeup for [an] exchange day owed." See Award at 127. The arbitrator awarded a new provision stating, "[A]n officer shall be allowed one tour exchange day each month on a noncumulative basis commencing January 1, 2018, unless the Director of Public Safety or his designee agrees in his/her sole discretion to grant additional days . . . ." Ibid.

The POBA argues that the arbitrator incorrectly stated that "there is no limitation" on tour exchanges, ignoring the fact that a comprehensive policy has been in effect for decades and includes a "significant restriction" limiting the use of this benefit to "no more than one tour exchange per week." The POBA maintains that the award is not a "balanced resolution" of this issue and that the arbitrator ignored POBA proposals regarding additional significant restrictions. The POBA also asserts that

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7/ Unlike a tour swap where one unit member swaps his/her tour with another member, a tour exchange is where a unit member chooses not to work on a day that he/she is scheduled without having to find a replacement and must either repay the City or work a different tour at the City's convenience. See Award at 125.

the City failed to provide sufficient evidence demonstrating that the existing tour exchange policy created an "administrative nightmare" as Director Shea alluded to in his testimony.

The City responds that there is no evidence in the record indicating a "once per week limitation" on tour exchanges. The City argues that the voluntarily negotiated agreements with other public safety units demonstrate a pattern of "restricting . . . unit members' use of time off" and that the POBA failed to submit any evidence that would warrant a deviation from the pattern of settlement. The City maintains that Director Shea's testimony supports its proposal.

We find that the POBA has failed to demonstrate that the award should be vacated or modified with respect to tour exchanges. The arbitrator considered the parties' proposals and legal arguments. See Award at 8, 13, 123-126. He also considered the testimony elicited by the parties, including "POBA testimony acknowledging that [the POBA] is unaware of any other police unit that has the ability to swap tours with oneself" as well as Director Shea's testimony that "the Department's staffing levels are thrown off" by tour exchanges because "there is no replacement for the officer who has decided not to work his scheduled shift"; that eliminating tour exchanges will help avoid an administrative nightmare affecting staffing levels and the impact of allowing unlimited choice of days off; and that the

current tour exchange policy does not require unit members to use a paid day off or compensatory time. Id. at 125-126. The arbitrator also considered the documents submitted by the parties, including the parties' expired agreement and the voluntarily negotiated agreements between the City and its three other public safety units. Ibd. at 125-127; City's Appendix Vols. III-IV at Ra435-507, 517-545, 713-719.

The arbitrator found that "the right to a tour exchange has existed for many years" and that it "is a benefit of significance" which allows "[a]n officer who wishes not to work a scheduled tour . . . [to] simply choose not to work as long as . . . the officer repays the City by working another tour at another time." See Award at 127. He also found that unit members were not required to "find a replacement . . . [or to] take a vacation day [or use] any other contractual paid day of leave." Ibid.

The arbitrator determined that under the current policy – which sets no limitation on the use of tour exchanges – there is "the potential for the City not having the ability to properly staff the department because no replacement is required as a condition for an officer choosing not to work his/her regularly scheduled tour." See Award at 127. He determined that establishing "a reasonable limitation on [the] use" of tour exchanges was more appropriate than eliminating the benefit as

proposed by the City or adopting the guidelines proposed by the POBA. Ibid. The arbitrator's award continues the tour exchange benefit but establishes a limitation of "one tour exchange day each month on a noncumulative basis commencing January 1, 2018" while allowing for managerial discretion "to grant additional days beyond the limitation." Ibid.

We find that the arbitrator's analysis was based on substantial evidence and complies with N.J.S.A. 34:13A-16g. The POBA has not refuted the evidence submitted to the arbitrator in support of the City's proposal, nor has it submitted sufficient evidence to demonstrate that there was any pre-existing limitation on the use of tour exchanges or that there was any divergence from the pattern of settlement among the City's other public safety units. The arbitrator's award is intended to ensure efficient operations and affords "due weight" to the appropriate 16g factors including the financial impact on the City and its residents, the interests and welfare of the public, and internal comparability and/or pattern of settlement. Accordingly, and for the reasons set forth above regarding modification of existing terms and conditions and internal comparability and/or pattern of settlement, we affirm the arbitrator's award.

D. Vacations (Article 11)

The arbitrator denied the City's proposal to immediately eliminate unit members' ability to convert summer vacation weeks into additional compensatory days. He also denied the POBA's proposal to reduce the number of vacation allowance tiers from three to two given that it "would result in an officer receiving 26 more vacation days after 25 years . . . [and] result[] in an opportunity for a cash out of the days" in violation of N.J.S.A. 34:13A-16.7(b). See Award at 121. The arbitrator awarded "a phase out of an officer's ability to receive additional compensatory days after the conversion of summer vacation weeks . . . [that] allow[s] an officer to receive no more than additional two compensatory days in 2018, no more than one additional compensatory day in 2019[,] and no additional compensatory days in 2020." See Award at 122-123. The arbitrator also awarded the following additional language:

> Employees who take qualifying FMLA/NJFLA leave will be required to use available vacation time concurrent with FMLA/NJFLA leave.
>
> The City shall have the right to record vacation time electronically as the official means of maintaining vacation information. The City may continue the use and availability of the manual entry book.

The POBA argues that other than the "staffing nightmare" that Director Shea alluded to in his testimony, the City failed to provide sufficient evidence demonstrating that receipt of

compensatory days in exchange for the deferral of a week of summer vacation created any operational deficiency.

The City responds that every other public safety unit agreed to eliminate the grant of compensatory days "solely because an officer elects to utilize summer vacation during a different time of year" and the POBA failed to submit any evidence that would warrant a deviation from the pattern of settlement. The City argues that the existing policy creates liability costs in two ways: (1) unit members can bank compensatory days at one rate of pay and cash them out later at a higher rate of pay; (2) if unit members utilize compensatory days that result in a shift dropping below minimum manning, overtime costs are incurred.

We find that the POBA has failed to demonstrate that the award should be vacated or modified with respect to the phase out of granting compensatory days for summer vacation deferral. The arbitrator considered the parties' proposals and legal arguments. See Award at 8, 12, 111-120. He also considered the testimony elicited by the parties, including the POBA President's testimony that the parties have led successful efforts to limit the amount of vacation time taken during the summer season "by providing . . . incentives" and that compensatory days "accrue[]" if they are not used as well as Director Shea's testimony that granting an additional compensatory day for summer vacation deferral creates "staffing issues." Id. at 117-120. The arbitrator also

considered the documents submitted by the parties, including the voluntarily negotiated agreements between the City and its three other public safety units. See Award at 40-42, 121-123; City's Appendix Vols. III-IV at Ra517-545, 713-719.

