



BIENNIAL REPORT
OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION
ON THE
POLICE AND FIRE PUBLIC INTEREST
ARBITRATION REFORM ACT

JANUARY 2008

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OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION
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THE POLICE AND FIRE PUBLIC INTEREST ARBITRATION REFORM ACT
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EXECUTIVE SUMMARY

The Police and Fire Public Interest Arbitration Reform Act (Reform Act), *P.L.* 1995, c. 425, *N.J.S.A.* 34:13A-14 *et seq.*, (Appendix, Tab 1), which took effect on January 10, 1996, has now been in place for twelve years. There have been no significant problems in its implementation or administration and twelve years of experience under the legislation indicates the following trends:

- Parties are invoking the interest arbitration process less frequently than before the Reform Act.
- In a substantial majority of cases – and virtually all cases during the past nine years – the parties have mutually agreed on the selection of an interest arbitrator instead of having an arbitrator assigned by lot by the Public Employment Relations Commission (Commission or PERC).
- There is a significant trend towards interest arbitrators assisting parties in reaching voluntary settlements, rather than issuing formal awards.

- When disputes do proceed to an award, interest arbitrators are overwhelmingly deciding disputes by conventional arbitration -- the terminal procedure mandated by the Reform Act unless the parties agree to one of the other optional procedures allowed by statute.
- The number of awards issued in each of the last twelve calendar years is substantially less than the average annual number of awards issued under the predecessor statute. In addition, the number of interest arbitration appeals filed with the Commission has been low.

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

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

INTRODUCTION

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

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

In undertaking this charge, the Commission is mindful that interest arbitration has often been the focus of intense discussion by the parties to a specific case and the interest arbitration community as a whole. The Legislature has given interest arbitrators the authority to set contract terms that may significantly affect both management and labor, and participants in the process may at times voice their opinions about the interest arbitration statute. The Commission considers and responds to constituent concerns as appropriate within the existing statutory framework. Substantive policy discussions about the interest arbitration statute are the province of the Legislature, labor and management representatives, and the public in general. Consistent with its neutrality as the agency charged with administering the statute, the Commission has not initiated statutory amendments or taken positions on proposals by others that might compromise the Commission's neutrality. This report describes the Commission's actions to implement and administer the Reform Act in a balanced and impartial manner and in accord with the Legislature's direction.

IMPLEMENTATION AND ADMINISTRATION OF THE REFORM ACT

Overview

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

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

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

- PERC is required to promulgate guidelines for determining comparability of jurisdictions.

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

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

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

In implementing the statute, the Commission also adopted regulations (including the comparability guidelines referred to earlier), modified its computer program to provide for assignment of arbitrators by lot, and, as authorized by the Act, adopted a fee schedule that offsets some of the costs of administering the statute. The regulations were described in the Commission's 1998 report and were readopted, with minor amendments, in July 2001 and again in July 2006. The

regulations readopted in 2006 are included in the Appendix, Tab 2. A description of the Commission's computer program is included in the Appendix, Tab 4, along with a December 2005 recertification by the Commission's expert consultant, confirming that the program makes by-lot appointments in a random manner.

In connection with its statutory responsibility to administer the Reform Act, the Commission values input from members of the interest arbitration community. During the past twelve years, Commission staff have had an ongoing dialogue with arbitrators and a broad range of employee and employer representatives about their experiences under the Reform Act. As an outgrowth of these discussions, the Commission initiated its online information data base and increased its emphasis on the voluntary police and fire mediation program – initiatives that are described on pages 11-12 of this report. The Commission plans to continue this dialogue with the interest arbitration community.

