

BIENNIAL REPORT

OF THE

NEW JERSEY

PUBLIC EMPLOYMENT RELATIONS COMMISSION

ON THE

POLICE AND FIRE PUBLIC INTEREST

ARBITRATION REFORM ACT AS AMENDED

BY P.L. 2010 c. 105

JANUARY 2012

TABLE OF CONTENTS

	<u>PAGE</u>
INTRODUCTION	1
IMPLEMENTATION AND ADMINISTRATION OF THE ACT	
Overview.....	4
Special Panel of Interest Arbitrators	6
Continuing Education Programs for Special Panel Members	8
Private Sector Wage Report	9
AGENCY INITIATIVES	
Interest Arbitration Resources and Information	10
Voluntary Mediation Program for Police and Fire Contract Negotiations.....	11
INTEREST ARBITRATION PETITIONS AND AWARDS UNDER THE REFORM ACT - Statistical Overview.....	12
INTEREST ARBITRATION APPEALS.....	18
CONCLUSION	21

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

JANUARY 2012

INTRODUCTION

The Police and Fire Public Interest Arbitration Reform Act (Reform Act), *P.L.* 1995, c. 425, *N.J.S.A.* 34:13A-14 *et seq.*, which took effect on January 10, 1996, was amended by *P.L.* 2010, c. 105 after 15 years. (Appendix, Tab 1). The new interest arbitration law took effect on January 1, 2011. The law establishes a 2% cap on arbitration awards during the effective period, fast-tracks the arbitration and appeal processes and makes changes to arbitrator selection, qualifications, and costs to the parties. The specific changes are outlined in the overview section. The law also establishes the Police and Fire Public Interest Arbitration Impact Task Force (“Task Force”) which is comprised of eight members. The Task Force will study the effect and impact of the arbitration award cap on local property taxes, municipal services, compensation rates, and the professional profile of police and fire departments and staffing levels. The Task Force will submit its findings on April 1 of each year, with a final report due April 1, 2014. The reader is directed to the reports of the Task Force that will be posted on the Commission’s website at www.state.nj.us/perc. (Appendix, Tab 3)

To assist the labor relations community in adapting to the new procedures, the Commission has developed Frequently Asked Questions and posted them to the Commission's website. (Appendix, Tab 2) Additionally, the Agency provides constituent outreach to employer and employee organizations at conferences and seminars. The Commission is currently engaged in the rulemaking process and will be publishing new interest arbitration rules for public comment in early 2012.

There have been no significant problems implementing the new law. It's important to note, that this report includes data from 2010 that is under the prior interest arbitration law. Because the Commission has only had one year of experience under the revised law, unlike past Biennial Reports, this report will reserve comments and recommendations on the new law.

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

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

In undertaking this charge, the Commission is mindful that interest arbitration has often been the focus of intense discussion by the parties to a specific case and the interest arbitration community as a whole. The Legislature has given interest arbitrators the authority to issue awards that may significantly affect both management and labor, and participants in the process may at times voice their opinions about the interest arbitration statute. The Commission considers and responds to constituent concerns as appropriate within the existing statutory framework. Substantive policy discussions about the interest arbitration statute are the province of the Legislature, the Task Force, labor and management representatives, and the public in general. Consistent with its neutrality as the agency charged with administering the statute, the Commission has not initiated statutory amendments or taken positions on proposals by others that might compromise the Commission's neutrality. This report describes the Commission's actions to implement and administer the Reform Act and *P.L.* 2010, c. 105 in a neutral and impartial manner and in accord with the Legislature's direction.

IMPLEMENTATION AND ADMINISTRATION OF THE REFORM ACT

Overview

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

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

- Effective date: January 1, 2011;
- The filing of a petition to initiate compulsory interest arbitration shall terminate any other formal impasse resolution proceeding such as mediation or fact-finding;
- The Commission must randomly select by lot and appoint an interest arbitrator to resolve a collective negotiations impasse within one business day after receipt of an interest arbitration petition;
- Interest arbitrators must have knowledge of local government operations and budgeting measures and serve for three-year terms. Current arbitrators have one year to demonstrate compliance with the new standards;
- Members of the interest arbitration panel shall be required to complete annual training approved by the State Ethics Commission;
- Final Offer arbitration is eliminated and the only process is conventional arbitration;
- The completion of interest arbitration hearings and the issuance of an interest arbitration award within 45 days after an arbitrator is appointed;
- Any appeal of an interest arbitration award be filed with the Commission within seven days after the issuance of an award;
- The Commission must issue a written decision within 30 days after it receives an appeal;

- In all cases, an interest arbitration award must be implemented immediately;
- The Commission must adopt a fee schedule for the compensation of interest arbitrators providing for a maximum fee of \$1,000 per day up to a limit of \$7,500 per case;
- The fee of an interest arbitrator who does not issue a decision within the time limits imposed by the law shall be reduced by \$1,000 per day;
- An arbitrator may charge a maximum \$500 cancellation fee;
- Interest arbitration awards must be within the 2.0% limit on the aggregate amount expended by the public employer on base salary items, as defined in the statute, in the twelve months immediately preceding the end of the expired contract and set by N.J.S.A. 34:13A-16.7 for contracts falling within the window period established by N.J.S.A. 34:13A-16.9.
- During the interest arbitration proceeding the parties shall submit written evidence of the financial impact of their final offers on the taxpayers and, that the arbitrator shall certify in the interest arbitration award, that the statutory limitations imposed by the local levy cap were taken into account. Aggregate value may be distributed over the term of agreement.
- The arbitrator is required to certify the statutory limits imposed on local levy cap was taken into account;
- Where a party has refused to engage in collective negotiations within the time periods mandated by N.J.S.A. 34:13A-16a(1), the other party may file an unfair practice charge, which shall not delay the impasse resolution process, but, the losing party shall be assessed for all administrative and legal costs associated with the filing and resolution of the charge;
- All collective negotiations agreements must be submitted to PERC within 15 days of contract execution for posting on the PERC website.
- Establish an eight member Task Force within 30 days of effective date to hold its first meeting within 60 days of the new law.

- Four members appointed by the Governor; two members appointed by the Senate President; and two members appointed by the Speaker of the General Assembly.
- Chair of PERC is executive non-voting member;
- Task Force may hold public hearings;
- Task Force to study effect and impact of cap upon local property taxes, collective bargaining agreements; arbitration awards; municipal services; municipal expenditures;
- Task force to study the interest arbitration process and its continued use;
- Task Force to report to Governor and Legislature April 1 of each year, final report April 1, 2014;
- Beginning April 1, 2014, the 2% arbitration cap shall become inoperative for all parties except those whose contracts expired prior to April 1, 2014, but for whom a final settlement has not been reached. When final settlement in all such negotiations is reached, the 2% arbitration cap shall expire.

In implementing the revised statute, the Commission has proposed new regulations that will be published for public comment in early 2012.

Special Panel of Interest Arbitrators

One of the Commission's most important responsibilities under the Act is maintaining a panel of highly qualified and experienced interest arbitrators. The Act makes it critical for the Commission to have an extremely competent panel, because it fundamentally changed the manner in which interest arbitrators are selected to hear cases. As noted, the statute requires that the Commission assign an arbitrator by lot from its Special Panel of Interest Arbitrators. Thus, any member of the Special Panel may be assigned to the most complex and demanding interest arbitration. In

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

Panel members serve for fixed three-year terms and are eligible for reappointment. In February 1996, the Commission appointed the initial panel of 17 interest arbitrators who met these criteria. In 2010, the panel consisted of 25 members. 21 arbitrators have retired or resigned over the past two years. In March 2011, the Commission reappointed the special panel and added four highly qualified and experienced arbitrators. The current panel consists of 8 members who meet the Commission's high standards.

The Commission continues to utilize its computer program to provide for assignment of arbitrators by lot. A description of the Commission's computer program is included in the Appendix, Tab 4, along with a December 2011

recertification by the Commission's expert consultant, confirming that the program makes by lot appointments in a random manner.

Continuing Education Programs for Special Panel Members

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

The Commission's most recent programs have focused on the new interest arbitration law and benefits issues. Outside budget and financial experts explained the legislation providing incentives for shared services, joint meetings, and municipal consolidations and limiting increases in property tax levies. They also examined the property tax levy cap. A pension expert addressed funding, accounting, and actuarial issues arising under the Public Employees' Retirement System (PERS) and the Police and Firemen's Retirement System (PFRS), with particular emphasis on an explanation of public employers' renewed pension contribution obligations under these systems. The 2009 program included a presentation on local government budgets; levy caps; the cap base; pensions; and revenue issues including ratables, collections and the State deficit. The arbitrators were also instructed in decision writing best practices. The 2010 program included updates on State and local

government revenue, local government budgets, levy and spending caps, and pensions. The Commission held two training sessions in 2011 in January and October. The programs updated the arbitrators on the Commission's implementation of the new law and included ethics training; review of draft proposed interest arbitration rules; local government finances; health benefit and pension reform changes; and application and implementation of the levy cap law.

In addition to providing continuing education for current Special Panel members, the Commission has an ongoing commitment to identifying talented and experienced labor relations neutrals who have the potential to become excellent interest arbitrators. It provides supplemental education to these neutrals. The 2010 and 2011 programs focused on municipal budget issues and the legislation affecting the parties - including the 2% property tax levy cap.

Private Sector Wage Report

In May 1996, the Commission arranged to have the New Jersey Department of Labor and Workforce Development, Division of Labor Market and Demographic Research (NJLWD), prepare the annual private sector wage report required by the Reform Act, *N.J.S.A. 34:13A-16.6*. The first report, prepared in September 1996, shows calendar year changes, through December 31, 1995, in the average private sector wages of individuals covered under the State's unemployment insurance system. Statistics are broken down by county and include a statewide average. Subsequent reports include the same information for calendar years 1996 through

2010.¹ In addition, for calendar years 1997 through 2010, the reports also show changes in average wages for such major industry groups as construction, manufacturing, transportation, wholesale and retail trade, services, finance and insurance, and real estate. Beginning with the 2002 report, the NJLWD uses the North American Industry Classification System (NAICS) to assign and tabulate economic data by industry. NAICS is the product of a cooperative effort on the part of the statistical agencies of the United States, Canada and Mexico. A NJLWD document attached to the 2002 through 2009 reports describes the system and how it differs from its predecessor, the 1987 Standard Industrial Classification System.

AGENCY INITIATIVES

Interest Arbitration Resources and Information

As part of its statutory responsibility to neutrally administer the Reform Act, the Commission has aimed to provide the parties with a range of information enabling them to effectively participate in the interest arbitration process. In 2000, all interest arbitration awards issued after January 1996 were posted on the Commission's website, as were the Commission's interest arbitration appeal decisions. In 2006, responding to suggestions from members of the labor relations community, the Commission began posting on its website all collective negotiations agreements filed pursuant to a public employer's statutory obligation to file contracts with the Commission. Contracts are searchable by employer or organization name, employer

¹The most recent annual report, prepared in August 2011 and included in the Appendix, Tab 3, reflects wage figures for calendar years 2009 and 2010.

type, and county. In cooperation with the Rutgers School of Management and Labor Relations Library, the Commission continues to add older contracts to the online data base. There are currently over 15,400 contracts online. The Commission will also explore other ways to expand parties' access to information that will assist them in negotiations and interest arbitration.

Voluntary Mediation Program for Police and Fire Contract Negotiations

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

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

INTEREST ARBITRATION PETITIONS

AND

AWARDS

Statistical Overview

The following statistics reflect the number of petitions filed by calendar year, arbitrators appointed and awards issued under the Interest Arbitration Act since 2000²: In the following charts, cases may be filed, appealed, decided or withdrawn in different calendar years. Cases are reported in the year which the event occurred.

Year	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
IA Filed	106	81	89	120	102	113	104	104	104	117	121	23
Arbitrators Appointed	80	76	79	101	95	107	82	107	100	114	110	34*
Mutual Selection	74	73	77	99	95	106	81	106	99	112	104	11^
By Lot Appt.	6	3	2	2	0	1	1	1	1	2	1	23

*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.

² See 2010 Biennial Report for awards from 1995 through 1999 available on the Commission website www.nj.gov/perc.

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

Year	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Awards Issued	24	17	16	23	27	11	13	16	15	19	14	34
Terminal Procedure Used for Pre January 2011 Filings												
Conventional	23	17	16	22	26	11	12	12	15	18	13	34
Final Offer	1	0	0	1	1	0	1	1	1	1	1	0

The number of awards issued over the last two years compared to the previous calendar years increased significantly. The 2010 Biennial Report indicated the total of awards issued for calendar years 2008 & 2009 was 34. The total number of awards issued for calendar years 2010 & 2011 was 48, a 28 % increase. By comparison, the average number of awards issued for the previous five years ranged from a low of 13 to a high of 19. Comparatively, the voluntary settlements generally were much higher than the awards. The total number of settlements reported to the Commission for calendar year 2010 was 47 and for 2011 it was 38.

The bulk of the awards/settlements issued in 2011 were filings from previous years that were still open in 2011. Those awards were issued in accordance with applicable provisions of the law in effect prior to January 1, 2011. The Commission began 2011 with 187 open cases. The Commission received a total of 100 awards/settlements during 2011. This reflects a 47% decrease in the backlog of open cases.

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

Beginning in 2011, the total number of interest arbitration petitions remaining open from filings back to 2008 to the present was approximately 87 cases. .

The mutual selection rate continued to peak throughout the previous five (5) years. Mutual selection by the parties of an interest arbitrator is eliminated effective with new law. Arbitrator appointments are done through a certified computer generated random selection process.

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

The thrust of many of the changes in the law addresses the compensation components of the awards/settlements. A review of the overall number of awards issued for 2010 and 2011 indicate significant changes in salary. The statistics show a great deal of variation as they relate to previous years. There is a continual decrease in the overall settlement rates and awarded salaries. Awards contain comprehensive data and creative solutions to many financially troubled jurisdictions.

The Reform Act of 2008 created substantial changes in the overall results of awards, settlements and filings. Effective January 1, 2011, additional changes were deemed necessary for the interest arbitration law resulting in the reform of the governing statute and act. The new guidelines maintain the nine criteria essential to issuing any award, but also introduced a 45-day processing deadline; reduced arbitrator's fees; incorporated a 2% cap on base salary; and established a definition of a base salary. The awards issued during the previous time period reflect a continued decline in the average salary increase. This trend occurred after the passage of the 2008 reform. The average awarded salary increase for calendar year 2010 was 2.5%. The increases for 2011 reduced again to 2.05%. The average annual awarded salary increase ranged from 3.95% in 2006 to 2.05% in 2011. The awards reflect a combination of customized results that are indicative of the faltering economy. Many awards address modifications of the health benefits, prior to the passage of *P.L.* 2011, C. 78. They also incorporate modified increases to the non-economic items as well as items now addressed in other legislation. See Appendix, Tab 6, pp. 1-2.

The increases for 1993 through 2011 are:

1993	5.65%
1994	5.01%
1995	4.52%
1996	4.24%
1997	3.63%
1998	3.87%
1999	3.69%

2000	3.64%
2001	3.75%
2002	3.83%
2003	3.82%
2004	4.05%
2005	3.96%
2006	3.95%
2007	3.77%
2008	3.73%
2009	3.75%
2010	2.50%
2011	2.05%

The quarterly issued interest arbitration salary analysis also reports the voluntary settlements. These are cases where the parties file a petition for interest arbitration, an arbitrator is appointed and the parties resolve their dispute with the assistance of the arbitrator and then he or she reports that settlement to the Commission. These settlements also reflect a decline in the average salary increases. The reported settlement for 2006 was 4.09%. Using 2006 as the starting point, annually the reported settlements declined to a low in 2010 of 1.86% followed by 1.87% in 2011. Some settlements included a zero percent increase for one or multiple years of the agreement; while others included changing health plans, no increase to longevity or other stipend allowances.

The reported voluntary settlements for 1993 through 2011 are:

1993	5.56%
1994	4.98%
1995	4.59%
1996	4.19%
1997	3.95%
1998	3.77%
1999	3.71%
2000	3.87%
2001	3.91%
2002	4.05%
2003	4.01%
2004	3.91%
2005	3.94%
2006	4.09%
2007	3.97%
2008	3.92%
2009	3.60%
2010	1.86%
2011	1.87%

INTEREST ARBITRATION APPEALS

The following statistics pertain to interest arbitration appeals filed since the 1996 adoption of the Reform Act through December 31, 2011. Some cases may be appealed and disposed in different calendar years.