The arbitrator determined that the City had "established a basis to modify the existing contractual scheme but not to the extent that it seeks." See Award at 122. He found that "all three of the other public safety units . . . have voluntarily agreed to some modifications in the method of deferring and converting summer vacation days and the benefit of adding compensatory days by doing so." Id. at 122-123; City's Appendix Vols. III-IV at Ra519, 525, 532-533, 714; see also, Award at 40-42. The arbitrator's award preserves "the options . . . for officers to exchange or defer summer season vacation weeks to single use days" but phases out receipt of "an additional compensatory day for each week [that an] officer defers" the use of "any or all summer season vacation weeks to other than the summer or holiday season." Id. at 122-123.

We find that the arbitrator's analysis was based on substantial evidence and complies with N.J.S.A. 34:13A-16g. The POBA has not sufficiently refuted the evidence submitted in support of the City's proposal, nor has it demonstrated that there was any divergence from the pattern of settlement among the City's other public safety units. Moreover, although the

arbitrator appropriately afforded internal comparability and/or pattern of settlement "due weight," phasing out the grant of compensatory days for summer vacation deferral also ensures efficient operations and implicates other 16g factors, including the financial impact on the City and its residents and the interests and welfare of the public. Accordingly, and for the reasons set forth above regarding modification of existing terms and conditions and internal comparability and/or pattern of settlement, we affirm the arbitrator's award.

E. Injury and Sick Leave (Article 12)

The arbitrator awarded the City's proposals regarding the following changes to injury and sick leave:

> a. Add as new Section: "Police officers who have been on sick leave for up to one (1) year, must return to work for six (6) months in order to receive the benefit of one-year leave benefit of Section B. Officers who do not return to work for at least six (6) months will have all sick time, from whatever off-duty injury or illness, counted toward the one (1) year limitation herein and, if granted additional sick time for any reason beyond one (1) year, such sick leave shall be without pay."
>
> b. Add as new Section: "Police officers who have been on injury leave for up to one (1) year, must return to work for two (2) months in order to receive the benefit of one-year leave benefit of Section A. Officers who do not return to work for at least two (2) months will have all injury leave time, excepting the officer who suffers a different and unrelated on-duty injury before the two (2) month period has been reached, counted toward the one (1) year limitation herein and

> if granted additional injury leave beyond one (1) year, such leave shall be without pay other than any compensation available under worker's compensation."
>
> c. Add as new Section: All use of injury or sick leave pursuant to this Article shall be in accordance with procedures established by General Orders of the Department. Vacation time shall run concurrent with sick time consistent with the current department policy and practice. Any member on sick leave for more than 60 days shall not accrue 2 comp days; after 120 sick days, the member shall not accrue 4 comp days; at 180 sick days, the member shall not accrue 6 comp days, and after 181 sick days, the member shall not accrue 8 comp days. An officer will not forfeit more comp days tha[n] he has accrued in one year. As used herein, sick leave includes leave for off-duty injuries. On-duty injuries shall be exempt from this Section, and will be defined in the General Order.
>
> d. Change paragraph D to 3 months.
>
> e. Change paragraph to read: "Any police officer that has a perfect attendance record during any calendar year (1/1 - 12/31) shall receive pay equivalent to two days' pay, which shall be paid in January of the next year. As used herein, perfect attendance means no missed days on sick or injury leave."
>
> f. Add to Article: "Employees out on sick or injury leave that qualifies under the FMLA will have FMLA time run concurrent with their sick leave."

The POBA argues that the City failed to provide sufficient evidence demonstrating that the existing sick leave policy was inadequate to address the misuse and/or abuse that Director Shea alluded to in his testimony.

The City responds that the changes it proposed to injury and sick leave were "modest" and agreed to by every other public safety unit and that the POBA failed to submit any evidence that would warrant a deviation from the pattern of settlement. The City maintains that "[t]he awarded language does not eliminate sick or injury leave" but rather "caps the ability of an officer to be out with pay on multiple and consecutive periods without returning to work for a specified period of time before retriggering unlimited paid sick or injury leave . . . ."

We find that the POBA has failed to demonstrate that the award should be vacated or modified with respect to injury and sick leave. The arbitrator considered the City's proposals and the parties' legal arguments. See Award at 12-13, 72-75. He also considered the testimony elicited by the parties, including Director Shea's testimony that officers currently have "unlimited sick and injury leave"; the pervasiveness of "staffing issues" when unit members are out on sick and injury leave; misuse and abuse of sick and injury leave; and the ineffectiveness of "disciplining officers" for violations. Id. at 73-74. The arbitrator also considered the documents submitted by the parties, including the voluntarily negotiated agreements between the City and its three other public safety units. See Award at 42-44, 75-76; City's Appendix Vols. III-IV at Ra517-545, 713-719.

The arbitrator determined that his analysis regarding internal comparability and/or pattern of settlement related to

contract duration was applicable to injury and sick leave. See Award at 75-76. He found that "[t]he modifications sought by the City are consistent with the terms agreed to by its other public safety units . . . ." Id. at 42-44, 75-76; City's Appendix Vols. III-IV at Ra518, 527, 535-536, 715-716. The arbitrator's award "preserve[s] the quintessential elements of the existing negotiated agreement that allows for up to one (1) year sick and injury leave benefit with pay and additional leave with pay in individual circumstances" while placing a reasonable limitation on unit members' ability to utilize this benefit on multiple and/or consecutive occasions without returning to work for a specified period. Id. at 75-76.

We agree with the arbitrator's analysis. The POBA has not refuted the evidence submitted in support of the City's injury and sick leave proposals, nor has it demonstrated that there was any divergence from the pattern of settlement among the City's other public safety units. Moreover, although the arbitrator appropriately afforded internal comparability and/or pattern of settlement "due weight," placing a reasonable limitation on the use of this benefit also ensures efficient operations and implicates other 16g factors including the financial impact on the City and its residents and the interests and welfare of the public. Accordingly, and for the reasons set forth above regarding modification of existing terms and conditions and

internal comparability and/or pattern of settlement, we affirm the arbitrator's award.

ORDER

The interest arbitration award is affirmed.

BY ORDER OF THE COMMISSION

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

ISSUED: December 21, 2017

Trenton, New Jersey

2018 BIENNIAL REPORT

TAB 16

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3111-13T2

APPROVED FOR PUBLICATION

January 15, 2016

APPELLATE DIVISION

IN THE MATTER OF
STATE OF NEW JERSEY and
NEW JERSEY LAW ENFORCEMENT
SUPERVISORS ASSOCIATION.

Argued September 21, 2015 – Decided January 15, 2016

Before Judges Messano, Simonelli and Carroll.