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

Special Panel of Interest Arbitrators

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

arbitrators are selected to hear cases. As noted, the statute requires that if the parties cannot agree on an arbitrator, the Commission will assign an arbitrator by lot from its special panel of arbitrators. *N.J.S.A. 34:13A-16e(1)*. Thus, any member of the Special Panel may be assigned to the most complex and demanding interest arbitration. In recognition of this fact, the Commission concluded that the Special Panel should be composed of only those labor relations neutrals who, in the judgment of the Commission, have the demonstrated ability and experience to mediate and decide the most demanding interest arbitration matters in the most professional, competent and neutral manner. Thus, Commission rules require that a member of the panel must have: (1) an impeccable reputation for competence, integrity, neutrality and ethics; (2) the demonstrated ability to write well-reasoned decisions; (3) a knowledge of labor relations and governmental and fiscal principles relevant to dispute settlement and interest arbitration proceedings; (4) substantial experience as a mediator and an arbitrator; and (5) a record of competent performance on the Commission's mediation, factfinding and grievance arbitration panels (Appendix, Tab 2; *N.J.A.C. 19:16-5.15*).

In February 1996, the Commission appointed a panel of 17 interest arbitrators who met these criteria. Panel members serve for three-year terms and are eligible for reappointment. Since 1996, 16 highly qualified and experienced arbitrators have been added to the Special Panel and 8 arbitrators have retired or resigned. The current panel consists of 25 members. In March 2008, the Commission will consider the reappointment of special panel members to new three-year terms.

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

Continuing Education Programs for Special Panel Members

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

Subsequent programs have built on the foundation established by these initial programs. Several programs have included presentations by experts who advised panel members of recent statutory and regulatory developments, while others have featured distinguished management and labor advocates who discussed their clients'

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

The Commission's most recent programs have focused on budgetary, pension, and health benefits issues. Outside budget and financial experts explained the legislation providing incentives for shared services, joint meetings, and municipal consolidations and limiting increases in property tax levies and they examined the amendment requiring arbitrators to consider the new property tax limits. A pension expert also addressed funding, accounting, and actuarial issues arising under the Public Employees' Retirement System (PERS) and the Police and Firemen's Retirement System (PFRS), with particular emphasis on an explanation of public employers' renewed pension contribution obligations under these systems. The 2007 program also included a review of recent legislative changes concerning the State Health Benefits Program (SHBP), along with a review of the procedural and substantive requirements that pertain to participating SHBP employers.

In addition to providing continuing education for current 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 for these neutrals to become special panel members.

Private Sector Wage Report

In May 1996, the Commission arranged to have the New Jersey Department of Labor and Workforce Development, Division of Labor Market and Demographic Research (NJLWD), prepare the annual private sector wage report required by the Reform Act, *N.J.S.A. 34:13A-16.6*. The first report, prepared in September 1996, shows calendar year changes, through December 31, 1995, in the average private sector wages of individuals covered under the State's unemployment insurance system. Statistics are broken down by county and include a statewide average. Subsequent reports include the same information for calendar years 1996 through 2006.¹ In addition, for calendar years 1997 through 2006, the reports also show changes in average wages for such major industry groups as construction, manufacturing, transportation, wholesale and retail trade, services, finance and insurance, and real estate. Beginning with the 2002 report, the NJLWD uses the North American Industry Classification System (NAICS) to assign and tabulate economic data by industry. NAICS is the product of a cooperative effort on the part of the statistical agencies of the United States, Canada and Mexico. An NJLWD document attached to the 2002, 2003 and 2004 reports describes the system and how it differs from its predecessor, the 1987 Standard Industrial Classification System.

¹The most recent annual report, prepared in September 2007 and included in the Appendix, Tab 3, reflects wage figures for calendar year 2006.