	As of 12/31/09 ³	2010	2011
Number of Appeals Filed with the Commission	51	14	13
Number of Appeals Withdrawn	20	5	4
Number of Awards Affirmed	17	3	8 ⁴
Number of Awards Affirmed with Modification	2	1	1
Number of Awards Remanded	14	2	4
Leave to Appeal Denied	3	0	1

³ This column reflects the cumulative total from 1996 through 12/31/2009.

⁴ Includes affirmance of appealed awards issued after a Commission remand of the initial award.

Number of Appeals Pending before Commission	-	-	1
Number of Appeals to Appellate Division	5	2	5
Number of Appeals Pending before Appellate Division	-	-	3
Number of Appeals to Supreme Court	1	0	0
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 Reform Act provisions; and provided guidance for arbitrators concerning the analysis required by the Reform Act. After this series of initial decisions, the number of appeals declined from 1999 through 2008, but have increased significantly in 2010 and 2011. From 1999 through 2008, the Commission decided between zero and four appeals per year. In 2010, there was nearly a 300% increase in the number of appeals filed from five in 2009 to 14 in 2010. There were 51 total appeals filed in the first 14 years of the Reform Act (1996-2009) and 27 total appeals combined for 2010 and 2011. The Commission issued six decisions in 2010 and 13 decisions in 2011. Nine appeals were withdrawn and two appeals are

pending. Pursuant to the reforms set forth in *P.L.* 2010, c. 105, the Commission must decide all appeals filed after January 1, 2011 within 30 days.

Since 1993, 28 awards have been affirmed by the Commission and four awards have been affirmed with a modification – including one case where the modification was reversed by the Courts. Of the 20 awards that were remanded, three were remanded to a new arbitrator and 17 were remanded to the original arbitrator. There have been seven requests for special permission to appeal an interest arbitrator's interim ruling, of which all but one were denied.

From 1996 through 2011, three of the Commission's interest arbitration decisions have been reviewed by the Courts. *Teaneck Tp. and Teaneck FMBA Local No. 42*⁵, *Somerset Cty. Sheriff's Office and FOP Lodge 39*⁶, and *Fort Lee and PBA Local No. 245*.⁷

Teaneck is described in the 2006 Biennial Report and *Somerset* is described in the 2010 Biennial Report. The Commission's decision in *Fort Lee* was affirmed by the Appellate Division. In *Fort Lee*, after an initial remand to the arbitrator to address comparability to private and public sector employees in general, as well as the \$1 million

⁵P.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).

⁶P.E.R.C. No. 2007-33, 32 *NJPER* 372 (¶56 2006), aff'd 34 *NJPER* 21(¶8 App. Div. 2008).

⁷P.E.R.C. No. 2009-64, 35 *NJPER* 149 (¶55 2009), appeal of decision on remand P.E.R.C. No. 2010-17, 35 *NJPER* 352 (¶118 2009), aff'd 2011 *N.J. Super. Unpub.* LEXIS 931.

the arbitrator projected in savings to the Borough from his award of a new salary schedule given the Borough's hiring freeze, the Commission had affirmed an award involving a unit of police officers. The employer appealed the Commission's decision to the Appellate Division and the Appellate Division affirmed. Appendix, Tab 8.

There are three appeals of Commission interest arbitration decisions pending before the appellate division.⁸

CONCLUSION

The Reform Act was in place for fifteen years. The amendments enacted in 2010 have been in place for less than one year. There have been no significant problems in their implementation. The Commission is not recommending any statutory changes as that is the purview of the Task Force. In administering the Act, the Commission has proposed new interest arbitration rules; will continue to encourage pre-arbitration mediation; will maintain a highly qualified Special Panel of Interest Arbitrators; will continue to provide panel members with pertinent continuing education; and will process interest arbitration appeals within 30 days.

⁸ *Hunterdon Cty. and FOP Lodge No. 94*, P.E.R.C. No. 2011-75, 37 *NJPER* 169 (¶55 2011), app. pending; *Hunterdon Cty. and FOP Lodge No. 29*, P.E.R.C. No. 2011-80, 37 *NJPER* 205 (¶65 2011), app. pending; and *City of Camden v. Int'l Assoc. of Firefighters, Local 788*, P.E.R.C. No. 2012-18, _ *NJPER* _ (¶__ 2011)_____

APPENDIX

TAB

Police and Fire Public Interest Arbitration Reform Act

***P.L., 2010, c. 105*..... 1**

Frequently Asked Questions 2

Task Force Interim Report 3

Description and Certification of Computer Program

for Random Assignment of Arbitrators By Lot 4

Private Sector Wage Survey. 5

Salary Increase Analysis -- Interest Arbitration 6

Public Employment Relations Commission --

Interest Arbitration Appeal Decisions 7

Court Decisions Reviewing Commission

Interest Arbitration Appeal Decisions..... 8

34:13A-14a. Short title.

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

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

34:13A-15. Definitions.

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

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

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

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

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

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

not delay or impair the impasse resolution process.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) The decision of an arbitrator or panel of arbitrators shall include an opinion and an award, and shall be rendered within 45 days of the commission's assignment of that arbitrator.

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

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

(a) Within seven days of receiving an award, an aggrieved party may file notice of an appeal of an award to the commission on the grounds that the arbitrator failed to apply the criteria specified in subsection g. of this section or violated the standards set forth in N.J.S.2A:24-8 or N.J.S.2A:24-9. The appeal shall be filed in a form and manner prescribed by the commission. In deciding an appeal, the commission, pursuant to rule and regulation and upon petition, may afford the parties the opportunity to present oral arguments. The commission may affirm, modify, correct or vacate the award or may, at its discretion, remand the award to the same arbitrator or to another arbitrator, selected by lot, for reconsideration. The commission's decision shall be rendered no later than 30 days after the filing of the appeal with the commission.

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

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

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

(6) The parties shall share equally the costs of arbitration subject to a fee schedule approved by the commission. The fee schedule shall provide that the cost of services provided by the arbitrator shall not exceed \$ 1,000 per day. The total cost of services of an arbitrator shall not exceed \$ 7,500. If the parties cancel an arbitration proceeding without good cause, the arbitrator may impose a fee of not more than \$ 500. The parties shall share equally in paying that fee if the request to cancel or adjourn is a joint request. Otherwise, the party causing such cancellation shall be responsible for payment of the entire fee.

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

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

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

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

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

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

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

(4) Stipulations of the parties.

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

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

(7) The cost of living.

(8) The continuity and stability of employment including seniority rights and such other factors not confined to the

foregoing which are ordinarily or traditionally considered in the determination of wages, hours, and conditions of employment through collective negotiations and collective bargaining between the parties in the public service and in private employment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34:13A-16.4. Biennial reports.

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

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

34:13A-16.5. Rules, regulations.

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

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

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

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

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

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

a. As used in this section:

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

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

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

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

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

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

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

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

(1) four to be appointed by the Governor;

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

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

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

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

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

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

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

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

f. The task force shall report its findings, along with any recommendations it may have, to the Governor and the Legislature annually, on or before April 1 of each year. The task force's final report due on or before April 1, 2014 shall include, in addition to any other findings and recommendations, a specific recommendation for any amendments to the arbitration award cap. Upon the filing of its final report on or before April 1, 2014, the task force shall expire.

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

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

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

34:13A-16.9. Effective date

January 30, 2012

Frequently Asked Questions Interest Arbitration Procedures

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

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

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

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

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

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

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

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

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

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

5 Q When must a response to a petition be filed?

A The non-petitioning party shall notify the Commission in writing of all issues in dispute within five days of receipt of the petition.⁴

6 Q When and how are arbitrators selected?

A On the first business day after the Commission receives a petition, the Commission shall select an arbitrator using a computer program that will make a random selection from its special panel of interest arbitrators.⁵ Mutual selection of an interest arbitrator is no longer permitted.

7 Q May the parties still invoke mediation or fact-finding?

A Yes, but those proceedings terminate immediately upon the filing of an interest arbitration petition.⁶

8 Q What is the terminal procedure in interest arbitration?

A The unsettled issues shall be determined by conventional arbitration only.⁷

9 Q What are the parties' responsibilities at an arbitration hearing?

A The parties shall submit their final offers on economic and non-economic issues in dispute. In addition to presenting evidence relevant to the nine statutory factors that an arbitrator must consider in rendering an award, all parties shall introduce evidence regarding the limitations imposed upon the local unit's property tax levy and present written estimates of the financial impact of their last offer on the taxpayers with the submission of their last offer.⁸

10 Q When must an arbitration award be issued?

A The arbitrator shall issue an award within 45 days of assignment.⁹ An arbitrator who fails to render a timely award shall be fined \$1,000 for each day the award is late.¹⁰

11 Q When will the award be implemented?

A An arbitrator's award shall be implemented immediately.¹¹

12 Q How can a party appeal an arbitration award that is issued after January 1, 2011, but was docketed under the former law?

A For any award received after January 1, 2011, within seven days of receiving an award, an aggrieved party may file a notice of appeal with the Commission. As a decision on an appeal must be issued within 30 days, the Commission has suspended application of the briefing schedule in N.J.A.C.

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

13 Q When will the Commission decide an appeal?

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

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

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

15 Q What are the costs?

A The parties share equally in the costs of arbitration. The arbitrator's fee shall not exceed \$1,000 per day and the total cost of the services of the arbitrator shall not exceed \$7,500. If the parties cancel an arbitration hearing without good cause, the arbitrator may impose a \$500 fee. The parties shall share equally in paying that fee if the request to cancel or adjourn is a joint request. Otherwise, the party causing such cancellation shall be responsible for payment of the entire fee.¹⁴

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

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

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

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

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

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

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

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

A. "Base salary" includes:

1. The salary set forth in a salary guide or table and any amount provided for salary increments.
2. Any amount provided for longevity or lenth of service.
3. It also shall include any other item agreed to by the parties, or any other item that was included in the base salary as understood by the parties in the prior contract.
4. Base salary shall not include non-salary economic issues, pension and health and medical insurance costs.
5. "Non-salary economic issues" means any economic issue that is not included in the definition of base salary.)¹⁸

EXAMPLES

How does the new law apply?

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

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

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

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

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

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

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

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

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

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

(IA petition filed after new law effective date)

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

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

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

(IA petition filed after new law effective date)

Footnotes

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

2011 REPORT

OF THE

POLICE AND FIRE PUBLIC INTEREST

ARBITRATION IMPACT TASK FORCE

TO THE GOVERNOR AND LEGISLATURE

June 17th, 2011

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

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

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

Role of the Task Force

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

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.

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

The Task Force is required to report its findings, along with any recommendations it may have, to the Governor and the Legislature annually, on or before April 1 of each year. The Task Force's final report due on or before April 1, 2014 shall include, in addition to any other findings and recommendations, a specific recommendation for any amendments to the arbitration award cap. Upon the filing of its final report on or before April 1, 2014, the task force shall expire.

2011 Report of the Task Force

Notwithstanding the appointment of the Task Force in February 2011, the Task Force was able to hold meetings on February 22 and March 30, 2011. At its first meeting, David Cohen was selected as the Chairperson and Robert Fagella was selected as the Vice-Chair.

As of the date of this report, it should be noted that there have not been any filings for interest arbitration since January 1, 2011, which also involve a collective negotiations agreement which expired on or after January 1, 2011. Thus, the Task Force does not yet have any awards to analyze and interpret concerning the full impact of the law. Since January 1, 2011, there have been twelve petitions for interest arbitration involving collective negotiations agreements which expired prior to January 1, 2011. While those petitions involve collective negotiations agreements which expired prior to January 1, 2011, they still will be subject to the procedural aspects of the law (but not the 2.0% cap provisions). Currently, there are four interest arbitrators ready to serve under the new law and four more are waiting until their schedules permit taking new cases.

It is anticipated that parties which might be subject to the 2.0% cap may try to reach more voluntary agreements, or use mediation and fact-finding prior to filing for interest arbitration. One of the items that the Task Force will review in the coming year is the increase in requests for mediation and fact-finding as compared to the same time period prior to enactment of the new interest arbitration statute. The Task Force will also review whether voluntary settlements are in general conformance with the new percentage caps. Further, we will need to review whether PERC's resources for mediation and fact-finding need to be adjusted and how the new procedures for appeals of interest arbitration awards are working.

In the interim, the Task Force has made recommendations to PERC regarding the compilation and reporting of interest arbitration awards. PERC will be working with the Division of Local Government Services of the Department of Community Affairs to update PERC's database of current public sector collective negotiations agreements. The Task Force is aware that N.J.S.A. 34:13A-8.2 always has required public employers to "file with the commission a copy of any contracts it has negotiated with public employee representatives following the consummation of negotiations."¹ Compliance with that provision, however, has not been consistent and, in the law enforcement area, such data is critical to the Task Force to complete its obligations. By May 15, 2011, or immediately thereafter, PERC will be sending reminders to public employers of the requirement to submit agreements to PERC for its database.

¹N.J.S.A. 34:13A-16.8(d)(2) also provides that, in order to facilitate the work of the task force, PERC is required to post on its website all collective negotiations agreements and interest arbitration awards entered or awarded after the date of enactment, including a summary of contract or arbitration award terms in a standard format developed by the Public Employment Relations Commission to facilitate comparisons. All collective negotiations agreements shall be submitted to PERC within 15 days of contract execution.

Beginning in the next fiscal year, DLGS will require certification of submission of all current collective negotiations agreements to PERC as a condition of budget submission to DLGS.

The Task Force is also working with PERC to complete a worksheet to assist with the compilation of financial data by the parties necessary for the interest arbitration process. The worksheet will ask the parties to identify what “base salary”² items existed in the expired collective negotiations agreement and the total cost of those items in the 12 months preceding expiration of the collective negotiations agreement. The parties will then identify the percentage and dollar impact that will be caused, for any adjustments to the identified base salary items, for the duration of the successor collective negotiations agreement. The worksheet will have to be certified as to its accuracy by the representative of the party submitting the data. Since much of the financial information is in the hands of the public employer, the Task Force is reviewing ways to remind the public employer of its responsibility to compile the information necessary to complete this worksheet and how the time needed to provide such financial information, or information disputes, will be addressed.

The Task Force anticipates that its April 2012 report will have much more information and data to provide in connection with its statutory responsibility.

² "Base Salary" is defined in N.J.S.A. 34:13A-16.7(a) as the salary provided pursuant to a salary guide or table and any amount provided pursuant to a salary increment, including any amount provided for longevity or length of service. It also shall include any other item agreed to by the parties, or any other item that was included in the base salary as understood by the parties in the prior contract. Base salary shall not include non-salary economic issues, pension and health and medical insurance costs.

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New Jersey Public Employment Relations Commission

Interest Arbitrator By-Lot Selection
Program:

Random Number Generation
Testing for Re-Certification

By

Francis A. Steffero, PhD, CISA

December 27, 2011

I. INTRODUCTION

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

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

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

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

In 2011, the Lotus Notes system was retested to confirm that the computer assisted system: complies with the interest arbitrator appointment procedures amended by L. 2010 c. 105 effective January 1, 2011; assigned interest arbitrators in a random manner; and followed the methodology from the past studies (Steffero, 2005, 2009). This PRNG (Pseudo Random Number Generator) test was not repeated because there had been no changes to the IBM random number generator between 2009 and 2011. The Completed Application Test was performed on November 15, December 22 and December 23, 2011. The results of the November 15 and December 22 testing identified the need to improve the interest arbitrator selection process for very small arbitrator pool sizes. SSI installed a programming update on December 23 and subsequent testing confirmed that the system performed successfully with very small pool sizes to select interest arbitrators in a random manner.

II. BACKGROUND INFORMATION

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

Donald Knuth (1981, 1998) devoted Volume II of the classic, seven volume series called The Art of Computer Programming, to semi-numerical algorithms, and Chapter 3 in Volume II thoroughly examined random numbers generated by digital computers. The 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.

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

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

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

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

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

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

III. METHODOLOGY

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

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

Production Server Environment

All certification testing was performed on the production environment at PERC. The major components of the environment at PERC were the server hardware, operating system and Lotus Notes Server. The production server hardware was a Hewlett-Packard ProLiant, DL380 G4 server with dual 3.6 gigahertz processors, 4 gigabytes of random access memory (RAM) and a high performance, SCSI disk subsystem. The production server operating system was Windows 2003 Server, Standard Edition, Version 5.2, and Service Pack 1, by Microsoft Corporation. The Lotus software version was Lotus Domino Server, Release 7.1 for Windows, January 17, 2006. The server hardware, operating system, and Lotus Notes software used for the PERC system were consistent with generally accepted standards for high performance, production server environments at the time of this study.