On appeal from the New Jersey Public Employment Relations Commission, PERC Docket No. IA-2014-003.

Frank M. Crivelli argued the cause for appellant New Jersey Law Enforcement Supervisors Association (Crivelli & Barbati, LLC, attorneys; Mr. Crivelli and Donald C. Barbati, on the brief).

Jeffrey J. Corradino argued the cause for respondent State of New Jersey (Jackson Lewis P.C., attorneys; Mr. Corradino, of counsel and on the brief; James J. Gillespie, on the brief).

Don Horowitz, Acting General Counsel, attorney for respondent New Jersey Public Employment Relations Commission (Mary E. Hennessy-Shotter, Deputy General Counsel, on the statement in lieu of brief).

The opinion of the court was delivered by

SIMONELLI, J.A.D.

Appellant New Jersey Law Enforcement Supervisors Association (NJLESA) appeals from that part of the March 10, 2014 final decision of respondent Public Employment Relations Commission (PERC), which affirmed a compulsory interest arbitration salary award rendered pursuant to the Police and Fire Public Interest Arbitration Reform Act (Act), N.J.S.A. 34:13A-14 to -21. On appeal, NJLESA contends that PERC erred in affirming the arbitrator's acceptance of the scattergram and methodology offered by respondent State of New Jersey (State) to calculate the salary award within the confines of N.J.S.A. 34:13A-16.7(b), commonly known as "the 2% salary cap."[1] For the following reasons, we affirm.

We begin with a review of the pertinent authority. At the time of the arbitration in this matter, the Act prohibited an interest arbitrator from rendering a salary award

> which, on an annual basis, increases base salary items by more than 2.0 percent of the aggregate amount expended by the public employer on base salary items for the members of the affected employee organization in the twelve months

[1] We decline to address NJLESA's additional contention, raised for the first time on appeal, that PERC's and the arbitrator's failure to consider its unique status as an intermediary, transitional bargaining unit led to an improper determination of the amount of monies available for distribution in a salary award rendered under the 2% salary cap. See Bryan v. Dep't of Corr., 258 N.J. Super. 546, 548 (App. Div. 1992) (citing Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973)).

> immediately preceding the expiration of the collective negotiation agreement subject to arbitration; provided, however, the parties may agree, or the arbitrator may decide, to distribute the aggregate monetary value of the award over the term of the collective negotiation agreement in unequal annual percentages.
>
> [N.J.S.A. 34:13A-16.7(b).[2]]

In rendering an award, the arbitrator must provide a reasoned explanation for the award, state which factors in N.J.S.A. 34:13A-16(g) were relevant, satisfactorily explain why the other factors were not relevant, and provide an analysis of the evidence on each relevant factor. Hillsdale PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71, 83-84 (1994). An arbitrator need not rely on all factors in fashioning the award, but must consider the evidence on each. Ibid.

In cases where the 2% salary cap applies, "the arbitrator must state what the total base salary was for the last year of the expired contract and show the methodology as to how base salary was calculated." Borough of New Milford and PBA Local 83, P.E.R.C. No. 2012-53, 38 N.J.P.E.R. ¶340, 2012 N.J. PERC LEXIS 18 at 13 (2012). Where the parties dispute the actual base salary amount, "the arbitrator must make the determination

[2] N.J.S.A. 34:13A-16.7(b) was amended, effective June 24, 2014, retroactive to April 2, 2014. P.L. 2014, c. 11, § 2. The amendment does not apply in this case.

and explain what was included based on the evidence submitted by the parties." Ibid. The arbitrator must then "calculate the costs of the award to establish that the award will not increase the employer's base salary costs in excess of 6% in the aggregate." Ibid. In calculating the award, the arbitrator must

> review the scattergram of the employees' placement on the guide to determine the incremental costs in addition to the across-the-board raises awarded. The arbitrator must then determine the costs of any other economic benefit to the employees that was included in base salary, but at a minimum this calculation must include a determination of the employer's cost of longevity.
>
> [Ibid.]

"Once these calculations are made, the arbitrator must make a final calculation that the total economic award does not increase the employer's costs for base salary by more than 2% per contract year[.]" Id. at 13-14.

In reviewing an interest arbitration award, PERC must determine whether: (1) the arbitrator failed to give due weight to the N.J.S.A. 34:13A-16(g) factors he deemed relevant to the resolution of the specific dispute; (2) the arbitrator violated the standards in N.J.S.A. 2A:24-8 and -9; or (3) the award is not supported by substantial credible evidence in the record as

a whole. Hillsdale, supra, 137 N.J. at 82. In cases where the 2% salary cap applies, PERC must also determine whether the award does not increase the employer's costs for base salary by more than 2% per contract year or, in this case, 8% in the aggregate. New Milford, supra, P.E.R.C. No. 2012-53, 38 N.J.P.E.R. ¶340, 2012 N.J. PERC LEXIS 18 at 13-14.

"Judicial scrutiny in public interest arbitration is more stringent than in general arbitration . . . [because it] is statutorily-mandated and public funds are at stake." Hillsdale, supra, 137 N.J. at 82. Accordingly, the "scope of our review of PERC's decisions reviewing arbitration is 'sensitive, circumspect, and circumscribed.'" In re City of Camden and the Int'l Ass'n of Firefighters, Local 788, 429 N.J. Super. 309, 327 (App. Div.) (quoting Twp. of Teaneck v. Teaneck Firemen's Mut. Benevolent Ass'n Local No. 42, 353 N.J. Super. 289, 300 (App. Div. 2002)), certif. denied, 215 N.J. 485 (2013). We defer to PERC's decisions because of its expertise and will only reverse if the decision is clearly demonstrated to be arbitrary, capricious, or unreasonable. In re Hunterdon Cty. Bd. of Chosen Freeholders, 116 N.J. 322, 328 (1989).

The record in this case reveals that NJLESA represents 665 primary-level law enforcement supervisors in several negotiation units. NJLESA and the State were parties to a collective

negotiations agreement (CNA) that expired on June 30, 2011. Following unsuccessful negotiations and mediation, on September 16, 2013, NJLESA filed a petition with PERC seeking compulsory interest arbitration pursuant to the Act.

Regarding the salary award, the arbitrator first determined that $56,945,856.70 was total base-year salary in the final twelve months of the CNA. The arbitrator then multiplied two percent of the total base-year salary ($1,138,917) by four and determined that $4,555,668 was the amount of money available under the 2% salary cap for the four-year successor CNA. The arbitrator next determined the amount the State would expend during the successor CNA based on each NJLESA member being moved through the salary schedule over the four years by achieving annual step movement, or annual increments, pursuant to the salary schedule regardless of whether they continued to be employed beyond the date the monies were projected to be spent. Using the State's scattergram, the arbitrator determined the cost of the step movement alone to be $3,734,295 or 6.56% of the original base salary amount. The arbitrator concluded that $821,373 remained to be awarded under the 2% salary cap, and ultimately granted a total salary award of $757,833, which was within the 2% salary cap. The arbitrator found that although

$821,373 was available to be awarded, there was "no basis for the expenditure or that requires any additional amounts."