RECENT AGENCY INITIATIVES

Interest Arbitration Resources and Information

As part of its statutory responsibility to neutrally administer the Reform Act, the Commission has aimed to provide the parties with a range of information to enable them to effectively participate in the interest arbitration process. In 2000, all interest arbitration awards issued after January 1996 were posted on the Commission's website, as were the Commission's interest arbitration appeal decisions. In 2006, responding to suggestions from members of the labor relations community, the Commission began posting on its website all public employer contracts received since January 2005. Contracts are searchable by employer or organization name, employer type, and county. If submitted in electronic format, the text of the contract is also searchable. In cooperation with the Rutgers School of Management and Labor Relations Library, the Commission is now adding older contracts to the online data base. It will also explore other ways to expand parties' access to information that will assist them in negotiations and interest arbitration.

Voluntary Mediation Program for Police and Fire Contract Negotiations

Throughout its administration of the Reform Act, the Commission has encouraged strong mediation efforts by interest arbitrators, believing that a voluntary settlement is often a quicker and less expensive way to arrive at a successor

agreement than interest arbitration. In addition, the parties have more control over a mediated settlement than an interest arbitration award.

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

As noted, mediation allows parties to reach a successor agreement more quickly and less expensively than interest arbitration but even if it does not result in an agreement, it can reduce the number of issues to be resolved in interest arbitration, potentially saving the parties time and money in that forum. In addition, the program offers parties the opportunity to become familiar with experienced neutrals who do not ordinarily work as interest arbitrators. If a settlement is not achieved, either party retains its right to file for interest arbitration after contract expiration.

Since January 2006, nineteen uniformed service negotiations units have tried conventional mediation. Settlements were reached in nine cases, interest arbitration was requested in four cases, and negotiations are continuing in the remaining cases.

Settlements were typically achieved within two or three months of the request for mediation.

INTEREST ARBITRATION PETITIONS

AND

AWARDS UNDER THE REFORM ACT

Statistical Overview

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

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

*In some cases, a settlement was reached after a petition was filed but before an arbitrator was appointed. In others, the parties have asked that the appointment of an arbitrator be held in abeyance pending negotiations. In addition, appointments in one calendar year may result from petitions filed in the preceding calendar year.

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

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

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

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

respectively. In 2006 and 2007, 104 petitions were filed each year. The overall decline in filings as compared with the predecessor statute indicates that the parties are reaching voluntary settlements more frequently, without invoking the interest arbitration process.

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

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

Thus, throughout the past twelve years, parties in a substantial majority of cases have mutually selected the arbitrator, and from 1999 through 2007, they have done so in virtually all cases. Of course, the parties need not mutually agree to an arbitrator, and if they do not do so, the Commission will randomly assign an arbitrator by lot.

The Commission views these mutual selection figures as very positive, since the parties are more likely to reach a settlement if they are working with an arbitrator whom they have both selected. It also takes, on average, significantly less time to achieve an arbitrator-facilitated voluntary settlement than to go through interest arbitration hearings and obtain an award. Further, if an award is issued, parties who

have mutually selected an arbitrator are more likely to have confidence in the reasonableness of the award.

The comparatively low number of awards issued each year from 1997 through 2007 indicates that the parties are reaching settlements in many cases, often with the assistance of the interest arbitrator functioning as a mediator. The average number of awards issued annually from 1997 through 2007 (22) is significantly lower than the average number of awards (74) issued each year from 1978 through 1995, and also lower than the average number (39), issued annually from 1993 through 1995, the three-year period immediately preceding the Act's passage. While statistics for the past several years show an inevitable variation in the annual number of awards, the figures also represent a trend toward a lower number of annual awards than in the initial years of the Reform Act. For example, while 37 awards were issued in 1997 and 41 in 1998, only 13 awards were issued in 2006 and only 16 awards were issued in 2007.