There were no changes in the production environment between the 2009 and 2011 re-certification testing. Therefore, the PRNG Test was not performed. A description of the test is included 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 eight arbitrators behaved in a random manner, an automated test was executed 300 times and the results were recorded, analyzed and presented in Table 2, Test 1, on December 23, 2011. The automated test script was executed two more times to produce Test 2 and Test 3, respectively, on that date 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 37.5 times ($300/8 = 37.5$), the second arbitrator 37.5 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.

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

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 8 interest arbitrators is behaving in a random manner.

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

Actual Arbitrator	Test 1	Test 2	Test 3
1	33	43	39
2	33	43	35
3	36	30	38
4	37	38	33
5	39	31	30
6	46	36	46
7	35	48	27
8	41	31	52
k=8	300	300	300
Chi-Square	3.63	8.37	12.75

At the .01 Level of Significance with $df = 7$, Chi-square must be less than 18.48.
The test indicates that the results do not differ from a random distribution.

V. CONCLUSION

The study confirmed that the random behavior of the computer-assisted method is consistent with the requirements set forth in N.J.S.A. 34:13A-16e and N.J.A.C. 19:16-5.6. The pseudo-random number generator provided by IBM/Lotus behaved in a random manner based on prior testing (Steffero, 2009). The computer-assisted processes developed by Specialty Systems, Inc. and modified on December 23, 2011, for selecting interest arbitrators by-lot behaved in a random manner.

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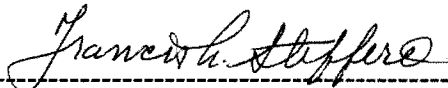
Signature Page

I hereby certify to the authenticity of the report entitled:

New Jersey Public Employment Relations Commission

Interest Arbitrator By-Lot Selection
Program:

Random Number Generation
Testing for Re-Certification

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

Francis A. Steffero, PhD, CISA

A handwritten date "December 27, 2011" is written over a horizontal dashed line.

Date



**STATE OF NEW JERSEY
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August 25, 2011

Attached is a report of private sector wage changes compiled by the New Jersey Department of Labor and Workforce Development ("NJLWD"). The first table shows changes in average wages in employment for major industry groups in New Jersey between 2009 and 2010. The calculations were made by dividing total wages paid by covered private sector employers in particular industry groups by the number of jobs reported by those employers at their work sites. Table one also shows changes in the average wages of state and local government jobs covered under the state's unemployment insurance system, as well as changes in the average wages of federal government jobs in New Jersey covered by the federal unemployment insurance system.

The second table shows changes in the average wages of private sector jobs covered under the state's unemployment insurance system between 2009 and 2010. Statistics are broken down by county and include a statewide average. These calculations were made by dividing total wages paid by covered private sector employers by the number of jobs reported by those employers at their work sites.

As was the case last year, the first table in this report uses the North American Industry Classification System (NAICS) to assign and tabulate economic data by industry. Prior NJLWD Reports had used the 1987 Standard Industrial Classification (SIC) system to assign and tabulate such data. The attached document from the NJLWD website describes NAICS and explains the major differences. Also attached is a document explaining "covered employment" for purposes of the New Jersey Unemployment Compensation Law.

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

**NEW JERSEY
AVERAGE ANNUAL WAGES
FOR JOBS COVERED BY UNEMPLOYMENT INSURANCE
BY NAICS INDUSTRY SECTOR
2009 and 2010**

NAICS Industry Sector	2009	2010	Net Change	% Change
Total Private Sector *	\$54,542	\$55,742	\$1,200	2.2%
Utilities	\$95,466	\$99,545	\$4,079	4.3%
Construction	\$60,588	\$60,767	\$179	0.3%
Manufacturing	\$71,374	\$74,131	\$2,757	3.9%
Wholesale Trade	\$74,113	\$76,808	\$2,695	3.6%
Retail Trade	\$29,677	\$29,988	\$311	1.0%
Transportation/Warehousing	\$46,622	\$47,782	\$1,160	2.5%
Information	\$83,562	\$86,407	\$2,845	3.4%
Finance/Insurance	\$97,368	\$104,418	\$7,050	7.2%
Real Estate/Rental/Leasing	\$51,779	\$54,260	\$2,481	4.8%
Professional/Technical Services	\$86,279	\$88,448	\$2,169	2.5%
Management of				
Companies/Enterprises	\$124,784	\$132,715	\$7,931	6.4%
Administrative/Waste Services	\$36,752	\$37,245	\$493	1.3%
Educational Services	\$43,071	\$44,119	\$1,048	2.4%
Health Care/Social Assistance	\$47,093	\$47,093	\$0	0.0%
Arts/Entertainment/Recreation	\$33,053	\$33,651	\$598	1.8%
Accommodation/Food Service	\$20,132	\$20,323	\$191	0.9%
Other Services **	\$32,090	\$33,299	\$1,209	3.8%
Total Government	\$58,424	\$59,736	\$1,312	2.2%
Federal Government	\$69,636	\$70,353	\$717	1.0%
State Government	\$62,511	\$63,263	\$752	1.2%
Local Government	\$55,442	\$56,966	\$1,524	2.7%
TOTAL	\$55,173	\$56,385	\$1,212	2.2%

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

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

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

**PRIVATE SECTOR
AVERAGE ANNUAL WAGES
FOR JOBS COVERED BY UNEMPLOYMENT INSURANCE
BY COUNTY
2009 AND 2010**

County	2009	2010	% Change
Atlantic	\$ 36,354	\$ 36,929	1.6%
Bergen	\$ 57,170	\$ 58,145	1.7%
Burlington	\$ 47,562	\$ 48,967	3.0%
Camden	\$ 44,558	\$ 45,188	1.4%
Cape May	\$ 29,337	\$ 29,926	2.0%
Cumberland	\$ 37,068	\$ 37,392	0.9%
Essex	\$ 56,159	\$ 57,556	2.5%
Gloucester	\$ 39,756	\$ 40,402	1.6%
Hudson	\$ 65,699	\$ 69,441	5.7%
Hunterdon	\$ 56,127	\$ 54,358	-3.2%
Mercer	\$ 58,469	\$ 61,481	5.2%
Middlesex	\$ 56,197	\$ 57,231	1.8%
Monmouth	\$ 46,391	\$ 46,665	0.6%
Morris	\$ 68,770	\$ 70,005	1.8%
Ocean	\$ 35,198	\$ 35,407	0.6%
Passaic	\$ 45,765	\$ 46,068	0.7%
Salem	\$ 49,489	\$ 51,168	3.4%
Somerset	\$ 75,264	\$ 76,010	1.0%
Sussex	\$ 36,771	\$ 36,729	-0.1%
Union	\$ 58,041	\$ 58,949	1.6%
Warren	\$ 43,609	\$ 44,948	3.1%
Total			
Private Sector*	\$ 54,542	\$ 55,742	2.2%

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

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

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

APPENDIX

Explanation of "Covered Employment"

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

The term "employment" does not include the following:

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

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

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

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

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

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



PUBLIC EMPLOYMENT RELATIONS COMMISSION

SALARY INCREASE ANALYSIS

INTEREST ARBITRATION

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 ³	13	2.05%	38	1.87%
1/1/010-12/31/2010	16 ₁	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 ²	4.52%	44	4.59%
1/1/94 - 12/31/94	35	0 ²	5.01%	56	4.98%
1/1/93 - 12/31/93	46	0 ²	5.65%	66	5.56%

¹Does not include awards on appeal.

²Includes only settlements in impasses for which an arbitrator was assigned.

³Awards subject to new law: 7

Avg. settlement for POST 2011 filings: 1.96% - various adjustments to guides; freezing steps; increase top step only; no retro; deferred increases.

P.E.R.C. NO. 2010-73

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF TRENTON,

Petitioner,

-and-

Docket No. IA-2007-016

TRENTON FMBA LOCAL NO. 6,

Respondent.

SYNOPSIS

The Public Employment Relations Commission affirms, with modification, an interest arbitration award. The City of Trenton appealed the award of a 24/72 work schedule on a trial basis and that driver's assignments be made by seniority. The Commission modifies the award to provide that the FMBA has the burden of justifying the continuation of the 24/72 schedule in any post-trial period arbitration proceedings. The Commission also modifies the award to remove the restrictions placed on the evidence the parties may present in the event they arbitrate a work schedule dispute at the end of the trial period. The Commission holds that the arbitrator's award of driver's pay to the most senior qualified employee involves a permissively negotiable subject and there is substantial credible evidence to support that aspect of the award.

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

P.E.R.C. NO. 2010-73

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF TRENTON,

Petitioner,

-and-

Docket No. IA-2007-016

TRENTON FMBA LOCAL NO. 6,

Respondent.

Appearances:

For the Petitioner, Knapp, Trimboli & Prusinowski, LLC
(Stephen E. Trimboli, of counsel and on the brief;
Molly S. Marmion, on the brief)

For the Respondent, Fox & Fox, LLP (David I. Fox, of
counsel; Lynsey A Stehling, on the brief)

DECISION

The City of Trenton appeals from an interest arbitration award involving a negotiations unit of firefighters represented by Trenton FMBA Local No. 6. See N.J.S.A. 34:13A-16f(5)(a). The arbitrator issued a conventional award as he was required to do absent the parties' agreement to use another terminal procedure. N.J.S.A. 34:13A-16d(2). We affirm the arbitration award with modifications to the work schedule trial period. We note that the economic terms of the award were not appealed.

The FMBA proposed a seven-year agreement from January 1, 2006 through December 31, 2012 with salary increases of 5.5% effective in the first three years and 4.75% effective each

P.E.R.C. NO. 2010-73

2.

January 1 for the remaining four years. The FMBA also proposed a 24/72 hour work schedule to replace the existing 10/14 hour work schedule. In addition, it submitted 29 other proposals on a variety of economic and non-economic issues including a proposal that driver's pay be increased by 1.5% each year of the contract from its current level of 4.5% of base salary. The FMBA also sought to incorporate language into the agreement that would require the City to make all driver appointments by seniority.

The City proposed a five-year agreement from January 1, 2006 through December 31, 2010 with 3% salary increases effective April 1 of each year. The City opposed the FMBA's work schedule proposal and proposed that driver's pay be eliminated. In addition, it made ten other proposals on various economic and non-economic issues.

The arbitrator issued an award that established a seven-year contract from January 1, 2006 through December 31, 2012. He awarded 3.5% salary increases effective each January 1 in 2006 through 2009, a 3% increase effective January 1, 2010, and 3.5% increases effective January 1 of 2011 and 2012. He also awarded a 1% increase in the longevity schedule at 24 and 29 years respectively and a \$250 enhancement to base pay for firefighters who perform EMS Special Work/First Responder Service; employee health and prescription premium sharing; and an increase in prescription co-pays.

P.E.R.C. NO. 2010-73

3.

The arbitrator did not award an increase in driver's pay, but did order that "Language shall be incorporated into the agreement to provide that driver position appointments be based on seniority among applicants who are qualified."

The arbitrator awarded the following work schedule:

Within ninety (90) days of the issuance of an Interest Arbitration Award in this matter, the City shall commence, for Local No. 6, a 24/72 hour shift schedule on a two year trial basis, subject to terms of this agreement. This means that there shall be a 24 hour tour followed by 72 hours off work, for all employees except for certain agreed upon staff "day" employees. The parties may mutually agree to a different implementation date. The 24/72 hour shift schedule shall remain in effect unless it is altered or replaced by mutual agreement or by decision of an interest arbitrator (pursuant to PERC rules) pursuant to the procedures set forth herein.

If either party desires to revert to the current work schedule (10/14-hour shifts) at the end of a 18-month period, begin on __ and end on __, it shall serve written notice of its intention to do so on the other party, at least 60 days prior to the end of that period. The specific reasons with statistical backup and detailed argument shall be submitted with the notice. This shall not preclude the submission of additional evidence thereafter. The other party who receives the notice shall after 30 days of receipt provide its objections to the notice and the parties shall immediately thereafter meet and confer in an effort to resolve any dispute concerning the schedule. If the parties are unable to reach agreement, either party shall have the right to submit the dispute to binding arbitration no later than 30 days after the end of the 18 month period, to an arbitrator designated by PERC

P.E.R.C. NO. 2010-73

4.

under its rules and regulations. The parties agree that the reversion to the old schedule shall only be based upon a demonstration of good cause for this and in evaluating the issues in question, such things as employee morale, productivity, staffing, training, sick leave, overtime and the like may be among the criteria addressed. The City may produce evidence as to the impact of dual work schedules on departmental operations, continuity and impairment or impediments to supervision. However, issues which are not attributable to the 24/72 hour shift such as reductions in manning, sick leave caused by on-the-job injury, or long-term illnesses or injuries, and the like, shall not be considered in support of a change to the former shift. During the period prior to the 60 day period, a committee consisting of representatives of Local 6 and the City shall meet at least every 30 days to evaluate the shift and any concerns which either party has with regard to its implementation.

The 24/72 hour shift shall remain in effect after the 18 month period. If there is objection to as set forth above, it shall continue at least until a determination of the arbitrator is made, provided that timely objection is made as aforesaid by the objecting party. The determination of the arbitrator shall be based upon the record developed without prejudice to the fact that the 24/72 hour work schedule shall be maintained during the course of review.

If neither party elects to submit the matter to arbitration in accordance with the procedures set forth above during the initial 18 month period, then the 24/72 hour work schedule shall become the permanent work schedule.

The conversion of hours shall be on the basis of one day equals 12 hours.

Operational periods shall mean 12 hours.

P.E.R.C. NO. 2010-73

5.

Vacation time may, subject to other provisions of the agreement, be taken in operational periods of 12 hours.

Prior to the implementation of the 24/72 hour shift, the parties shall meet to agree upon such things as paid leave time like vacations, holidays, personal days and sick days to maintain the equivalent level of benefit as under the current 10/14 hour shift schedule.

[Arbitrator's Award at 117-119]

The City appeals from both the award of the 24/72 work schedule and the award of the driver's pay language. The City appeals on the following grounds:

The arbitrator failed to apply the criteria set forth in N.J.S.A. 34:13A-16g(1), (3) and (8) by failing to give adequate weight and consideration of the comparison of the wages, salaries, hours and conditions of employment of the firefighters by ordering a completely different work schedule for rank-and-file firefighters from that worked by fire officers.

The arbitrator failed to apply the criteria set forth in N.J.S.A. 34:13A-16g(1), (3) and (8) by failing to give adequate weight and consideration to the adverse effects of having fire officers, especially Captains work a different schedule.

The arbitrator's award was procured by undue means pursuant to N.J.S.A. 2A:24-8 when he failed to apply controlling precedent regarding the conclusion of the trial period. Specifically, Township of Teaneck, P.E.R.C. No. 2000-33, 25 NJPER 450, 457 (¶30199 1999), requires that the "trial period" contain a sunset provision (i.e. the schedule goes away unless the parties agree otherwise), whereas the arbitrator's "trial period" would place

P.E.R.C. NO. 2010-73

6.

the burden on the City to negotiate out of the "trial" schedule.

The arbitrator exceeded his authority pursuant to N.J.S.A. 2A:24-8, and failed to apply the criteria set forth in N.J.S.A. 34:13A-16g(1), (3) and (8), by specifically barring consideration of days lost to on-the-job injuries in determining the effectiveness of the new schedule, regardless of the evidence presented at hearing by the City that suggests a positive correlation between longer work days and on-the-job injuries.

The FMBA responds that the arbitrator's award should be affirmed because the award satisfies our standard of review; the arbitrator gave due weight to legal precedent and the statutory criteria in awarding the 24/72-hour work schedule; and the award of driver's pay was in compliance with N.J.S.A. 2A:24-8 and the statutory criteria.

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

(1) The interests and welfare of the public
. . . ;

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

(a) in private employment in
general . . . ;

P.E.R.C. NO. 2010-73

7.

- (b) in public employment in general . . . ;
- (c) in public employment in the same or comparable jurisdictions;
- (3) the overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leave, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received;
- (4) Stipulations of the parties;
- (5) The lawful authority of the employer . . . ;
- (6) The financial impact on the governing unit, its residents and taxpayers . . . ;
- (7) The cost of living;
- (8) The continuity and stability of employment including seniority rights . . . ; and
- (9) Statutory restrictions imposed on the employer. . . .