NJLESA did not claim that the arbitrator failed to comply with N.J.S.A. 34:13A-16(g) or violated the standards in N.J.S.A. 2A:24-8 and -9, and agreed that $56,945,856.70 was the total base-year salary in the final twelve months of the CNA. Instead, NJLESA challenged the arbitrator's acceptance of the State's scattergram and methodology to calculate the costs of the salary award to establish that the award would not violate the 2% salary cap. NJLESA asserted that its scattergram provided a more accurate "cost out" of the salary award because it contained the actual salary expenditures for fiscal years 2012 and 2013, the first two years of the successor CNA, which reflected savings the State realized in those fiscal years from retirements and attrition. In contrast, the State's scattergram contained projected salary figures for fiscal years 2012 and 2013, and moved all NJLESA members through the salary guide regardless of whether they retired after fiscal year 2011 or new members joined the unit.

PERC determined that the arbitrator's acceptance of the State's scattergram was consistent with New Milford, and rejected NJLESA's argument that the savings the State realized in fiscal years 2012 and 2013 should be credited. Citing

Borough of Ramsey and Ramsey PBA Local No. 155, P.E.R.C. No. 2012-60, 39 N.J.P.E.R. ¶17 (2012), PERC held that "[w]hether speculative or known, . . . any changes in financial circumstances benefitting the employer or majority representative [were] not contemplated by the statute or to be considered by the arbitrator." This appeal followed.

On appeal, NJLESA argues that the arbitrator's decision to accept the State's scattergram and methodology, and PERC's affirmance of that decision, contravened PERC's prior decisions in New Milford, supra, and City of Atlantic City and Atlantic City PBA Local 24, P.E.R.C. No. 2013-82, 39 N.J.P.E.R. ¶161, 2013 N.J. PERC LEXIS 38 (2013), which compelled the arbitrator to adopt NJLESA's scattergram and methodology. In particular, NJLESA emphasizes a passage in New Milford, where PERC said:

> Since an arbitrator, under the new law, is required to project costs for the entirety of the duration of the award, calculation of purported savings resulting from anticipated retirements, and for that matter added costs due to replacement by hiring new staff or promoting existing staff are all too speculative to be calculated at the time of the award. The Commission believes that the better model to achieve compliance with P.L. 2010 c. 105 is to utilize the scattergram demonstrating the placement on the guide of all of the employees in the bargaining unit as of the end of the year preceding the initiation of the new contract, and to simply move those employees forward through the newly awarded salary scales and longevity entitlements.

> Thus, both reductions in costs resulting from retirements or otherwise, as well as any increases in costs stemming from promotions or additional new hires would not effect [sic] the costing out of the award required by the new amendments to the Interest Arbitration Reform Act.
>
> [New Milford, supra, P.E.R.C. No. 2012-53, 38 N.J.P.E.R. ¶340, 2012 N.J. PERC LEXIS 18 at 15.]

NJLESA argues that this passage prevents an arbitrator from adopting a scattergram that contains "speculative" figures.

NJLESA also points to a passage in City of Atlantic City, where PERC said:

> We further clarify that the above information must be included for officers who retire in the last year of the expired agreement. For such officers, the information should be prorated for what was actually paid for the base salary items. Our guidance in New Milford for avoiding speculation for retirements was applicable to future retirements only.
>
> [City of Atlantic City, supra, P.E.R.C. No. 2013-82, 39 N.J.P.E.R. ¶161, 2013 N.J. PERC LEXIS 38 at 10.]

NJLESA argues that this passage requires an arbitrator to use actual paid salary when that data is available. NJLESA notes that the retirements in fiscal years 2012 and 2013, which enabled the State to realize savings, were not speculative because they actually occurred. NJLESA, thus, argues that the arbitrator should have used its scattergram, which reflected the

State's savings from those retirements, and thus showed more salary available for distribution to NJLESA members under the 2% salary cap.

NJLESA's argument fails for two reasons. First, PERC specifically rejected it:

> We note that the cap on salary awards in the new legislation does not provide for the PBA to be credited with savings that the Borough receives from retirements or any other legislation that may reduce the employer's costs. It is an affirmative calculation based on the total 2011 base salary costs regardless of any changes in 2012. Likewise, the PBA will not be debited for any increased costs the employer assumes for promotions or other costs associated with maintaining its workforce.
>
> [New Milford, supra, P.E.R.C. No. 2012-53, 38 N.J.P.E.R. ¶340, 2012 N.J. PERC LEXIS 18 at 16 (emphasis added).]

Since New Milford, PERC has consistently maintained that the State's savings on salary expenditures may not be considered when calculating a salary award under the 2% salary cap, and PERC has never suggested otherwise. For example, immediately after New Milford, PERC explained that

> [t]he statute does not provide for a majority representative to be credited with savings that a public employer receives from any reduction in costs, nor does it provide for the majority representative to be debited for any increased costs the public employer assumes for promotions or other costs associated with maintaining its workforce.

> [Borough of Ramsey, supra, P.E.R.C. No. 2012-60, 39 N.J.P.E.R. ¶17 at 9 (emphasis added).]

More recently, PERC reiterated its guidance in New Milford, and rejected essentially the same argument advanced by NJLESA:

> Additionally, the [union] asserts that the arbitrator miscalculated longevity in 2014 because she failed to deduct the "offsetting decreased cost in longevity from employees who left the bargaining unit due to retirements, promotions and terminations from the base year 2013." We squarely addressed this issue in New Milford wherein we stated as follows:
>
> . . . .
>
> Based on the clear guidance we provided in New Milford, we reject the union's argument that the arbitrator miscalculated longevity for 2014 because she did not offset costs resulting from retirements.
>
> [City of Camden and IAFF Local 788, P.E.R.C. No. 2014-95 (2014) at 8-9 (emphasis added).]

A fair reading of Atlantic City does not change the analysis. That case involved a dispute over the base salary calculation for the twelve months preceding the expiration of the collective bargain agreement. City of Atlantic City, supra, P.E.R.C. No. 2013-82, 39 N.J.P.E.R. ¶161, 2013 N.J. PERC LEXIS 38 at 2. It did not purport to change the New Milford analysis, but instead reiterated it. Id. at 6-7. Accordingly, PERC's decision in this case was not arbitrary, capricious, or unreasonable because it conformed to New Milford and subsequent

decisions by refusing to credit NJLESA with savings from retirements or attrition.