This Report contains a 15-year analysis of salary awards (included in the Appendix at Tab 5), showing that for the three calendar years preceding the adoption of the Reform Act and for the first two years it was in place, there was a decline in the average annual salary increases awarded. The average salary increase awarded in 1993 was 5.65%, as compared with 5.01% in 1994; 4.52% in 1995; 4.24% in 1996; and 3.63% in 1997. For awards issued from 1998 through 2007, the average annual awarded salary increases fell within a very narrow range – from 3.64% to 4.05%. See Appendix, Tab 5, pp. 1-2. The increases for 1998 through 2007 are as follows:

1998	3.87%
1999	3.69%
2000	3.64%
2001	3.75%
2002	3.83%
2003	3.82%
2004	4.05%
2005	3.96%
2006	3.95%
2007	3.77%

The salary increase analysis also includes information on reported voluntary settlements – settlements in cases in which a petition for interest arbitration was filed, an arbitrator was appointed, and an arbitrator reported to the Commission the terms of the settlement. These settlements reflect a decline in average salary increases from 1993 through 1999. The average salary increase for reported voluntary settlements was 5.56% for 1993, as compared with 4.98% for 1994; 4.59% for 1995; 4.19% for 1996; 3.95% for 1997; 3.77% for 1998 and 3.71% for 1999. The average salary increase for reported voluntary settlements rose slightly in 2000, 2001, and 2002, with increases of 3.87%, 3.91% and 4.05%, respectively. For 2003 through 2005, the average reported voluntary settlement declined somewhat from the 2002 figure, to 4.01%, 3.91% and 3.94%, respectively. Settlements in 2006 averaged 4.09%, and settlements in 2007 declined to an average of 3.97%.

INTEREST ARBITRATION APPEALS

The following statistics pertain to interest arbitration appeals filed since the 1996 adoption of the Reform Act through December 31, 2007.

Number of Appeals Filed with the Commission	46
Number of Appeals Withdrawn	19
Number of Awards Affirmed	15
Number of Awards Affirmed With modification	2
Number of Awards Vacated and Remanded	10
Leave to Appeal Denied	3
Number of Appeals Pending before Commission	0
Number of Appeals to Appellate Division	4 ²
Number of Appeals Pending before Appellate Division	1
Number of Appeals to Supreme Court	1
Number of Appeals Pending before Supreme Court	0

Several appeals were filed in 1997 and in 1998, resulting in a series of Commission decisions that set forth the Commission's standard of review; interpreted

²Two of the four appeals were withdrawn before the cases were briefed and thus no court decisions were issued.

Reform Act provisions; and provided guidance for arbitrators concerning the analysis required by the Reform Act. After this series of initial decisions, the number of appeals declined and, from 1999 through 2007, the Commission decided between zero and four appeals per year. One decision was issued in 2006 and one decision was issued in 2007.

Overall, 15 awards have been affirmed by the Commission and two awards have been affirmed with a modification – including one case where the modification was reversed by the Courts. Of the ten awards that were vacated and remanded, two were remanded to a new arbitrator and eight were remanded to the original arbitrator. In the first of the cases remanded to the original arbitrator, the parties reached a settlement after the remand and the arbitrator did not issue a new award. In five other remands, the original arbitrator issued a new award that was not appealed by either party. In the seventh remand, the first arbitrator issued a new award that was appealed to the Commission and affirmed. In the eighth remand, the original arbitrator issued a new award that was appealed to the Commission and vacated. The case was consolidated with a subsequent interest arbitration proceeding involving the same parties, in which a different arbitrator had already been appointed. That arbitrator issued an award in the consolidated proceeding that was not appealed by either party.

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

issued an award that was also appealed, this time by the union. That award was affirmed by the Commission.

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

Only one of the Commission's interest arbitration decisions has been reviewed by the Courts. Teaneck Tp. and Teaneck FMBA Local No. 42³. This case is described in the 2006 Biennial Report and the Court decisions in Teaneck are included in the Appendix, Tab 7. An appeal of another decision is now pending in the Appellate Division. Somerset Cty. Sheriff's Office and FOP Lodge 39.⁴

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

⁴P.E.R.C. No. 2007-33, 32 NJPER 372 (¶56 2006), appeal pending App. Div. Docket No. A-1899-06T3.

CONCLUSION

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