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

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

P.E.R.C. NO. 2010-73

8.

Super. 298, 299 (App. Div. 2002), *aff'd o.b.* 177 N.J. 560 (2003), citing Cherry Hill Tp., P.E.R.C. No. 97-119, 23 NJPER 287 (¶28131 1997). Because the Legislature entrusted arbitrators with weighing the evidence, we will not disturb an arbitrator's exercise of discretion unless an appellant demonstrates that the arbitrator did not adhere to these standards. Teaneck, 353 N.J. Super. at 308-309; Cherry Hill.

An arbitrator 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). An arbitrator must provide a reasoned explanation for an award, N.J.A.C. 19:16-5.9, and, once he or she has done so, an appellant must offer a particularized challenge to the arbitrator's analysis and conclusions. Lodi. As we discussed in Teaneck, additional considerations pertain in reviewing an award ordering a work schedule change.

Before awarding a major work schedule change, an arbitrator should carefully consider the fiscal, operational, supervision and managerial implications of such a proposal, as well as its impact on employee morale and working conditions. That requirement derives both from the arbitrator's obligation to

P.E.R.C. NO. 2010-73

9.

consider the relevant statutory factors, N.J.S.A. 34:13A-16g, and from Court and Commission decisions recognizing a strong governmental policy interest in ensuring appropriate discipline, supervision, and efficient operations in a public safety department. City of Clifton, P.E.R.C. No. 2002-56, 28 NJPER 201 (¶33071 2002); see also Teaneck, 25 NJPER at 455 and cases cited therein.

We also reiterate that the party proposing a work schedule change has the burden of justifying it. Clifton; Teaneck; cf. PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71, 82 (1994). That burden is consistent with the fact that interest arbitration is an extension of the negotiations process and that, within the context of the statutory criteria, an interest arbitrator should fashion an award that the parties, as reasonable negotiators, might have agreed to. Hudson Cty. Prosecutor, P.E.R.C. No. 98-88, 24 NJPER 78 (¶29043 1997). Over the course of a negotiations relationship between a particular employer and majority representative, department work schedules are not routinely or frequently changed and they should not be changed by an arbitrator without strong reasons.

We first consider the City's appeal of the 24/72 hour work schedule. The background of the arbitration proceedings is necessary to fully address the City's arguments. After the assignment of the initial interest arbitrator, the parties

P.E.R.C. NO. 2010-73

10.

participated in mediation and then one day of hearing. After the first hearing day, the interest arbitrator withdrew from the case. The parties agreed on the appointment of a second arbitrator and to incorporate the record from the first day of hearing into the new arbitrator's record. After the record closed before the new arbitrator, the Trenton Fire Officers Association ("TFOA") settled its contract without achieving its 24/72 work schedule proposal. The City then filed a petition for scope of negotiations determination arguing that the FMBA could not continue to submit its 24/72 work schedule proposal to the arbitrator because the superior officers settled and remained on the 10/14 schedule. We held that the proposal was mandatorily negotiable and could be submitted to the interest arbitrator for consideration in accordance with the Teaneck standards.^{1/}

In Teaneck, the firefighters proposed a 24/72 work schedule and the employer opposed the proposal on the ground that the superior officers were on a 10/14 schedule. The arbitrator awarded the 24/72 schedule and, on appeal, we modified the award

^{1/} The City asserts for the first time in its reply brief that it objected to the submission of certifications by the FMBA after the close of the record. It asks us to disregard the evidence. The FMBA responds that the parties agreed to submit certifications to the arbitrator after the City filed a post-hearing scope petition on the subject. The City did not list this issue in its Notice of Appeal and did not brief it until it asked for leave to file a reply brief. We will consider all of the evidence that was part of the record before the arbitrator.

P.E.R.C. NO. 2010-73

11.

to provide that the 24/72 schedule could be implemented only if and when the 24/72 schedule was adopted for the superior officers' unit. The Appellate Division reversed and remanded that portion of our ruling and the Supreme Court affirmed substantially for the reasons expressed by the Appellate Division. 353 N.J. Super. 289 (App. Div. 2002), *aff'd o.b.* 177 N.J. 560 (2003). The Appellate Division stated that:

[F]rom a practical standpoint PERC's decision dooms the FMBA rank-and-file to continuation on the 10/14 shift in perpetuity so long as the Township continues to oppose the change to a 24/72 shift for the officers. . . . By its postponement of a trial period for the 24/72 schedule, PERC has sent FMBA's proposal off to a political never-never land. Such a result is both arbitrary and unreasonable.

On remand, we directed the arbitrator to consider the work schedule proposal in light of the standards arbitrators should apply in considering proposals for a major work schedule change, including proposals that would result in supervisors being on a different work schedule from the employees they supervise.

[A]n arbitrator may award such a proposal only if he or she finds that the different work schedules will not impair supervision or that, based on all the circumstances, there are compelling reasons to grant the proposal that outweigh any supervision concerns.

[Teaneck, 25 NJPER at 455]

The City argues that the arbitrator misunderstood our scope decision because he found it "significant" that the issue of dual work schedules was "thoroughly reviewed by PERC, and that the

P.E.R.C. NO. 2010-73

12.

courts have specifically rejected the claim advanced by the City in this proceeding that the dual work schedule necessarily, amongst other things, would impair supervision." The City contends that the arbitrator operated under the assumption that we had applied the Teaneck standards to the FMBA's work schedule proposal and had resolved the factual issue in favor of the FMBA.

The FMBA responds that the City has cited the award out of context and that when read as a whole, the arbitrator did not believe that PERC resolved the issue of dual work schedules. It argues that the award was based on the testimony and documentary evidence presented by the FMBA that demonstrated that the FMBA met the standards necessary to award the 24/72 work schedule.

The arbitrator stated the following with regard to the City's argument that dual work schedules would preclude the awarding of the 24/72 work schedule:

I find it significant that this particular issue of dual work schedules has been thoroughly reviewed and considered by PERC and has also been reviewed at the highest level of New Jersey's court system. The fact that a fire department would operate with firefighters and fire officers on different work schedules has not been found to render the issue non-negotiable. The courts have specifically rejected the claim advanced by the City in this proceeding that the dual work schedule necessarily, among other things, would impair supervision. As found by the Court, to reach such a per se conclusion would doom the FMBA rank and file to a continuation of the 10/14 shift in perpetuity simply because the change would result in different work schedules within the

P.E.R.C. NO. 2010-73

13.

department. Of course, simply because the issue has been found to be mandatorily negotiable does not require an award on the merits of the issue that favors the FMBA. I have carefully reviewed the record on the issue.

[Arbitrator's Award at 102]

We find that the arbitrator was not under the assumption that we had found in favor of the FMBA's work schedule proposal. The arbitrator correctly found that under Teaneck, the resulting dual work schedule for the firefighters and officers could not be a per se bar to his awarding the proposal. He specifically stated that he carefully considered the record in concluding to award the work schedule.

Under Teaneck, an arbitrator must find that awarding different work schedules will not impair supervision, or that compelling reasons exist that override the danger of impaired supervision. The City argues that the arbitrator did not make this finding prior to awarding the 24/72 work schedule. It further argues that the FMBA did not meet its burden of proving the need for a work schedule change because the union did not produce evidence to rebut the City's supervisory concerns and only provided evidence of other non-comparable municipalities where the 24/72 work schedule was working. Specifically, the City argues that supervision would be impaired because with the dual schedules, a captain would only be working with his assigned company four times during a 28-day cycle. It also asserts that

P.E.R.C. NO. 2010-73

14.

training, discipline, and procedures would be negatively impacted.

The FMBA responds that the only evidence presented by the City on the work schedule issue in Trenton was the testimony of the fire director who did not have experience with 24/72 work schedules. The FMBA asserts that it demonstrated by a preponderance of the credible evidence that the 24/72 schedule minimizes the attendant risks of firefighting compared to the 10/14 schedule; the department currently operates well with inconsistent supervision due to gaps in the officers ranks because of injuries, illness, and military service obligations; both Newark and Teaneck had dual work schedules without problems; and in other municipalities, the 24/72 schedule reduced sick time, overtime, firefighter injuries and fatigue, and improved productivity and morale.

We find that the arbitrator's award of the work schedule on a trial basis was in accordance with the Teaneck standards. The arbitrator acknowledged that the party seeking to modify existing terms and conditions of employment has the burden to prove that there is a basis for its proposed change and he applied that principle to his analysis of the issues in dispute. Clifton; see also Union Cty., P.E.R.C. No. 2003-33, 28 NJPER 459, 460 (¶33169 2002). The arbitrator did not find that his award of the work schedule would impair supervision. He found that the City's

P.E.R.C. NO. 2010-73

15.

supervision concerns were speculative. He also found that there was no guarantee that the City would have the same success as Newark and Teaneck with the dual schedule nor the overall success of the other cities with a 24/72 work schedule. However, the FMBA produced enough detailed and unrefuted evidence regarding the success and benefits of the 24/72 schedule in other municipalities to warrant a trial schedule.

The City also argues that the arbitrator did not give due weight to the internal pattern of settlement because the fire officers did not achieve the 24/72 work schedule in negotiations. The FMBA responds that the fire officers had to abandon their 24/72 work schedule proposal because it was facing layoffs and needed to preserve jobs. The City replies that its memorandum of agreement with the fire officers does not address any layoff action.

The fact that the TFOA did not achieve a work schedule change in its negotiations does not require greater weight be applied to the internal pattern of settlement criterion. Teaneck. We find that the arbitrator did consider the internal pattern of settlement. The arbitrator stated he found his award of the trial period to be consistent with the internal pattern of settlement with the fire officers. He wrote:

The awarding of the FMBA's work schedule proposal is not inconsistent with awarding the terms of the TFOA agreement on the issues of salary and longevity despite the exclusion

P.E.R.C. NO. 2010-73

16.

of the TFOA work schedule proposal from the MOA. Unlike the salary and longevity issues, which involve compensation, the work schedule proposal does not and, based upon this record, will not cause additional costs to the City nor require the additional staffing of firefighters.

[Arbitrator's Award at 105]

The City also argues that the arbitrator's language for the trial period was procured by undue means in violation of N.J.S.A. 2A:24-8. Specifically, it argues that it is contrary to the trial period in Teaneck because it does not include a sunset provision; the old schedule should be restored unless otherwise agreed upon; the burden does not remain on the FMBA to set forth compelling reasons for continuing conflicting schedules; and the factors to be considered regarding the schedule must not be limited.

The FMBA responds that the trial period maintains the 10/14 schedule as the status quo for successor negotiations if the City objects to maintaining the 24/72 schedule; we have previously rejected the City's argument that an employer may unilaterally revert to the old schedule during the resolution of the next contract; and the arbitrator only narrowed the evidence to that relevant to the work schedule.

In Teaneck, we stated:

We specifically approve the arbitrator's establishment of a trial period. Where, as here, a work schedule change was awarded because of potential benefits, as opposed to

problems with an existing schedule, it was appropriate for the arbitrator to establish a mechanism to ensure that the awarded schedule will not become the new status quo unless the predicted benefits materialize. A trial period accomplishes that. However, we note that the arbitrator's "trial period" did not clearly provide that the new work schedule would not become part of the status quo for successor contract negotiations, a concept which we believe is a necessary part of a trial period. Accordingly, we clarify that the 24/72 schedule will not be continued into the agreement that follows the completion of the trial period unless there is a mutual agreement to do so, or an interest arbitrator awards the schedule anew. If there is no mutual agreement, the old work schedule will effectively be restored and the burden will be on the FMBA to again justify adoption of a new work schedule proposal.

[Id. at 457]

In City of Clifton, P.E.R.C. No. 2002-56, 28 NJPER 201

(¶33071 2002), we clarified our decision in Teaneck:

Finally, we consider whether the City may return to the 10/14 schedule after the trial period concludes. While Teaneck referred to the old schedule being "effectively restored" following the trial period, we did not mean that the employer could unilaterally revert to the old schedule after the trial period. Instead, the quoted language signified that the burden was on the union to again justify the schedule. We think it would be destabilizing to allow the employer to revert to an old schedule during negotiations or interest arbitration, with the possibility that it might have to change back should an interest arbitrator again award the schedule. See Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Ass'n, 78 N.J. 25, 48 (1978) and N.J.S.A. 34:13A-21.

[28 NJPER at 209]

P.E.R.C. NO. 2010-73

18.

The arbitrator awarded a two year trial period that requires the party seeking to revert to the 10/14 schedule to give notice at 18 months. If the parties are unable to reach an agreement, they may submit the dispute to binding interest arbitration where reversion to the old schedule will require the party seeking reversion to the old schedule to show good cause. We agree with the City that this language shifts the burden to it if it seeks a return to the 10/14 schedule. Under Teaneck and Clifton, the FMBA must maintain the burden to prove its case for the 24/72 schedule anew if the City objects to its continuation. Thus, we modify the award to provide that the FMBA has the burden of justifying the continuation of the 24/72 schedule in the post-trial period arbitration proceedings.^{2/}

We disagree with the City that it can revert to the old schedule after the trial period. It is more appropriate for the 24/72 schedule to continue until a resolution of the work schedule by the parties or the arbitrator. Clifton.

We also modify the award to remove the restrictions placed on the evidence the parties may present in the event they arbitrate the work schedule dispute at the end of the trial period. The arbitrator may consider all evidence relevant to the work schedule. If the City objects to the 24/72 work schedule,

^{2/} If the trial period were to expire at the end of the contract, the FMBA would have the burden of justifying adoption of the schedule in the successor agreement.

P.E.R.C. NO. 2010-73

19.

it is not precluded from presenting its evidence and argument to the arbitrator under our rules and the procedures for conventional arbitration. If the arbitrator excludes evidence relevant to the parties' dispute, the City may appeal by special permission to appeal. N.J.A.C. 19:16-5.17. The weight given to the City's arguments and evidence remains in the discretion of the arbitrator.

The City's last point of appeal is that the award's seniority language for driver's pay was procured by undue means in violation of N.J.S.A. 2A:24-8 and failed to apply the criteria set forth in N.J.S.A. 34:13A-16g(5) by failing to give adequate weight to controlling case law. Specifically, the City argues that the award bases driver's assignments solely on seniority, which interferes with its prerogative to assign the most qualified individual to the position.

The FMBA responds that the City never filed a scope of negotiations petition on the proposal and that the arbitrator properly modified the FMBA's proposal so as to not compromise management's prerogative to assign the employees it deems most qualified.

The City replies that it could not file a scope petition because the FMBA did not list the seniority issue on its Petition to Initiate Compulsory Interest Arbitration. The FMBA responds that the seniority issue was in its final offer submitted on

P.E.R.C. NO. 2010-73

20.

April 15, 2008 and that the City must be barred from arguing negotiability now since it could have included the issue in the scope petition it filed over the work schedule.

N.J.A.C. 19:16-5.5(c) provides:

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

N.J.A.C. 19:16-5.5 structures the interest arbitration process and ensures that the parties and the arbitrator know the nature and extent of the controversy at the outset. Borough of Allendale, P.E.R.C. No. 98-27, 23 NJPER 508 (¶28248 1997). In setting deadlines for filing scope petitions and submitting responses to a petition, the rule furthers the statutory goal of providing for an expeditious, effective, and binding procedure for the resolution of disputes between law enforcement officers and firefighters and their public employers. N.J.S.A. 34:13A-14a.

P.E.R.C. NO. 2010-73

21.

In Borough of Roseland, P.E.R.C. No. 2000-46, 26 NJPER 56 (¶31019 1999), we held that where a scope petition contends that an item proposed for interest arbitration is not mandatorily negotiable, it is presumptively time-barred unless it is filed within the time prescribed by N.J.A.C. 19:16-5.5(c) or by the date set by the Director of Arbitration for a response to the interest arbitration petition. However, we will consider, on a case by case basis, arguments that N.J.A.C. 19:16-5.5(c) should be relaxed. Further, we will evaluate the nature of the negotiability challenge. Where a party alleges that a proposal contravenes a statute or regulation, or would significantly interfere with a clearcut and dominant government policy interest, that factor may weigh in favor of relaxing N.J.A.C. 19:16-5.5(c). Id.

We have also held that N.J.A.C. 19:16-5.5(c) does not bar an employer from arguing, even after an award, that subjects are illegal rather than permissive. That is because a public body cannot be bound by an illegal award. Roseland; see also Town of Kearny, P.E.R.C. No. 81-23, 6 NJPER 431 (¶11218 1980); Town of Kearny, P.E.R.C. No. 81-38, 6 NJPER 455 (¶11233 1980). There is no showing that this aspect of the award involves either a statute or regulation or a clearcut and dominant governmental policy interest.