Second, NJLESA misreads N.J.S.A. 34:13A-16.7(b) and ignores our standard of review. The language of the 2% salary cap provision prohibits an interest arbitrator from rendering an award that "increases base salary items by more than 2.0 percent of the aggregate amount expended by the public employer on base salary items for the members of the affected employee organization in the twelve months immediately preceding the expiration of the collective negotiation agreement subject to arbitration." N.J.S.A. 34:13A-16.7(b). The statute sets a maximum salary award, but does not require the arbitrator to award any specified amount or prescribe the methodology for calculating the salary award. As PERC recognized in New Milford:

> Arriving at an economic award is not a precise mathematical process. Given that the statute sets forth general criteria rather than a formula, except as set forth [in the two percent salary cap provision, N.J.S.A. 34:13A-16.7(b),] the treatment of the parties' proposals involves judgment and discretion and an arbitrator will rarely be able to demonstrate that an award is the only "correct" one.
>
> [New Milford, supra, P.E.R.C. No. 2012-53, 38 N.J.P.E.R. ¶340, 2012 N.J. PERC LEXIS 18 at 11.]

Thus, except for failure to comply with the 2% salary cap provision, we will not set aside an interest arbitration award for failure to apply a specific methodology. However, NJLESA does not suggest that the arbitrator's salary award exceeded the 2% salary cap. Instead, it argues that the arbitrator should have used its methodology and awarded a credit for the State's savings from retirements and attrition in fiscal years 2012 and 2013. NJLESA cites to no authority that required the arbitrator or PERC to do so. Rather, the relevant authority requires us to defer to PERC's decision to affirm the arbitrator's exercise of discretion, which was based on his special expertise in labor relations. See State v. Prof'l Ass'n of N.J. Dep't of Educ., 64 N.J. 231, 259 (1974). Stated differently, the deferential standard of review for interest arbitration awards does not permit us to substitute our judgment for PERC's judgment by requiring the arbitrator to adopt NJLESA's methodology.

In sum, contrary to NJLESA's argument, PERC's decision was not arbitrary, capricious or unreasonable. The decision fully comported with New Milford and its progeny, and the award complied with the 2% salary cap provision.

Affirmed.

SUPREME COURT OF NEW JERSEY
C-793 September Term 2015
077217

IN THE MATTER OF
STATE OF NEW JERSEY AND
NEW JERSEY LAW ENFORCEMENT
SUPERVISORS ASSOCIATION

ON PETITION FOR CERTIFICATION

(NEW JERSEY LAW ENFORCEMENT
SUPERVISORS ASSOCIATION -
PETITIONER)

FILED

APR 29 2016

CLERK

To the Appellate Division, Superior Court:

A petition for certification of the judgment in A-003111-13 having been submitted to this Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied, with costs.

WITNESS, the Honorable Stuart Rabner, Chief Justice, at Trenton, this 26th day of April, 2016.

CLERK OF THE SUPREME COURT

The foregoing is a true copy
of the original on file in my office.

CLERK OF THE SUPREME COURT
OF NEW JERSEY

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5312-14T1

IN THE MATTER OF
BOROUGH OF OAKLAND,

Respondent,

v.

PBA LOCAL 164,

Appellant.

Argued December 1, 2016 – Decided January 5, 2017

Before Judges Hoffman and Whipple.

On appeal from the New Jersey Public Employment Relations Commission, Docket No. IA-2014-044, PERC No. 2015-75.

Richard D. Loccke argued the cause for appellant (Loccke Correia & Bukosky, attorneys; Mr. Loccke, of counsel and on the briefs; Corey M. Sargeant, on the briefs).

Matthew J. Giacobbe argued the cause for respondent Borough of Oakland (Cleary Giacobbe Alfieri Jacobs, LLC, attorneys; Mr. Giacobbe, of counsel and on the brief; Adam S. Abramson, on the brief).

Frank C. Kanther, Deputy General Counsel, argued the cause for respondent New Jersey Public Employment Relations Commission (Robin McMahon, General Counsel, attorney;

Mr. Kanther, on the statement in lieu of brief).

PER CURIAM

PBA Local 164 (PBA) appeals from the June 2015 decision of the New Jersey Public Employment Relations Commission (PERC), affirming the May 2015 public interest arbitration award of arbitrator Robert C. Gifford (Gifford) establishing the terms of the collective negotiated agreement (CNA) between the PBA and the Borough of Oakland (Borough). We affirm.

I.

The PBA consists of police officers in the ranks of patrol officer, sergeant, lieutenant, and captain. The PBA and the Borough were parties to a collective negotiations agreement that expired on December 31, 2013. On March 31, 2014, the Borough filed a petition to initiate compulsory interest arbitration. PERC appointed Gifford as the interest arbitrator.

On April 20, 2015, Gifford conducted a formal interest arbitration hearing. After receiving post-hearing briefs, Gifford closed the record. On May 4, 2015, Gifford issued his decision and award. Gifford rendered a three-year award, effective January 1, 2014, through December 31, 2016. The award contained the following provisions, in relevant part: (1) modifications to the salary guide for new hires, specifically adding two steps to the salary guide for officers hired on or

after January 1, 2015, and upwardly adjusting the salary guide by 0.81% for officers hired on or after January 1, 2015; (2) eliminating longevity pay for officers hired on or after January 1, 2015; and (3) capping terminal leave payments at $15,000 for all officers hired on or after May 22, 2010.

The PBA appealed the award to PERC, which affirmed the award on June 25, 2015. The PBA then appealed to this court, arguing:

> POINT I
>
> UNDER CLEAR STATUTORY STANDARDS AND UNDER SUPREME COURT DECISIONAL LAW SIGNIFICANT PORTIONS OF THE AWARD CANNOT BE SUSTAINED, AND P.E.R.C. WAS IN ERROR IN CONFIRMING THE EFFECTIVE AWARD.
>
> POINT II
>
> THE ARBITRATOR'S AWARD SHOULD BE [FOUND] AS VIOLATIVE OF N.J.S.A. 34:13A-16(g) AND CONTROLLING CASE LAW.

II.

The New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 to -43, includes a compulsory interest arbitration procedure for police departments and police officer representatives who reach an impasse in collective negotiations. N.J.S.A. 34:13A-16(b)(2). Either party may petition to initiate this process with PERC. Ibid. The parties may appeal the

arbitrator's award to PERC, and may appeal from PERC decisions to this court. N.J.S.A. 34:13A-16(f)(5)(a).

Our review of "PERC decisions reviewing arbitration is sensitive, circumspect[,] and circumscribed." Twp. of Teaneck v. Teaneck Firemen's Mut. Benevolent Ass'n Local No. 42, 353 N.J. Super. 289, 300 (App. Div. 2002), aff'd o.b., 177 N.J. 560 (2003). We will uphold these decisions unless they are "clearly arbitrary or capricious." Ibid. (citation omitted). However, we provide heightened scrutiny of statutorily mandated public interest arbitration where public funds are at stake. Hillsdale PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71, 82 (1994).

PERC's role is to consider whether the arbitrator properly applied the factors articulated in N.J.S.A. 34:13A-16(g) and issued a reasonable determination. Teaneck, supra, 353 N.J. Super. at 306. The arbitrator's role, in turn, is to choose between the parties' final offers after considering these factors. Hillsdale, supra, 137 N.J. at 82. PERC will not vacate an award unless (1) the arbitrator failed to give due weight to the N.J.S.A. 34:13A-16(g) factors he or she determined were relevant; (2) "the arbitrator violated the standards in N.J.S.A. 2A:24-8 and -9; or (3) the award is not supported by substantial credible evidence in the record as a whole." In re State, 443 N.J. Super. 380, 385 (App. Div.) (citing Hillsdale,

supra, 137 N.J. at 82), certif. denied, 225 N.J. 221 (2016). We will similarly uphold an award if it is supported by "substantial credible evidence in the record." Hillsdale, supra, 137 N.J. at 82 (citation omitted).

N.J.S.A. 34:13A-16(f)(5) requires the arbitrator issue a "written report explaining how each of the statutory criteria played into the arbitrator's determination of the final award." Providing guidance for this written report, N.J.S.A. 34:13A-16(g) states:

> The arbitrator shall decide the dispute based on a reasonable determination of the issues, giving due weight to those factors listed below that are judged relevant for the resolution of the specific dispute. In the award, the arbitrator or panel of arbitrators shall indicate which of the factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor . . . .

An arbitrator is required to consider nine specific factors under N.J.S.A. 34:13A-16(g). "The arbitrator need not rely on all factors, but must identify and weigh the relevant factors and explain why the remaining factors are irrelevant." In re City of Camden, 429 N.J. Super. 309, 326 (App. Div.) (citing Hillsdale, supra, 137 N.J. at 83-84), certif. denied, 215 N.J. 485 (2013). If the arbitrator provides a "reasoned explanation," it should satisfy the requirement he or she give

"due weight" to each factor. Hillsdale, supra, 137 N.J. at 84. No single factor is dispositive, but collectively they "reflect the significance of fiscal considerations." City of Camden, supra, 429 N.J. Super. at 326-27.

In 2010, the legislature amended N.J.S.A. 34:13A-16 to prohibit an interest arbitration award from increasing public employer "base salary" costs by more than two-percent per contract year. See N.J.S.A. 34:13A-16.7(b) (codifying L. 2010, c. 105, § 2).[1] The statute defines "base salary" as "salary provided pursuant to a salary guide or table and any amount provided pursuant to a salary increment, including any amount provided for longevity or length of service." N.J.S.A. 34:13A-16.7(a).

As a result of the legislation, PERC modified the interest arbitration award review standard to insure that the arbitration awards will not increase base salary by more than two-percent per contract year or six-percent in the aggregate for a three-year contract award. See Borough of New Milford, & PBA Local 83, P.E.R.C. No. 2012-53, 38 NJPER 340 (¶116 2012). Here, the award was subject to this two-percent salary cap, and therefore

[1] The legislature amended N.J.S.A. 34:13A-16.7(b), making it effective on June 24, 2014, and retroactive to April 2, 2014. See L. 2014, c. 11, § 2. Because the Borough filed its petition to initiate compulsory interest arbitration on March 31, 2014, two days before this retroactive date, the amendment does not apply here.

PERC was required to determine whether Gifford complied with and adequately explained his awards consistent with the requirements of both N.J.S.A. 34:13A-16(g) and N.J.S.A. 34:13A-16.7. See In re State, supra, 443 N.J. Super. at 384-85.

III.

The PBA argues we should vacate and remand Gifford's award because he failed to provide a "costing out or other economic analysis of significant parts of the [d]ecision." Specifically, the PBA argues Hillsdale required Gifford to provide a cost analysis of his changes to the length of the wage progression schedule for future hires, elimination of longevity for future hires, and modification of terminal leave benefits for certain current employees and future hires. The PBA further contends Gifford could not conduct this required analysis because the Borough failed to provide sufficient evidence in the record, causing Gifford to base the awarded modifications on speculation. However, we find a full cost-out of these changes for new hires is impossible and has not been required in prior PERC decisions.

PERC first addressed the issue of costing out potentially speculative costs under the two-percent cap of N.J.S.A. 34:13A-16.7 in New Milford, supra, 38 NJPER 340. PERC stated:

> [W]e modify our review standard [under the new 2% limitation on adjustments to base

> salary] to include that we must determine whether the arbitrator established that the award will not increase base salary by more than 2% per contract year or 6% in the aggregate for a three-year contract award.
>
> . . . .
>
> Since an arbitrator, under the new law, is required to project costs for the entirety of the duration of the award, calculation of purported savings resulting from anticipated retirements, and for that matter added costs due to replacement by hiring new staff or promoting existing staff are all too speculative to be calculated at the time of the award. The Commission believes that the better model to achieve compliance with [N.J.S.A. 34:13A-16.7] is to utilize the scattergram demonstrating the placement on the guide of all of the employees in the bargaining unit as of the end of the year preceding the initiation of the new contract, and to simply move those employees forward through the newly awarded salary scales and longevity entitlements. Thus, both reductions in costs resulting from retirements or otherwise, as well as any increases in costs stemming from promotions or additional new hires would not affect the costing out of the award . . . .
>
> [New Milford, supra, 38 NJPER 340 (emphasis added).]

PERC next addressed the statutory cap in Borough of Ramsey, & Ramsey PBA Local No. 155, P.E.R.C. No. 2012-60, 39 NJPER 17 (¶3 2012), reaffirming New Milford with regard to speculative costs relating to new hires:

> In New Milford, we determined that reductions in costs resulting from retirements or otherwise, or increases in

> costs stemming from promotions or additional new hires, should not affect the costing out of the award. N.J.S.A. 34:13A-16.7(b) speaks only to establishing a baseline for the aggregate amount expended by the public employer on base salary items for the twelve months immediately preceding the expiration of the collective negotiation agreement subject to arbitration.
>
> [Borough of Ramsay, supra, 39 NJPER 17.]