P.E.R.C. NO. 2010-73

22.

Our rules on filing a scope petition may be relaxed if the City did not know what the proposal was or if a subsequent revision raised new negotiability concerns. Roseland at 59 n. 1. We do not find it appropriate to relax our rules here where the City was put on notice of the seniority for driver's assignments in the FMBA's final offer and did not file a scope petition on the issue within fourteen days or include it in the scope petition it filed on the work schedule issue.

The issue of assigning the most senior qualified driver is permissively negotiable. City of Camden, P.E.R.C. No. 93-43, 19 NJPER 15 (¶24008 1992), aff'd 20 NJPER 319 (¶25163 App. Div. 1994). By not filing a timely scope petition, the City is deemed to have agreed to submit the issue to interest arbitration. N.J.A.C. 19:16-5.5(d); N.J.S.A. 34:13A-16f(4).

The arbitrator found that it was the parties' practice to assign the most senior employee to the driver position. The City has not provided evidence or argument to challenge the arbitrator's finding. The City cites Town of Phillipsburg, P.E.R.C. No. 83-122, 9 NJPER 209 (¶01098 1983), in support of its argument that the award, as written, is illegal because it would eliminate the City's discretion to make or change shift assignments based on any other factors besides seniority. However, the City has not provided any specifics as to its need

P.E.R.C. NO. 2010-73

23.

to make driver assignments on unique qualifications.^{3/} Contrast New Jersey Transit, P.E.R.C. No. 2006-36, 31 NJPER 358 (¶143 2005) (arbitration restrained where employer proved that special skills and traits were required for new unit). The arbitrator's award of driver's pay to the most senior qualified employee involves a permissively negotiable subject and there is substantial credible evidence to support that aspect of the award.

ORDER

The interest arbitration award is affirmed as modified by this decision.

BY ORDER OF THE COMMISSION

Commissioners Colligan, Eaton, Fuller, Krengel, Voos and Watkins voted in favor of this decision. None opposed.

ISSUED: April 29, 2010

Trenton, New Jersey

3/ We note that the arbitrator did not order the language in his award, but directed the parties to develop language that incorporates their practice. We encourage the parties to address any specific concerns of the City in the drafting process.

P.E.R.C. NO. 2010-74

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF BERGENFIELD,

Respondent,

-and-

Docket No. IA-2009-011

BERGENFIELD PBA LOCAL NO. 309,

Appellant.

SYNOPSIS

The Public Employment Relations Commission affirms an interest arbitration award involving the Borough of Bergenfield and PBA Local 309. The PBA appealed the award arguing that the arbitrator failed to apply and give due weight to the statutory factors and that the arbitrator's award of salary increases below the employer's financial offer was not supported by substantial credible evidence and violated N.J.S.A. 2A:24-8. The Commission holds that the arbitrator's award is supported by substantial credible evidence.

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

P.E.R.C. NO. 2010-74

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF BERGENFIELD,

Respondent,

-and-

Docket No. IA-2009-011

BERGENFIELD PBA LOCAL NO. 309,

Appellant.

Appearances:

For the Respondent, Eric M. Bernstein & Associates,
L.L.C., attorneys (Deborah J. Bracaglia, of counsel)

For the Appellant, Loccke, Correia, Schlager, Limsky &
Bukosky, attorneys (Leon B. Savetsky, of counsel)

DECISION

On November 30, 2009, Bergenfield PBA Local No. 309 appealed from an interest arbitration award involving a unit of approximately 45 police officers employed the Borough of Bergenfield. See N.J.S.A. 34:13A-16f(5)(a).^{1/} The arbitrator issued a conventional award, as he was required to do absent the parties' agreement to use another terminal procedure. N.J.S.A. 34:13A-16d(2). A conventional award is crafted by an arbitrator after considering the parties' final offers in light of nine statutory factors. We affirm the award.

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

P.E.R.C. NO. 2010-74

2.

The arbitrator awarded a four-year contract, effective July 1, 2008 through June 30, 2012, with a wage increase of 2.5% each July 1 at each rank and step of the salary guide. The arbitrator further awarded that to be eligible for retroactive pay, an officer must be on the payroll as of November 13, 2009, the date of the award. The arbitrator further determined that the "Maternity/Paternity Leave" language proposed by the PBA would not be awarded, but that the Borough shall codify its statutory obligations in the contract. Finally, the arbitrator determined that all other proposals and offers not specifically granted are denied and that the provisions of the existing contract not otherwise modified shall be carried forward.

On appeal, the PBA argues that the award:

failed to apply and give due weight to the statutory factors;

violated N.J.S.A. 2A:24-8 in that it was procured by undue means; and

was not supported by substantial credible evidence in the record as a whole.

With respect to the issues of contract duration and salary, the PBA proposed a four-year contract with increases of 4.5% each July 1 of the agreement. The Borough proposed a three-year contract with increases of 3% on July 1, 2008, 3.4% on July 1, 2009 and 3.4% on July 1, 2010. The PBA argues that the arbitrator inexplicably arrived at a salary award substantially lower than the final salary offer of not only the PBA, but also

P.E.R.C. NO. 2010-74

3.

substantially lower than the final salary offer of the Borough itself. The PBA further argues that the arbitrator failed to perform any required analysis of the evidence and failed to explain how or why he arrived at his award.

The following is a summary of the arbitrator's findings.

The record reveals an exemplary police department whose personnel enjoy a solid economic package of wage and benefit entitlements. The Borough manages the community with conservative fiscal restraint while providing citizens with quality services. The 2009 Anticipated Budget Surplus for the Borough is \$1,715,050, an increase from 2008, in which the Borough anticipated and realized a budget surplus of \$1,486,000.

In accordance with its philosophy of fiscal conservatism, the Borough has restrained debt; the percentage of net debt to equalized evaluations for 2008 was 0.74%.

The Borough has demonstrated an ability to keep debt and taxes low, efficiently collect taxes and maintain property values. It has also demonstrated a commitment to allocating funds toward public safety as nearly half of the salaries in 2008 were for the police department.

In addition to base wages, the Borough pays its officers longevity and a \$950 yearly clothing allowance.

The PBA's last offer, on its face, would yield wage increases approaching 20%, compounded over the four-year term of

P.E.R.C. NO. 2010-74

4.

the agreement. Local 309 not only falls within the range of top wage police salaries in Bergen County, but pays top step police salaries that exceed all but one municipality. Salaries for sergeants, lieutenants and captains exceed the salaries in similarly-situated municipalities.

The arbitrator found that the PBA relied heavily on contract comparisons achieved in times of stronger municipal and State economies; and relied on contract comparisons where "comparables" carried significant weight in awards and settlements.

The Borough submitted a salary guide proposal that differentiated between those employees hired before or after December 31, 2008. It also proposed the addition of two steps for police officers hired after January 1, 2008.

The arbitrator found that, in an environment where economic constraint and budgetary hurdles loom, a greater emphasis must be placed on the cost implications of salary increases and consideration of fiscal limitations on the municipal budget.

The arbitrator found that the 2007 top step police officer salary compared very favorably to the salaries of the population of the Borough. Base pay for municipal police officers greatly exceeds the median household and median family income of the Borough's residents.

The arbitrator stated that he had no intention of eliminating any contract benefit or previously earned language.

P.E.R.C. NO. 2010-74

5.

He then proceeded to apply the statutory factors with an emphatic accent on the public's demand for services, the impact of the economic increase on the taxpayer, and the results of the award on the general welfare of the community.

The statutory factors are as follows:

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

P.E.R.C. NO. 2010-74

6.

- (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 arbitrator must also separately determine whether the total net annual economic changes for each year of the agreement are reasonable under the foregoing factors. N.J.S.A. 34:13A-16d(2).

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

P.E.R.C. NO. 2010-74

7.

Arriving at an economic award is not a precise mathematical process. Given that the statute sets forth general criteria rather than a formula, the treatment of the parties' proposals involves judgment and discretion and an arbitrator will rarely be able to demonstrate that an award is the only "correct" one. See Borough of Lodi, P.E.R.C. No. 99-28, 24 NJPER 466 (¶29214 1998). Some of the evidence may be conflicting and an arbitrator's award is not necessarily flawed because some pieces of evidence, standing alone, might point to a different result. Lodi. Therefore, within the parameters of our review standard, we will defer to the arbitrator's judgment, discretion and labor relations expertise. City of Newark, P.E.R.C. No. 99-97, 25 NJPER 242 (¶30103 1999). However, an arbitrator must provide a reasoned explanation for an award and state what statutory factors he or she considered most important, explain why they were given significant weight, and explain how other evidence or factors were weighed and considered in arriving at the final award. N.J.S.A. 34:13A-16g; N.J.A.C. 19:16-5.9; Lodi.

We next review the arbitrator's application of the statutory factors.

The arbitrator found that the community demands an effective police force and that police department members provide many other voluntary and charitable community-oriented services. He

P.E.R.C. NO. 2010-74

8.

also found that any wage increase has a significant impact on the financial operation of the Borough.

With respect to the interests and welfare of the public, the arbitrator considered the PBA's proposal to be beyond the parameters of the Borough's budget and the economic limitations under the local Cap law. He viewed the Borough's proposal as an attempt to award present officers increases while at the same time implementing cost-savings, specifically a proposal to change the prescription drug plan.

With respect to comparability issues, the arbitrator found that the PBA enjoys a contract generally more economically rewarding than the vast majority of similarly-situated communities in Bergen County.

The arbitrator found overall compensation to be significant in scope and financial terms. He considered the officers' salary, longevity, holidays, vacation days, personal days, medical and hospitalization insurance, clothing allowance, overtime payments, minimum call-in time, and sick leave. The arbitrator also found that the officers' average annual wages exceed a large segment of the private sector economy.

There were no stipulations of the parties.

With respect to the lawful authority of the employer, the arbitrator concluded that the PBA's proposal would result in the Borough exceeding the Cap limit.

P.E.R.C. NO. 2010-74

9.

With respect to the cost of living, in light of the economic climate of the nation and the State, the arbitrator found that both proposals exceed the rise in the cost of living.

As a result, and placing particular emphasis on the interests and welfare of the public and the Cap limitations, the arbitrator determined that reasonable wage increases would be 2.5% across the board on July 1 of each contract year. He recognized that the wages increases are dramatically below the PBA's proposal and "perceptibly less" than the Borough proposal. However, he found a clear justification for his decision, when the interests and welfare of the public and the budgetary constraints facing the Borough are considered. He noted that the majority of police personnel now receive between \$104,149 and \$134,731 in annual base salary, with the added considerations of benefit entitlements and longevity payments. He further noted that considering the increases over the course of the agreement, to be paid retroactively to July 1, 2008, officers will be receiving substantial new money; and that these figures are not insignificant, whether taken alone or in comparison to the household incomes and family incomes in Bergenfield and to police departments in similarly-situated municipalities.

As for the cost of the award, he found that total wage increases over the four-year period will exceed \$489,000.

P.E.R.C. NO. 2010-74

10.

Despite the cost of the award, the arbitrator found that the wage increase will assist in maintaining continuity and stability of employment. The Borough had contended that its proposal would guarantee continuation and stability of employment and the arbitrator found that an award with less economic impact would further guarantee continuation of employment for all police officers.

The arbitrator stated that under his award, officers will be receiving two simultaneous and immediate increases exceeding 5% in their base wages (as a result of the July 1, 2008 and July 1, 2009 increases). Soon after, the officers will be receiving another 2.5% increase. When adding the intention of relief for the Borough's budget and respite to the taxpayer, the arbitrator concluded that his award was both justified and responsible. He granted the Borough's proposal to limit eligibility for retroactive pay to officers on the payroll at the time of the award, but denied the Borough's request for elimination of the senior officer differential.

He denied all other economic and non-economic proposals of the Borough, including the Borough's request to change the prescription plan and for health insurance premium contributions. The arbitrator stated that these matters have merit in the face of economic realities, but found that the Borough's post-hearing evidence supporting its positions was untimely.

P.E.R.C. NO. 2010-74

11.

Finally, the arbitrator rejected the PBA's proposal to add a "Personnel Files" clause and granted, in part, its "Maternity/Paternity Leave" proposal.

The PBA argues that the arbitrator failed to apply and give due weight to the statutory factors. We disagree.

With respect to the comparability factor, N.J.S.A. 34:13A-16g(2), the PBA argues that the arbitrator arbitrarily became fixated on the comparison between Bergenfield's top level patrol officer salary and the median household or family income in Bergenfield. We find that the arbitrator considered both the PBA and the Borough's suggested comparable police departments and also looked at the private sector. While more or less weight could have been given to a particular comparison group, there is no single comparison that is required under the Act. To be sustained, there must be substantial credible evidence in the record to support an arbitrator's conclusions. We have no doubt that the arbitrator's comparison's meet that test.

As for the overall compensation factor, the PBA asserts that the arbitrator focused almost exclusively on salary and wages and did not address the various indicia of overall compensation set for in 16g(3). However, the arbitrator did consider longevity, holidays, vacation days, personal days, medical and hospitalization insurance, clothing allowance, overtime payments, minimum call-in time, and sick leave.

P.E.R.C. NO. 2010-74

12.

The PBA objects to the arbitrator's mentioning that officers will immediately be receiving more than 5% in retroactive payments and another 3% eight months from the date of the award. However, we do not read that as a justification for the 2.5% annual increases, but as a recognition of the increases that officers will see in their paychecks right away.

The PBA argues that the arbitrator failed to provide any specific backup for several of his statements suggesting that wage increases for police officers have a significant impact on the Borough's finances. The Borough allotted nearly half the salaries of Borough employees in 2008 for police department salaries. It increased the amount appropriated for police department funding for 2009. There can be little dispute that wage increases for police officers have a significant impact on Borough finances. This is not to say that the Borough could not have paid somewhat higher increases without jeopardizing public safety. That, however, is not the question. The question on appeal is whether the arbitrator's award is supported by substantial credible evidence. The PBA has not shown that it was not.

With respect to 16g(5), the PBA asserts that the arbitrator did not provide a reasoned explanation for his conclusion that the PBA's proposal would result in the Borough's exceeding the Cap limit. The Borough responds that while this may not have

P.E.R.C. NO. 2010-74

13.

been the factor most emphasized by the arbitrator, the opinion and award clearly addresses it. We agree that the arbitrator did not cite the portions of the record that would support his conclusion that the PBA proposal would result in the Borough's exceeding the Cap limit. However, the arbitrator did not award the PBA's proposal and provided ample and substantial other justification for the economic terms of his award.

With respect to 16g(6), the PBA argues that the arbitrator's opinion contains no analysis of any evidence or any explanation for his salary award. It suggests that the award will adversely affect police officer morale. We repeat that there is substantial credible evidence in the record to support the arbitrator's salary award. We note that the Borough was also seeking changes in other economic benefits including two additional salary steps, longevity, holidays, health insurance, vacations, terminal leave, and sick leave. Those proposals were denied. Our point is that the net increase resulting from the Borough's overall proposal, if its other proposals were accepted, would have been lower than the Borough's proposed salary increases alone.

With respect to 16g(7), we agree with the PBA that the arbitrator appears to have given the cost of living little weight.

P.E.R.C. NO. 2010-74

14.

With respect to 16g(8), the PBA argues that the arbitrator did not explain why a salary award lower than the Borough's final offer would help guarantee continuation of employment. We believe that he did. He stated that if the Borough could be taken at its word that its proposal would guarantee the continuation and stability of employment, then a lesser award would further guarantee the continuation of employment for all police officers.

Finally, with respect to 16g(9), we repeat what we said about 16g(5). The spending and tax levy Caps did not appear to have played a major role in the arbitrator's decision making process.

The PBA argues that an award substantially lower than the Borough's last offer was not supported by substantial credible evidence and violated N.J.S.A. 2A:24-8. That statute provides that an arbitration award may be vacated:

- 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;

P.E.R.C. NO. 2010-74

15.

- 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.

The PBA contends that under Hudson Cty. Prosecutor, P.E.R.C. No. 98-88, 24 NJPER 78 (¶29043 1997), the arbitrator should not have determined an issue outside the boundaries of the parties' positions on the issue. In Hudson Cty. Prosecutor, we stated that we were not deciding whether, if confronted only by competing proposals for across-the-board salary increases, an arbitrator would be prohibited from awarding increases lower (or higher) than proposed by either party. As in Hudson Cty Prosecutor, we need not decide that question because this is not a case where the only proposals involved salary increases.