Here, Gifford relied on New Milford in providing the following cost analysis:

> In accordance with PERC's standards, by utilizing the same complement of officers employed by the Borough as of December 31, 2013 over a term of three (3) years, and assuming for the purposes of comparison there are no resignations, retirements, promotions or additional hires, the increases to base salary awarded herein increase the total base salary including annual base salary, holiday pay, detective differential and longevity as follows:

Base Year	Total Base Salary	Increase from Prior Year
2013	$2,669,607	
2014	$2,734,265	$64,658
2015	$2,775,269	$41,005
2016	$2,834,269	$58,755
	Total Increase	$164,418

We find Gifford appropriately followed New Milford by using existing personnel numbers for the twelve months preceding the new CNA to project costs over its full duration. Gifford

awarded a three-year contract effective January 1, 2014, through December 31, 2016. Gifford used the agreed-upon total pensionable base salary for 2013 of $2,740,442.90 — the figure from last year of the preceding contract — to calculate the two-percent annual cap amount of $54,809. He then adjusted the 2013 base salary to $2,669,607 to reflect the total base salary for the twenty-one officers on the Department roster as of December 31, 2013. Gifford ultimately awarded a total salary increase of $164,418, which is equivalent to an average base salary increase of $54,806 per year over three years. This places the award just under the N.J.S.A. 34:13A-16.7 two-percent annual cap.

In reviewing Gifford's decision, PERC noted that arbitrators "should not factor in projected retirements or hiring during the term of the new contract as such projections are not consistent with the precise mathematical calculations necessary to determine compliance with the [two-percent] annual base salary cap." PERC then found Gifford appropriately relied on New Milford in rendering his calculations, stating "his overall salary award was consistent with our guidance in that decision and the interest arbitration law."

PERC thus based its decision on controlling law, including its own prior guidance and a review of Gifford's calculations. Gifford was bound to confine his calculations within the two-

percent cap, which he did using established PERC criteria. We therefore find PERC's decision affirming the award without the cost analysis urged by the PBA was not arbitrary, capricious, or unreasonable.

IV.

The PBA also argues Gifford improperly analyzed the factors of N.J.S.A. 34:13A-16(g) by failing to base the award on evidence presented in the record. The PBA contends Gifford's award was "devoid of any analysis of the evidence pertaining to the relevant factors, and any explanation why other factors are irrelevant." We disagree.

As noted, N.J.S.A. 34:13A-16(g) directs arbitrators to consider nine statutory factors, and arbitrators must "identify and weigh the relevant factors and . . . explain why the remaining factors are irrelevant." Hillsdale, supra, 137 N.J. at 84. Reviewing courts may vacate an award when it fails to give "due weight" to the statutory factors. Id. at 82 (citation omitted). These factors are as follows:

> (1) The interests and welfare of the public. . . .
>
> (2) Comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally:

(a) In private employment in general
. . . .

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

(c) In public employment in the same or similar comparable jurisdictions
. . . .

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

(4) Stipulations of the parties.

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

(6) The financial impact on the governing unit, its residents, the limitations imposed upon the local unit's property tax levy
. . . and taxpayers. . . .

(7) The cost of living.

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

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

[N.J.S.A. 34:13A-16(g)(1)-(9).]

The PBA raised the argument that Gifford improperly analyzed the nine factors in its appeal to PERC. PERC disagreed and affirmed Gifford, stating:

> We find that the arbitrator complied with N.J.S.A. 34:13A-16(g) and sufficiently explained his basis for finding some statutory factors more relevant than others, gave due weigh to the factors deemed relevant, and analyzed the evidence on each relevant factor.

In its briefs before this court, the PBA only points to factor (6), arguing it requires the cost-out discussed above. Otherwise, the PBA fails to identify or explain which factors Gifford failed to analyze correctly. Upon our review of the record, we determine PERC's assessment of Gifford's award is supported by the record and conclude he appropriately addressed all nine statutory factors.

Gifford began by stating he considered all factors relevant, but noted not all were entitled to equal weight. First, he gave greater weight to the Borough's "ability to pay," the "lack of adverse impact," the "interests and welfare of the public," and "public sector comparability." He analyzed these criteria through statutory factors (1) (interests and welfare of the public), (2)(b) (comparison to public employment in general) and (2)(c) (comparison to public employment in the same or similar comparable jurisdictions), and (6) (financial impact on

the government unit, residents, and taxpayers). He also discussed factors (5) (lawful authority of the employer) and (9) (statutory restrictions on the employer) in this context.

Regarding factor (1) (interests and welfare of the public), Gifford stated the award serves the interests of the public "through a weighing of the statutory criteria after due consideration to the Hard Cap." He also noted the overall compensation awarded served the interests of the public because the base salary calculations would not exceed the two-percent cap. He further noted his modifications for new hires would improve the Borough's ability to manage its operations within statutory limitations.

As to factor (5) (lawful authority of the employer), Gifford stated the award would not exceed the Borough's lawful authority. Regarding factor (6) (financial impact on the governing unit, residents, and taxpayers), Gifford stated the award would not have an adverse impact on the Borough, its taxpayers, and residents, as the Borough did not claim an inability to pay up to statutory permitted levels. As to factor (9) (statutory restrictions on the employer), Gifford found the award would not prohibit the Borough from meeting its statutory obligations or cause it to exceed its lawful authority.

Gifford then explained he gave less weight to factor (2)(a) (comparison to private employment), based on the unique nature of law enforcement jobs. Rather, he gave greater weight to factors (2)(b) (comparison to public employment in general) and (2)(c) (comparison to public employment in the same or similar comparable jurisdictions), noting the PBA and the Borough provided evidence comparing the PBA to other law enforcement units in Bergen County and New Jersey. He also noted the Borough provided internal comparisons to other employees in the Borough itself. Gifford further considered the comparable salary increases of other awards subject to the two-percent salary cap and the benefits received by other law enforcement units.

Gifford also gave less weight to factors (3) (overall compensation received by employees), (4) (stipulations of the parties), (7) (cost of living), and (8) (continuity and stability of employment). Regarding factor (3), he stated the evidence showed the overall compensation received by Borough officers is "fair, reasonable, and competitive." As to factor (4), Gifford noted the parties stipulated to the Borough's ability to pay up to statutory permitted levels, and they stipulated to the amounts of family medical coverage costs.

Regarding factor (7) (cost of living), Gifford considered figures from the U.S. Bureau of Labor Statistics for the Consumer Price Index for All Urban Consumers, but gave it little weight because it would not impact his awarded salary increases that would not exceed the statutory cap. Last, addressing factor (8) (continuity and stability of employment), Gifford stated the evidence showed the modifications were reasonable under the circumstances, and his award would have less of a negative impact on the Police Department than if he had adopted the Borough's proposals in full.

As far as we can discern, the PBA is arguing this analysis was insufficient because Gifford failed to fully "provide an analysis of the evidence on each relevant factor." N.J.S.A. 34:13A-16(g). We note that Gifford's analysis on some factors was limited; for instance, he completed most of his discussion of factors (1), (5), (6), and (9) in one short paragraph. However, it appears Gifford first presented the arguments of both parties and then briefly discussed each factor, "[h]aving considered the entire record." Besides reciting general standards, the PBA does not specifically explain where Gifford's analysis fell short or what type of analysis was required instead.

Therefore, because Gifford addressed every factor, we find PERC's decision to affirm Gifford's award was based on substantial evidence in the record and its decision was neither arbitrary, capricious, nor unreasonable.

Affirmed.

NOT FOR PUBLICATION WITHOUT THE APPROVAL
OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0413-15T4

IN THE MATTER OF
STATE OF NEW JERSEY,

Respondent/Cross-Appellant,

and

FRATERNAL ORDER OF POLICE LODGE 91,

Appellant/Cross-Respondent.

APPROVED FOR PUBLICATION

June 26, 2017

APPELLATE DIVISION

Argued May 16, 2017 - Decided June 26, 2017

Before Judges Reisner, Koblitz and Mayer.

On appeal from the Public Employment Relations Commission, P.E.R.C. No. 2016-11.

Frank M. Crivelli argued the cause for appellant/cross-respondent Fratnernal Order of Police Lodge 91 (Crivelli & Barbati, attorneys; Mr. Crivelli, on the brief).

James J. Gillespie argued the cause for respondent/cross-appellant State of New Jersey (Jackson Lewis, attorneys; Jeffrey J. Corradino, of counsel; Mr. Gillespie, on the brief).

Frank C. Kanther, Deputy General Counsel, argued the cause for respondent New Jersey Public Employment Relations Commission (Robin T. McMahon, General Counsel, attorney; Mr. Kanther, on the brief).

The opinion of the court was delivered by

REISNER, P.J.A.D.

Fraternal Order of Police Lodge 91 (FOP) appeals, and the State cross-appeals, from a September 3, 2015 final decision of the Public Employment Relations Commission (PERC) adopting, in pertinent part, a lengthy and meticulously detailed interest arbitration award deciding the terms of an initial collective negotiations agreement (CNA) between the Division of Criminal Justice (DCJ) and a newly certified unit representing DCJ investigators. The FOP contends that PERC erred as a matter of law in its February 13, 2015 interlocutory decision directing the arbitrator to apply the two percent statutory cap on salary increases, set forth in N.J.S.A. 34:13A-16.7.[1] The State contends that PERC erred in confirming the award with respect to certain non-salary issues, including an education reimbursement, paid time off to attend certain educational classes, a $300 clothing allowance, and arbitration of minor discipline.[2]

[1] That decision did not become ripe for an appeal as of right until PERC issued its final decision. FOP previously filed a motion for leave to appeal, which we denied.

[2] Before oral argument of the appeal, the State withdrew an additional issue concerning the manner in which the arbitrator implemented the two percent cap.

On the cross-appeal, we conclude that PERC's decision as to the non-salary issues is not arbitrary and capricious, see In re State, 443 N.J. Super. 380, 384-86 (App. Div.), certif. denied, 225 N.J. 221 (2016), and we affirm for the reasons stated in the agency's September 23, 2015 decision. The State's arguments are without sufficient merit to warrant further discussion. R. 2:11-3(e)(1)(E).

We affirm on the FOP's appeal, substantially for the reasons stated in the agency's February 13, 2015 decision. We owe deference to PERC's reasonable interpretation of its enabling statute, and we find no basis to depart from that deference here. See In re Camden Cty. Prosecutor, 394 N.J. Super. 15, 23 (App. Div. 2007). We agree with PERC that the two percent cap applies where, as here, a newly certified bargaining unit is negotiating its first CNA with the public employer. We reject the FOP's argument, because read as a whole and construed in light of its purposes, the Police and Fire Public Interest Arbitration Reform Act, N.J.S.A. 34:13A-14 to -16.9, both entitles a newly certified unit to demand interest arbitration and subjects that arbitration process to the two percent cap.[3]

[3] Unless further extended by the Legislature, the two percent cap will expire at the end of 2017 as set forth in N.J.S.A. 34:13A-16.9. See L. 2014, c. 11, § 4. As a result, although this case

Read literally, the Act does not permit interest arbitration for newly certified bargaining units or subject such arbitrations to the cap. Both N.J.S.A. 34:13A-16(b)(2), requiring interest arbitration, and the section setting forth the two percent cap, N.J.S.A. 34:13A-16.7(b), apply by their terms to situations in which an existing CNA is expiring. However, a literal reading of the Act would produce absurd results, contrary to its purpose. See Perez v. Zagami, LLC, 218 N.J. 202, 209-11 (2014).

> [W]here a statute or ordinance does not expressly address a specific situation, the court will interpret it "consonant with the probable intent of the draftsman 'had he anticipated the matter at hand.'" In that regard, "[i]t is axiomatic that a statute will not be construed to lead to absurd results."
>
> [Twp. of Pennsauken v. Schad, 160 N.J. 156, 170 (1999) (citations omitted).]

One of the Act's central goals is to resolve law enforcement labor disputes through interest arbitration. See N.J.S.A. 34:13A-14(a); In re State, 114 N.J. 316, 326 (1989). That requirement "shall be liberally construed." N.J.S.A. 34:13A-14(d). Applying the statute to newly certified bargaining units, negotiating their first CNAs, serves that purpose. Another important purpose of the Act is to limit the economic burden on public employers and

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presents a novel issue, we acknowledge that our decision may have limited application.

preserve the public fisc. See N.J.S.A. 34:13A-16.8; Assembly Law and Pub. Safety Comm., Statement to Assembly Comm. Substitute for A. 3393, Dec. 9, 2010. Therefore, it serves the economic policies expressed in the Act to apply the two percent salary cap uniformly, whether an interest arbitration concerns an expiring CNA or the negotiation of a unit's first CNA.

Accordingly, we agree with PERC that the FOP cannot obtain the Act's benefits without also accepting its burdens. Interpreting the Act to give newly certified bargaining units the benefit of interest arbitration without the financial limit of the two percent cap would produce a skewed result, at odds with the Legislature's intent in enacting the salary cap provision.

Affirmed.

Errata Sheet

2018 Biennial Report on the Police & Fire Public Interest Arbitration Reform Act
March 2018

Page	Error	Correction
25	Prior to issuance of the remand award, the police unit settled. The remand award, applicable to the fire units, was issued in 2017 and was not appealed.	Prior to issuance of the remand award, the police unit and rank-and-file fire unit settled. The remand award, applicable to the fire officer unit, was issued in 2017 and was not appealed.