Finally, the PBA argues that the arbitrator violated N.J.S.A. 2A:24-8 by conditioning eligibility to receive retroactive pay on the requirement that an officer be on the Borough's payroll as of the date of the award. It asserts that three police officers have retired since July 1, 2008 and that the arbitrator's failure to give a reasoned explanation for this aspect of his award also violated N.J.S.A. 34:13A-16g. In addition, it asserts that the arbitrator did not explain why he reduced the retirees' vested retirement benefits.

Nothing in N.J.S.A. 2A:24-8 or N.J.S.A. 34:13A-16g requires that salary increases be paid retroactively to retirees.

P.E.R.C. NO. 2010-74

16.

Although the impact on the three officers may be significant, the cost of retroactive compensation is part of the overall cost of the economic package. The arbitrator's decision to preclude retroactive compensation for employees no longer on the payroll does not affect vested retirement benefits and is not reversible error. The cases cited by the PBA involve changes in health benefits already being received by current retirees, not retroactive wage increases not yet received by current retirees. See Policy v. The Powell Pressed Steel Co., 770 F.2d 609 (6th Cir. 1985); International Union v. Yard-Man, Inc., 716 F.2d 1476 (6th Cir. 1983), cert. den. 465 U.S. 1007 (1984).

ORDER

The arbitrator's award is affirmed.

BY ORDER OF THE COMMISSION

Commissioners Eaton, Fuller and Watkins voted in favor of this decision. Commissioner Krengel voted against this decision. Commissioner Voos abstained. Commissioner Colligan recused himself.

ISSUED: April 29, 2010

Trenton, New Jersey

P.E.R.C. NO. 2011-8

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF ATLANTIC,

Appellant,

-and-

Docket No. IA-2007-057

FOP LODGE #34,

Respondent.

SYNOPSIS

The Public Employment Relations Commission remands an interest arbitration award to the arbitrator for clarification and issuance of a supplemental decision opinion and award. The Commission finds that the arbitrator must clarify three areas of his award relating to a \$1200 equity adjustment, eligibility for retiree health benefits and holiday pay. The parties have ten days to submit supplemental briefs addressing the issues in the supplemental award.

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

P.E.R.C. NO. 2011-8

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF ATLANTIC,

Appellant,

-and-

Docket No. IA-2007-057

FOP LODGE #34,

Respondent.

Appearances:

For the Appellant, Eric M. Bernstein & Associates,
L.L.C., attorneys (Deborah J. Bracaglia, of counsel)

For the Respondent, Selikoff & Cohen, PA, attorneys
(Keith Waldman, of counsel)

DECISION

On April 21, 2010, the County of Atlantic appealed from an interest arbitration award involving a unit of corrections officers represented by FOP Lodge #34. See N.J.S.A. 34:13A-16f(5)(a). The arbitrator issued a conventional award, as he was required to do absent the parties' agreement to use another terminal procedure. N.J.S.A. 34:13A-16d(2). A conventional award is crafted by an arbitrator after considering the parties' final offers in light of nine statutory factors. In its appeal, the County has identified two apparent inconsistencies and we have identified one other area that we believe require clarification. Accordingly, we remand this matter to the arbitrator to clarify his ruling in the three

P.E.R.C. NO. 2011-8

2.

areas. After the issuance of a supplemental award and the filing of any supplemental briefs addressing the supplemental award, we will consider the appeal on the merits.

Among other things, the arbitrator awarded a \$1200 equity adjustment that he described as similar to the one that Arbitrator Robert Glasson had recommended be added to the maximum step in a voluntary settlement involving the County and Sheriff's officers represented by PBA Local 243 (Dkt. No. IA-2006-026). The arbitrator stated that Glasson added the \$1200 to base salary "in order to maintain experienced and qualified County Sheriff's Officers". Arbitrator's Opinion at 69. Later in his opinion, the arbitrator stated:

I incorporated the equity adjustment for the top of the December 31, 2006, Salary guide for the very same reason utilized by Arbitrator Glasson to maintain experienced and qualified Correction Officers. There is no question that the Correction Officers in Atlantic County are not paid at the same level as PBA 243. Nevertheless, to maintain a stable workforce the \$1,200 equity adjustment must be placed on Step 7 of the December 31, 2006, Salary guide.

[Arbitrator's Opinion at 83]

The arbitrator in this case did not include any further details of Glasson's analysis or reasoning. Accordingly, we remand this issue to the arbitrator for clarification of the basis for his award of the \$1200 equity adjustment. If the arbitrator was relying on reasoning in Arbitrator Glasson's

P.E.R.C. NO. 2011-8

3.

recommendation that was not included in this arbitrator's opinion, then this arbitrator should include that reasoning in a supplemental decision to be issued within 30 days.

The arbitrator also ruled that employees hired on or before December 31, 2006 shall be eligible for retiree health benefits if they have 25 or more years of pension credit and at least 15 years of full-time service with the County; employees hired on or after January 1, 2010 will need at least 25 years of service with the County. We remand this issue to the arbitrator to explain the eligibility requirements for employees hired in 2007, 2008 and 2009.^{1/}

Finally, the County proposed that holidays be paid at straight time rather than overtime rates of time and one half. At page 87 of his Opinion and Award, the arbitrator states that "Unfortunately, the County's position cannot be sustained because they had bargained that in the past and even though we have different economic circumstances now, nothing has been presented to me to have that removed from the equation of benefits." Yet on page 93 of his Opinion and Award, the arbitrator states that "modification of retiree health benefits as of January 1, 2010 and the elimination of ten (10) holidays from mandatory overtime will reduce the County's overall costs for the FOP 34 bargaining

^{1/} In its brief, the FOP asserts that because the change is not effective until 2010, the status quo is maintained for 2007, 2008 and 2009. If that is the case, the arbitrator should so clarify.

P.E.R.C. NO. 2011-8

4.

unit." We note that both parties proposed that officers shall have the option to refuse mandatory overtime (except in emergent situations) two times within each calendar year without being subject to disciplinary action. The arbitrator awarded the substance of that proposal. We are not clear, however, how acceptance of the mandatory overtime proposal and rejection of the County's holiday overtime proposal will "reduce the County's overall costs." Accordingly, we remand this issue to the arbitrator to clarify what he meant at page 93.^{2/}

ORDER

This matter is remanded to the arbitrator to issue a supplemental Opinion and Award within 30 days. The parties shall then have ten days to file supplemental briefs addressing the issues in the supplemental award.

BY ORDER OF THE COMMISSION

Commissioners Colligan, Eaton, Krengel, Voos and Watkins voted in favor of this decision. None opposed. Commissioner Fuller abstained.

ISSUED: August 12, 2010

Trenton, New Jersey

^{2/} In its brief, the FOP asserts that the arbitrator's statement refers to giving correction officers the right to decline mandatory overtime twice in one year except for on three specifically named holidays. We are not clear that this is what the arbitrator was referring to since, presumably, if an officer declines mandatory overtime, another officer will be required to work that overtime and there will be no savings to the County.

P.E.R.C. NO. 2011-17

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF ASBURY PARK,

Petitioner,

-and-

Docket No. IA-2008-069

PBA LOCAL 6,

Respondent.

CITY OF ASBURY PARK,

Petitioner,

-and-

Docket No. IA-2008-047

PBA LOCAL 6, SUPERIOR OFFICERS
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission affirms an interest arbitration award involving the City of Asbury Park and PBA Local 6 and PBA Local 6, Superior Officers Association. The City appealed the award arguing that the arbitrator failed to apply and give due weight to the statutory factors and that the delay in the arbitrator's issuance of the award without reopening the record resulted in an award not based on updated financial information. The Commission holds that the arbitrator's award is supported by substantial credible evidence, the arbitrator properly addressed the statutory factors and the City has not shown how the evidence, including the evidence it sought to submit if the record was reopened, require that the award be vacated or remanded for reconsideration.

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. 2011-17

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF ASBURY PARK,

Petitioner,

-and-

Docket No. IA-2008-069

PBA LOCAL 6,

Respondent.

CITY OF ASBURY PARK,

Petitioner,

-and-

Docket No. IA-2008-047

PBA LOCAL 6, SUPERIOR OFFICERS
ASSOCIATION,

Respondent.

Appearances:

For the Petitioner, Ruderman & Glickman, P.C.,
attorneys (Steven S. Glickman, of counsel)

For the Respondents, Loccke, Correia, Schlager, Limsky
& Bukosky, attorneys (Leon B. Savetsky, of counsel)

DECISION

On June 1, 2010, the City of Asbury Park appealed from two interest arbitration awards involving units of police officers and police superior officers employed by the City and represented by PBA Local 6 (PBA) and PBA Local 6, Superior Officers Association (SOA), respectively. See N.J.S.A.

P.E.R.C. NO. 2011-17

2.

34:13A-16f(5)(a).^{1/} The arbitrator issued a conventional award, as he was required to do absent the parties' agreement to use another terminal procedure. N.J.S.A. 34:13A-16d(2). A conventional award is crafted by an arbitrator after considering the parties' final offers in light of nine statutory factors. We affirm the award.

The arbitrator was appointed in March 2008. Several pre-arbitration mediation sessions were held through November 19, 2008. A formal hearing was held on February 17, 2009. Post-hearing briefs were filed on or about May 15, 2009. On May 16, 2010, the arbitrator issued his Decision and Award.

The City proposed two-year contracts with wage freezes in both years and implementation of the State Health Benefits Direct 10 Plan. The unions proposed four-year contracts with 5% wage increases effective January 1 of each year, a \$500 increase in the clothing allowance each year, compensatory time to be compensated at the double time rate, giving employees the option of receiving compensation for extra duty work in the form of compensatory time, and adding an Inspector's rate.

The arbitrator issued a three-year award effective January 1, 2008 through December 31, 2010; increased the uniform allowance by \$100 effective June 1, 2010; awarded the City's

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

P.E.R.C. NO. 2011-17

3.

proposal granting it the authority to provide health insurance coverage pursuant to the State Health Benefits Program Direct 10 Plan; and increased salaries 2.5% effective October 1, 2008, 2.5% effective July 1, 2009, and 2.5% effective July 1, 2010. He rejected the unions' other proposals.

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 statutory facts listed in N.J.S.A. 34:13A-16g judged relevant to the resolution of the specific dispute; (2) the arbitrator violated the standards in N.J.S.A. 2A:24-8 and -9; or (3) the award is not supported by substantial credible evidence in the record as a whole. Teaneck Tp. v. Teaneck FMBA, Local No. 42, 353 N.J. Super. 298, 299 (App. Div. 2002), *aff'd* o.b. 177 N.J. 560 (2003), citing Cherry Hill Tp., P.E.R.C. No. 97-119, 23 NJPER 287 (¶28131 1997). Because the Legislature entrusted arbitrators with weighing the evidence, we will not disturb an arbitrator's exercise of discretion unless an appellant demonstrates that the arbitrator did not adhere to these standards. Teaneck, 353 N.J. Super. at 308-309; Cherry Hill.

Arriving at an economic award is not a precise mathematical process. Given that the statute sets forth general criteria rather than a formula, the treatment of the parties' proposals

P.E.R.C. NO. 2011-17

4.

involves judgement and discretion and an arbitrator will rarely be able to demonstrate that an award is the only "correct" one. See Borough of Lodi, P.E.R.C. No. 99-28, 24 NJPER 466 (¶29214 1998). Some of the evidence may be conflicting and an arbitrator's award is not necessarily flawed because some pieces of evidence, standing alone, might point to a different result. Lodi. Therefore, within the parameters of our review standard, we will defer to the arbitrator's judgment, discretion and labor relations expertise. City of Newark, P.E.R.C. No. 99-97, 25 NJPER 242 (¶30103 1999). However, an arbitrator must provide a reasoned explanation for an award and state what statutory factors he or she considered most important, explain why they were given significant weight, and explain how other evidence or factors were weighed and considered in arriving at the final award. N.J.S.A. 34:13A-16g; N.J.A.C. 19:16-5.9; Lodi.

In its initial appeal document, the City argues that the arbitrator failed to properly consider five of the nine statutory factors in rendering his award. The statutory factors are as follows:

- (1) The interests and welfare of the public . . . ;
- (2) Comparison of the wages, salaries, hours, and conditions of employment of the employees with the wages, hours and conditions of employment of other employees performing the same or similar services and with other employees generally:

P.E.R.C. NO. 2011-17

5.

- (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]

Attached to the City's appeal were copies of the City's 2009 and 2010 Special Municipal Aid Applications and correspondence with a representative of the Civil Service Commission about the City's proposed layoff of three employees in the Department of Commerce and eight full-time and one part-time employee in other

P.E.R.C. NO. 2011-17

6.

departments. Also attached was a copy of the City's April 27, 2010 request to the arbitrator to reopen the record.

The City claims that the arbitrator failed to properly consider factors 1, 5, 6, 8 and 9. It asserts that the genesis of its appeal arises out of the delay in both the holding of the interest arbitration hearing and the issuance of the Decision and Award. The City asserts that: by awarding an agreement that includes 2010, the arbitrator issued an award with no record evidence from either party regarding the City's 2010 budget as it would relate to the statutory factors because, especially in these economic and legislative times, any such evidence would be too speculative to consider relevant; the lack of sufficient record evidence regarding the 2009 budget in conjunction with the delay in the issuance of the award required additional evidence to evaluate the statutory factors; the arbitrator indicated that his award would require adjustments to the City's 2008 and 2009 budgets, which could not be adjusted, requiring an even greater impact on the City's 2010 budget; and "extending the agreement into 2010 because the delay in the issuance of the Decision and Award would require the parties to immediately commence negotiations if an award did not include 2010 does not address the statutory factors." The City states that on April 27, 2010, it asked the arbitrator to reopen the hearing for the parties to submit updated financial and other information for consideration,

P.E.R.C. NO. 2011-17

7.

the unions objected, and the arbitrator denied the request. The City asks, at the very least, that the matter be remanded to the arbitrator to reopen the hearing so that both parties are given the opportunity to present updated information.

In its brief, the City emphasizes that the issue in this case is limited to situations where there is a disparity between the parties regarding the duration of the award; where the parties agree upon the duration of the agreement, they accept the deficiencies inherent in issuing such an award. The City states that the delay in the issuance of the Decision and Award is not the reason why the Award should be overturned, but it illustrates the arbitrator's inability to accurately apply the statutory factors beyond the contract duration proposed by the City. The City asserts that there can be no dispute that the documents submitted by the City are absolutely necessary to apply the statutory factors to the Award. The City contends that if the arbitrator had reopened the record as the City had requested, he would have had the documents necessary to apply the statutory factors to the duration issue, which then might have changed his Decision and Award not only with respect to the duration of the Award, but to the terms of the Award as well.

The unions respond that the arbitrator fully considered each of the statutory factors, the evidence and the arguments of the parties. They contend that numerous documents properly received

P.E.R.C. NO. 2011-17

8.

in evidence during the hearing dealt with terms and conditions of employment not only going back to 2004, but also with 2008 and 2009. The unions argue that there was certainly a substantial basis upon which the arbitrator could award a very modest, deferred salary increase for 2010.

In deciding the issue of contract duration, the arbitrator balanced the nature of the City's financial status, the need to provide harmony and stability in the labor-management relationship, including the need to maintain the department's increased effectiveness and productivity, and the desirability of maintaining the continuity and stability of employment within the department. He concluded that a three-year contract would be consistent with the above considerations and, by doing so, would best further the interests and welfare of the public.

Having awarded a three-year contract beginning January 1, 2008, the arbitrator was charged with setting salary rates for those three years. He awarded delayed 2.5% increases for each of the three years. The first would be payable on October 1, 2008, the second on July 1, 2009, and the third on July 1, 2010. The arbitrator found that a balance had to be struck between the level of salary increases and the realities of the City's budgetary needs. He found that the increases awarded were well below comparable increases in surrounding municipalities and for those in general for contract years 2008 and 2009, although the

P.E.R.C. NO. 2011-17

9.

arbitrator took notice of settlements and awards for those years and years going forward that reflect, as in this case, decreasing levels of increases for contracts negotiated during the time frame of this proceeding. The arbitrator recognized that the monies required to fund the award will require adjustments to the City's budget, and perhaps to staffing levels in the department. However, he also found that the costs can be funded without compelling the City to exceed its budget and tax levy caps. He concluded that the requirement to maintain and fund an effective law enforcement department in Asbury Park cannot be met without some assumption of costs that place a burden on the City's finances.

The collective negotiations process contemplates labor and management sitting down and negotiating terms and conditions of employment for one, two, three or more future years. Parties enter into collective negotiations agreements even though no one can predict with any assurance the exact budget circumstances a public employer will face in future years. For police and fire departments, when the parties cannot reach a voluntary agreement, either party may invoke the interest arbitration process by which a neutral third party sets terms and conditions of employment based on the evidence presented and in light of the nine statutory factors. N.J.S.A. 34:13A-16b(2). As an extension of the collective negotiations process, an arbitrator will also

P.E.R.C. NO. 2011-17

10.

award multi-year contracts. And because of the delays in the interest arbitration process, arbitration awards will often also set terms and conditions of employment retroactively thereby requiring adjustments to the public employer's budgets.

Retroactive salary adjustments and future salary increases are inherent in both the collective negotiations process and interest arbitration.

We have examined the documents attached to the City's appeal, documents that presumably the City wanted the arbitrator to consider after reopening the record. Those documents indicate that the City requested and received \$7.5 million in Special Municipal Aid for 2007, \$12 million for 2008, and \$10.5 million for 2009. The documents also indicate that in December 2009, the City requested \$12 million in Special Municipal Aid for 2010, but they do not indicate the outcome of that application. The documents also indicate that the City planned to lay off three employees in the Department of Commerce in the fall of 2009, and eight full-time and one part-time employee in various other departments in April 2010. The City could have submitted the documents regarding its receipt of Special Municipal Aid for 2007 and 2008 during the February 2009 hearing. Most of the remaining information it sought to have included in the record in April 2010 could have been offered to the arbitrator at a much earlier date. Nonetheless, none of these documents require vacating the

P.E.R.C. NO. 2011-17

11.

arbitrator's decision to award a delayed 2.5% salary increase for 2010. That decision is supported by substantial credible evidence in the record. An interest arbitration award is not unreasonable even though an employer may be forced to make economies in order to implement the award. Irvington PBA v. Town of Irvington, 80 N.J. 271, 296 (1979). That is true even where municipal officials must determine whether, and to what extent, police personnel or other town employees should be laid off, or whether budgetary appropriations for non-payroll costs should be reduced. Id. at 296-297. This arbitrator properly addressed the five statutory factors identified by the City in its appeal. The City has not shown how the record evidence, or even the evidence it would have submitted in a reopened record, require that the award be vacated or remanded for reconsideration. We therefore affirm the award.

ORDER

The interest arbitration award is affirmed.

BY ORDER OF THE COMMISSION

Commissioners Eaton, Fuller, Krengel and Voos voted in favor of this decision. Commissioner Watkins voted against this decision. Commissioner Colligan recused himself.

ISSUED: August 12, 2010

Trenton, New Jersey

P.E.R.C. NO. 2011-37

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWN OF KEARNY,

Appellant,

-and-

Docket No. IA-2008-021

KEARNY FIREMEN'S MUTUAL BENEVOLENT
ASSOCIATION, LOCAL NO. 18,

Respondent.

SYNOPSIS

The Public Employment Relations Commission affirms an interest arbitration award involving the Town of Kearny and Kearny Firemen's Mutual Benevolent Association, Local No. 18. The Town appealed the award arguing that the arbitrator failed to apply and give due weight to the statutory factors and that the arbitrator should not have ordered a fifth year on the record presented. The Commission holds that the arbitrator's award is supported by substantial credible evidence, the arbitrator properly addressed the statutory factors, and the Town has not shown how the evidence requires rejecting the arbitrator's award of increases similar to its own settlement pattern.

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

P.E.R.C. NO. 2011-37

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWN OF KEARNY,

Appellant,

-and-

Docket No. IA-2008-021

KEARNY FIREMEN'S MUTUAL BENEVOLENT
ASSOCIATION, LOCAL NO. 18,

Respondent.

Appearances:

For the Appellant, Apruzzese, McDermott, Mastro & Murphy, P.C., attorneys (Frederick T. Danser, of counsel and on the brief; Robert J. Merryman, on the brief)

For the Respondent, Fox and Fox, LLP, attorneys (David I. Fox, Nora R. Locke and Jessica S. Swanson, of counsel and on the brief)

DECISION

On June 7, 2010, the Town of Kearny appealed from an interest arbitration award involving a unit of firefighters employed by the Town and represented by Kearny Firemen's Mutual Benevolent Association, Local No. 18 (FMBA). See N.J.S.A. 34:13A-16f(5)(a). The arbitrator issued a conventional award, as he was required to do absent the parties' agreement to use another terminal procedure. N.J.S.A. 34:13A-16d(2). A conventional award is crafted by an arbitrator after considering

P.E.R.C. NO. 2011-37

2.

the parties' final offers in light of nine statutory factors. We affirm the award.^{1/}

The Town proposed a four-year contract with wage increases of 3.25% on July 1 of 2007, 2008, 2009 and 2010. Among other things, the Town also proposed a change in salary progression for new employees, a change in health benefits including an employee contribution of 1.5% of salary, changes in leaves of absence, vacations and sick leave, and resolution of pending grievances.

The FMBA proposed a five-year agreement with wage increases of 4.5% plus a 2% parity payment on July 1 of 2007, 2008, 2009, 2010 and 2011. The FMBA also sought a senior duty differential for those members who have completed a specific number of years as a firefighter, a 0.6% night differential (the FMBA claims that the PBA enjoys both a night differential and 0.6% added to base pay for muster pay), a clothing allowance to replace the direct exchange program under which clothing orders and repairs are done through the mail, widows' benefits similar to those enjoyed by the PBA, an increase in holiday pay, a differential for employees assigned to the day shift, a 2% payment for First Responder duties, a \$1500 payment for the performance of HAZMAT and Technical Rescue duties, and numerous non-economic items.

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

P.E.R.C. NO. 2011-37

3.

On May 20, 2010, the arbitrator issued a 74-page Opinion and Award. He noted that the record was extensive, containing hundreds of exhibits and including data concerning the entire financial profile of the Town including budget documents and comprehensive financial analyses, interest arbitration awards and labor agreements from many municipalities with emphasis on paid fire departments, and internal labor agreements between the Town and its six unions with accompanying arguments as to the relevance of the specific terms of those agreements. The arbitrator also stated that the parties submitted voluminous evidence touching upon the statutory factors with extensive argument as to the relevance and weight to be given to those factors.

After summarizing the parties' proposals and respective arguments on those proposals in detail, the arbitrator awarded a five-year agreement. The arbitrator accepted the FMBA's argument that a shorter period would result in additional protracted negotiations almost immediately after the implementation of the award. The arbitrator noted that no persuasive arguments to the contrary had been offered. He further observed that the Town's agreements with the Association of Department Heads and Assistant Departments Heads, Kearny PBA Local 21, and the Kearny Superior Officers Association expire on December 31, 2012, six months

P.E.R.C. NO. 2011-37

4.

after the June 30, 2012 expiration date awarded by the arbitrator.

By way of introduction to his award on salary and benefit issues, the arbitrator explained that those issues could not be properly analyzed and decided separately. He noted that there is substantial cost to the Town and impact on employees associated with each issue.

The arbitrator began with salary, the most substantial cost item. He stated that any analysis of that issue must start with the internal relationships between the FMBA and the other employee organizations that have negotiated with the Town. In particular, the arbitrator stated that a proper analysis must start by addressing whether there is a pattern of settlement that applies to the negotiations unit, and if so, whether adherence to its terms represents a reasonable determination of the issue. He noted that evidence of a pattern of settlement can implicate several of the statutory factors including the interests and welfare of the public, internal comparisons between an employer's negotiations units, and the continuity and stability of employment.

The arbitrator then reviewed the Town's other labor agreements. The Town has agreed to 3.25% increases on January 1 of each year with Civil Service Council No. 11 for 2008-2011, the Association for Department Heads and Assistant Department Heads

P.E.R.C. NO. 2011-37

5.

for 2009-2012, Kearny PBA Local 21 for 2009-2012, and the Kearny Superior Officers Association (SOA) for 2009-2012. For 2007 and 2008, the PBA and SOA received 3.95% increases in base pay. The arbitrator noted, however, that the Town's law enforcement units receive 0.6% on top of base salary each year for muster pay, thus turning the 3.95% increases into 4.5% and the 3.25% increases into 3.85%. He concluded that there is an internal pattern of settlement with respect to base wage increases and that adherence to that pattern with respect to base wages and health insurance represents a reasonable determination of those issues.

As for health benefits, the arbitrator awarded the Town's proposal that sets the New Jersey Direct 15 plan as the basic plan with an employee option to pay the difference between Direct 10 and Direct 15. He did not award the Town's proposal for a 1.5% contribution given the fact that the Town's agreements with both of its law enforcement units expire on December 31, 2012 and those units do not make a contribution. We note that on May 22, 2010, the Town began health benefit deductions of 1.5% of base salary pursuant to P.L. 2010, c. 2.

As for salary, the arbitrator awarded the Town's internal pattern of 3.25% increases to base pay for each of the five years. He rejected the FMBA's proposals for 4.5% increases plus 2% parity payments, finding that they would so encroach upon the Town's budget responsibilities in all areas of its budget that

P.E.R.C. NO. 2011-37

6.

the result would have an adverse financial impact on the governing body, residents and taxpayers.

The arbitrator noted that the FMBA's financial expert had submitted an extensive report putting the Town's financial position in its most favorable light. He further noted, however, that the report would be more persuasive in the absence of a declining economy, declining surplus, declining State aid, and the budgetary pressures placed upon the Town due to the tax cap levy. The arbitrator concluded that an award to base pay beyond 3.25% per year would be inconsistent with the relevant statutory criteria.

The Town's law enforcement units have received additional payments beyond the levels of the across-the-board increases. The arbitrator rejected the FMBA's argument for dollar for dollar parity. He found, however, that the FMBA had shown that there was a basis for some additional compensation for specialized duties, although the financial circumstances of the Town prevent such payments from being anywhere near as substantial as the FMBA had proposed. Thus, the arbitrator rejected the FMBA's proposal for HAZMAT and Technical Rescue payments. However, he awarded a 1% payment for the performance of First Responder Duties as part of base pay beginning July 1, 2011. He found that the data submitted concerning the extensive nature of these payments

P.E.R.C. NO. 2011-37

7.

through fire departments in New Jersey allowed for consideration of the proposal.

The arbitrator also awarded the FMBA's proposals to modify the leaves of absence provision to be consistent with the Kearny Fire Superior Officers Association and PBA benefits. He added the widow's benefit and military leave time provision contained in the PBA agreement. He restored a retiree dental benefit if it was inadvertently omitted from the current agreement, modified the holiday provision to incorporate a practice, included current differentials for the Mechanic and Chief Inspector of Combustibles, ordered the generation of overtime lists in each firehouse, and allowed vacation time carryover at the sole discretion of the Chief. He declined to award any of the other economic or non-economic proposals.

The arbitrator concluded that the annual economic change of the award is 16.25% over five years for base wages with an additional 1% in 2011 due to the First Responder payment. He found the costs of the award to be generally consistent with internal comparability for wage increases that have been granted by the Town during these years in the law enforcement units. He further found the costs to be consistent with the cost of living data submitted for 2007 and 2008 but lower than the data in 2009 and 2010. He concluded that the terms of the award fall above

P.E.R.C. NO. 2011-37

8.

the cost of the Town's proposal but far lower than the costs associated with the FMBA's proposal.

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

- (1) The interests and welfare of the public
 . . . ;
- (2) Comparison of the wages, salaries, hours, and conditions of employment of the employees with the wages, hours and conditions of employment of other employees performing the same or similar services and with other employees generally:
 - (a) in private employment in general . . . ;
 - (b) in public employment in general . . . ;
 - (c) in public employment in the same or comparable jurisdictions;
- (3) the overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received;
- (4) Stipulations of the parties;
- (5) The lawful authority of the employer
 . . . ;

P.E.R.C. NO. 2011-37

9.

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

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

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

Arriving at an economic award is not a precise mathematical process. Given that the statute sets forth general criteria

P.E.R.C. NO. 2011-37

10.

rather than a formula, the treatment of the parties' proposals involves judgment and discretion and an arbitrator will rarely be able to demonstrate that an award is the only "correct" one. See Borough of Lodi, P.E.R.C. No. 99-28, 24 NJPER 466 (¶29214 1998). Some of the evidence may be conflicting and an arbitrator's award is not necessarily flawed because some pieces of evidence, standing alone, might point to a different result. Lodi. Therefore, within the parameters of our review standard, we will defer to the arbitrator's judgment, discretion and labor relations expertise. City of Newark, P.E.R.C. No. 99-97, 25 NJPER 242 (¶30103 1999). However, an arbitrator must provide a reasoned explanation for an award and state what statutory factors he or she considered most important, explain why they were given significant weight, and explain how other evidence or factors were weighed and considered in arriving at the final award. N.J.S.A. 34:13A-16g; N.J.A.C. 19:16-5.9; Lodi.

The Town argues that proper resolution of this matter is a modification of the award or a decision to vacate and remand the award for reconsideration of the economic award for 2010 and 2011. The FMBA responds that since the Town's proposal for a 3.25% increase for 2010 was granted, the Town's appeal should be limited to the 3.25% for 2011, the 1% First Responder pay for 2011, and the vacation and widows' benefits provisions.

P.E.R.C. NO. 2011-37

11.

More specifically, the Town argues that the arbitrator did not appropriately consider and apply the interest and welfare of the public factor when he awarded a five-year contract. See N.J.S.A. 34:13A-16g(1). The Town states that while there were no economic data for 2010 and 2011 in the record, there is a considerable amount of economic information that demonstrated the trends with respect to loss of State aid, increases in taxes and tax rates, increasing reliance on property taxes as part of the municipal budget, and loss of property value for homeowners. The Town asserts that there is no sound reason to expect that these trends will not continue into both 2010 and 2011. The Town argues that while the arbitrator made reference to the FMBA's financial expert, he made no reference to the report of the Town's Chief Financial Officer. The Town contends that the arbitrator did not discuss the award's impact on the Town's tax rate, and did not analyze the Town's budget situation or its ability to fund the award in the fourth and fifth years in light of its cap obligations.^{2/}

The FMBA responds that the arbitrator discussed what considerations were made in reaching his determination. It states that the arbitrator indicated that pursuant to established case law, evidence of pattern of settlement can implicate several

^{2/} The Town has both tax levy and spending cap restrictions that must be considered under N.J.S.A. 34:13A-16g(5) and 16g(9). See N.J.S.A. 40A:4-45.1 and 40A:4-45.45.

P.E.R.C. NO. 2011-37

12.

of the statutory criteria, including the interest and welfare of the public, internal comparisons between the employer's negotiations units, and the continuity and stability of employment. The FMBA notes that the contract expiration date is consistent with the termination dates of the agreements between the Town and the Association of Department Heads and Assistant Department Heads, Kearny PBA Local 21, and the Kearny SOA. The FMBA further responds that the fact that the arbitrator could not have certain information in his possession for calendar years 2011 and 2012 is irrelevant to his ability to award a contract term beyond 2009. The FMBA states that interest arbitration awards typically extend beyond the date in which the award was rendered.

N.J.S.A. 34:13A-16g(1) addresses the interest and welfare of the public. The arbitrator found a pattern of internal settlement that included the:

Association of Department Head and Assistant Department Heads,
1/1/09 through 12/31/12 with wage increases of 3.25% per year;

Kearny Civil Service Council No. 11,
1/1/08 through 12/31/11 with wage increases of 3.25% per year;

Kearny PBA Local 21,
1/1/07 through 12/31/08 with wage increases of 3.95% per year and
1/1/09 through 12/31/12 with wage increases of 3.25% per year; and

Kearny Police Superior Officers Association,

P.E.R.C. NO. 2011-37

13.

1/1/09 through 12/31/12 with maintenance of existing rank differential which translates to the same wage increases of 3.25% per year.

The arbitrator noted that the police units also receive an additional 0.6% per year which turns the 3.95% increases into 4.5% and the 3.25% increases into 3.85%. The arbitrator stated that internal pattern of settlements are also relevant under the comparability factor, N.J.S.A. 34:13A-16g(2)(c), and the continuity and stability of employment factor, 16g(8). The arbitrator applied this internal pattern to base wages and health benefits and that application is supported by substantial credible evidence.

We conclude that the arbitrator adequately addressed the interest and welfare of the public when he awarded the Town's proposal for 3.25% increases for each year of the agreement. We recognize that there can only be limited hard economic data for 2010 through 2012. We recently addressed that fact in the context of a similar dispute over the duration of an agreement. City of Asbury Park, P.E.R.C. No. 2011-17, 36 NJPER 323 (¶126 2010). We stated:

The collective negotiations process contemplates labor and management sitting down and negotiating terms and conditions of employment for one, two, three or more future years. Parties enter into collective negotiations agreements even though no one can predict with any assurance the exact budget circumstances a public employer will face in future years. For police and fire departments, when the parties cannot reach a

P.E.R.C. NO. 2011-37

14.

voluntary agreement, either party may invoke the interest arbitration process by which a neutral third party sets terms and conditions of employment based on the evidence presented and in light of the nine statutory factors. N.J.S.A. 34:13A-16b(2). As an extension of the collective negotiations process, an arbitrator will also award multi-year contracts. And because of the delays in the interest arbitration process, arbitration awards will often also set terms and conditions of employment retroactively thereby requiring adjustments to the public employer's budgets. Retroactive salary adjustments and future salary increases are inherent in both the collective negotiations process and interest arbitration.

Here, the arbitrator awarded a fifth year, but awarded an increase for that year consistent with the Town's settlements with its department heads and assistant department heads, police officers and police superior officers. The additional 0.6% annual muster pay for the police officers is addressed by the award of a 1% First Responder stipend in the last year of the agreement. Although the arbitrator did not order employee contributions to health insurance premiums, 1.5% contributions for health benefit premiums under P.L. 2010, c. 2 commenced on May 21, 2010. The Town's other negotiations units will not begin to make health benefit contributions until the expiration of their current agreements.

The Town also argues that the arbitrator failed to consider and give due weight to the lawful authority of the Town. See N.J.S.A. 34:13A-16g(5) and (9). The Town asserts that the

P.E.R.C. NO. 2011-37

15.

arbitrator completely ignored both the tax levy cap and the appropriations cap. The Town further asserts that the award will make it extremely difficult, if not impossible, for the Town to meet those legally imposed obligations.

The PBA responds that the arbitrator referred to the cap laws in explaining that "an award to base salary beyond 3.25% would be inconsistent with the relevant statutory criteria. These include financial impact, the impact of the costs of the FMBA's proposal on the Town's appropriation and revenue caps, internal comparability and cost of living." Arbitrator's Award at 67. It further responds that the Town and PBA agreed to a four-year agreement with a 3.25% increase in addition to the 0.6% muster pay, totaling 3.85% for each of the years 2009 through 2012. The FMBA contends that the FMBA Financial Expert Report demonstrated that the Town is in good financial health and could easily have afforded to pay the FMBA's proposal and that the salary increases and other benefits are well within cap calculations.

N.J.S.A. 34:13A-16g(5) and (9) require consideration of the employer's lawful authority, in particular consideration of its cap restrictions. In its brief to the arbitrator, the Town acknowledged that the tax levy cap is applied to the budget as a whole and not to each of its individual components. Appellant's Appendix at 137. In its brief on appeal, the Town argues that

P.E.R.C. NO. 2011-37

16.

the award will make it extremely difficult, if not impossible, for the Town to meet its cap obligations. The Town asserts that it will have to reduce its labor costs through reductions in personnel in order to remain within the cap limitations. We reject this ground for appeal. An interest arbitration award is not unreasonable even though an employer may be forced to make economies in order to implement the award. Irvington PBA v. Town of Irvington, 80 N.J. 271, 296 (1979). That is true even where municipal officials must determine whether, and to what extent, police personnel or other employees should be laid off, or whether budgetary appropriations for non-payroll costs should be reduced. Id. at 296-297. We recognize that any salary increase places pressure on a public employer's cap limitations. However, an interest arbitration award that is similar to the employer's own internal pattern of settlements should not create unexpected pressure.

The Town also argues that the arbitrator failed to assess the financial impact of the last two years of the award. N.J.S.A. 34:13A-16g(6). The Town contends that the failure to have a record to assess the financial impact of the last two years is fatal to its approval, particularly given the unprecedented economic situation facing municipalities in New Jersey.

P.E.R.C. NO. 2011-37

17.

The FMBA responds that the employer's offer does not automatically equate with the public or taxpayers' interest. It states that arbitrators have viewed the public interest as encompassing the need for both fiscal responsibility and a compensation package required to maintain an effective public safety department with high morale.

Our discussion of Asbury Park above is relevant here. There is no per se bar to awarding terms and conditions of employment for future years based on the record evidence and the current economic trends. The Town presented hundreds of pages of documentation to the arbitrator. It has not pointed to any particular evidence in the record that requires rejecting the arbitrator's award of increases similar to the Town's own internal pattern of settlement.

The Town also argues that the arbitrator failed to appropriately assess the continuity and stability of employment. N.J.S.A. 34:13A-16g(8). It contends that the arbitrator rejected the Town's reasonable request for a 1.5% contribution towards health insurance, a contribution now imposed by law on most public employees in New Jersey. The Town argues that the arbitrator placed too great an emphasis on comparability with the Town's police officers. It asserts that the focus should not be on whether the employees will be satisfied with the compensation package they receive, but instead on whether the public employer

P.E.R.C. NO. 2011-37

18.

can maintain its current staffing levels while at the same time pay for the rising cost of employee salaries and benefits.

The FMBA responds that the arbitrator addressed this factor in general and in addressing the duration of the award. It suggests that the Town wants to reopen the record to challenge the fourth year of the agreement that it had proposed. The FMBA states that the Town continuously relies upon economic conditions of the State and not the economic conditions that are specific and relevant to the Town of Kearny. The FMBA adds that pursuant to P.L. 2010, c. 2, the Town instituted a 1.5% salary deduction of base salary from Kearny firefighters towards health care and that this issue is moot.

We conclude that the arbitrator adequately considered this statutory factor and that his award is supported by substantial credible evidence. The Town has not pointed to any evidence showing that the award in the final two years will impact its ability to continue staffing levels in the Fire Department or other Town departments.

Finally, the Town argues that the award must be vacated or modified because the arbitrator violated the standards set forth in N.J.S.A. 2A:24-8(d). The award states:

Language shall be added to the Agreement stating that "At the sole discretion of the Chief, FMBA members may receive payment for all carried over vacation time at straight time or, in the alternative, the ability to

P.E.R.C. NO. 2011-37

19.

carry over all unused vacation days at the end of the calendar year."

The Town asserts that the award makes no mention of the basis for the carryover or the length of time of such carryover, all of which are circumscribed by N.J.S.A. 11A:6-3. That statute permits vacation time not taken because of business demands to accumulate and be granted during the next succeeding year only. The Town contends that the arbitrator so imperfectly executed his powers in issuing this portion of the award that no definite award on this subject was made.

The FMBA responds that the provision is clear and provides for the restriction of vacation carryover "at the sole discretion of the Chief."

We conclude that the language does not compel the Town to violate N.J.S.A. 11A:6-3 because the Chief retains the discretion to deny the right to carry over unused vacation days. Any dispute that arises over the meaning of this contract language can be addressed through the parties' negotiated grievance procedure.

The second alleged violation involves widows' benefits. The arbitrator stated:

Effective with the date of this Award, this Agreement shall provide a surviving spouse benefits provision that conforms with the benefits provided by the PBA agreement.

P.E.R.C. NO. 2011-37

20.

The Town asserts that the award leaves open the question of whether this provision applies prospectively or retroactively. The Town argues that this uncertainty rises to the level of an imperfect execution which in turn requires remand for clarification.

The FMBA responds that the Town did not address the FMBA's proposal in its original submission and that there is no ambiguity, it shall be applied in the same manner as it is applied in the PBA contract.

We similarly hold that any dispute over the meaning of this provision can be addressed through the grievance procedure.

ORDER

The arbitrator's award is affirmed.

BY ORDER OF THE COMMISSION

Commissioners Colligan, Eaton, Krengel and Voos voted in favor of this decision. None opposed. Commissioner Watkins recused himself. Commissioner Fuller abstained.

ISSUED: October 28, 2010

Trenton, New Jersey

P.E.R.C. NO. 2011-36

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF PASSAIC and
PASSAIC COUNTY SHERIFF,

Appellants,

-and-

Docket No. IA-2007-115

POLICE BENEVOLENT ASSOCIATION LOCAL 197
(Correction Officers),

POLICE BENEVOLENT ASSOCIATION LOCAL 197
(Correction Superior Officers),

POLICE BENEVOLENT ASSOCIATION LOCAL 286
(Sheriff's Officers),

POLICE BENEVOLENT ASSOCIATION LOCAL 286
(Sheriff's Superior Officers),

Respondents.

SYNOPSIS

The Public Employment Relations Commission remands an interest arbitration award involving the County of Passaic and the Passaic County Sheriff and Police Benevolent Association Locals 197 and 286 to a new arbitrator for decision on the existing record because the interest arbitrator issued two awards that do not adequately address all the statutory factors or comply with the remand directives of the Commission set forth in P.E.R.C. No. 2010-42, 35 NJPER 451 (¶149 2009).

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. 2011-36

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF PASSAIC and
PASSAIC COUNTY SHERIFF,

Appellants,

-and-

Docket No. IA-2007-115

POLICE BENEVOLENT ASSOCIATION LOCAL 197
(Correction Officers),

POLICE BENEVOLENT ASSOCIATION LOCAL 197
(Correction Superior Officers),

POLICE BENEVOLENT ASSOCIATION LOCAL 286
(Sheriff's Officers),

POLICE BENEVOLENT ASSOCIATION LOCAL 286
(Sheriff's Superior Officers),

Respondents.

Appearances:

For the Appellants, Genova, Burns & Giantomasi,
attorneys (Brian W. Kronick, of counsel and on the
brief; Kristina E. Chubenko, on the brief)

For the Respondents, Loccke, Correia, Schlager, Limskey
& Bukosky, attorneys (Leon B. Savetsky, of counsel)

DECISION

The County of Passaic and Passaic County Sheriff appeal from an interest arbitration award involving negotiations units of County Correction Officers and Sheriff's Officers represented by Police Benevolent Association, Local 197 (Correction Officers), Police Benevolent Association, Local 197 (Correction Superior Officers), Police Benevolent Association Local 286 (Sheriff's

P.E.R.C. NO. 2011-36

2.

Officers), and Police Benevolent Association, Local 286 (Sheriff's Superior Officers). See N.J.S.A. 34:13A-16f(5)(a). We had vacated the arbitrator's initial award in this matter and remanded to the arbitrator for reconsideration and issuance of a new award. P.E.R.C. No. 2010-42, 35 NJPER 451 (¶149 2009). We instructed the arbitrator that the new award had to explain which of the statutory factors he deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor. After an extension of time, the arbitrator's new award was due on March 18, 2010. On April 27, the arbitrator issued his opinion and award on remand. The arbitrator had not sought a second extension of time. His initial award ordered 4% increases on April 1 of each of the five contract years. His award on remand reduced the increases to 3.75% for 2007 and 2008, and 3.5% for 2009, 2010 and 2011.

The County argues that the award should be vacated because the arbitrator's jurisdiction to issue the new award expired; the arbitrator failed to analyze the nine statutory factors and failed to comply with our remand directives; and the arbitrator violated N.J.S.A. 2A:24-8. The Associations respond that the arbitrator's award complied with the applicable statutes and the standard of review, but that if a remand is required, it should be to the same arbitrator.

P.E.R.C. NO. 2011-36

3.

Because the second award does not include the findings and analysis that we directed, we vacate the award and remand the case to a new arbitrator for reconsideration consistent with this opinion. If the parties are unable to agree on a replacement arbitrator, an arbitrator shall be appointed by lot. N.J.A.C. 19:16-8.3. The remand shall be decided on the existing record, unless the arbitrator requires additional submissions.

We take this action because the arbitrator has issued two awards that do not adequately address all the statutory factors. For example, N.J.S.A. 34:13A-16g(2) requires an arbitrator to make a comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceeding with those of other employees performing the same or similar services and with other employees generally. More specifically, this statutory factor requires a comparison with public employees in the same jurisdiction. In our initial decision, we stated:

In addressing the "Comparability" factor, the arbitrator did not make any findings about the County's alleged pattern of settlement with 13 other negotiations units; and did not decide whether a wage and medical contribution pattern was established or whether the evidence supports a deviation from the pattern. See Union Cty., P.E.R.C. No. 2003-33, 28 NJPER 452 (¶33169 2002). He must do so on remand.

In his decision on remand, the arbitrator did not discuss the alleged internal pattern of settlement that we specifically

P.E.R.C. NO. 2011-36

4.

directed him to address. The County has filed exceptions on that issue and has outlined the evidence it presented supporting a finding of an internal pattern of settlement. The arbitrator was required to address that evidence on remand and did not. We express no opinion on the evidence presented because it is for an arbitrator to review that evidence and apply the statutory factors in the first instance. It is then for us to review an award under the standards affirmed in Teaneck Tp. v. Teaneck FMBA, Local No. 42, 353 N.J. Super. 298, 299 (App. Div. 2002), aff'd o.b. 177 N.J. 560 (2003), citing Cherry Hill Tp., P.E.R.C. No. 97-119, 23 NJPER 287 (¶28131 1997).

ORDER

The interest arbitration award is vacated and this matter is remanded for appointment of a new arbitrator. If the parties are unable to agree on a replacement arbitrator, an arbitrator shall be appointed by lot. The remand shall be decided on the existing record, unless the arbitrator requires additional submissions.

BY ORDER OF THE COMMISSION

Commissioners Eaton, Fuller, Krengel, Voos and Watkins voted in favor of this decision. None opposed. Commissioner Colligan recused himself.

ISSUED: October 28, 2010

Trenton, New Jersey

P.E.R.C. NO. 2011-56

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF ATLANTIC,

Appellant,

-and-

Docket No. IA-2007-057

FOP LODGE #34,

Respondent.

SYNOPSIS

The Public Employment Relations Commission vacates and remands an interest arbitration award to the arbitrator for issuance of a new decision that further explains the weight given to the employer's evidence on the issue of comparability for the award of the \$1200 equity adjustment, salary guide restructuring, Holiday Pay/Holidays, shift differentials and retiree health benefits. The arbitrator must also identify what evidence he relied on to determine the County could fund the award without exceeding its lawful authority and provide a more thorough explanation of the cost of living factor.

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

P.E.R.C. NO. 2011-56

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF ATLANTIC,

Appellant,

-and-

Docket No. IA-2007-057

FOP LODGE #34,

Respondent.

Appearances:

For the Appellant, Eric M. Bernstein & Associates,
L.L.C., attorneys (Deborah J. Bracaglia, of counsel)

For the Respondent, Selikoff & Cohen, PA, attorneys
(Keith Waldman, of counsel)

DECISION

On April 21, 2010, the County of Atlantic appealed from an interest arbitration award involving a unit of corrections officers represented by FOP Lodge #34.^{1/} See N.J.S.A. 34:13A-16f(5)(a). The arbitrator issued a conventional award, as he was required to do absent the parties' agreement to use another terminal procedure. N.J.S.A. 34:13A-16d(2). A conventional award is crafted by an arbitrator after considering the parties' final offers in light of the nine statutory factors. We vacate

^{1/} The collective negotiations agreement expired on December 31, 2006.

P.E.R.C. NO. 2011-56

2.

the award and remand it the arbitrator for further explanation and analysis regarding the specific issues identified in this decision.^{2/}

The Parties' Proposals

I. The County's Proposals

The County proposed a four-year agreement from January 1, 2007 through December 31, 2010. The County proposed a new salary guide that would add a step between steps 6 and 7 of the prior agreement to break up the \$12,400 "bubble" existing between those steps. For 2007, the County proposed dollar increases ranging from \$500 to \$800 at steps one through five, that any officers on step 6 move to step 8, and to increase step 8 by \$2600 or 4.8%. In 2008, the County proposed dollar increases ranging from \$500 to \$800 for steps one through seven, with a \$2280 or 4% increase for officers at step 8. In 2009, the County proposed to roll the hazardous duty pay of \$1350 into the base salary for all Correction Officers as well as to increase step 8 by \$2441 or 4.1%. Effective January 1, 2009, the County proposed to reduce time and one-half payment for holidays to straight time and to increase the uniform allowance by \$100.^{3/} For 2010, the County

2/ We deny the FOP's request for oral argument. The matter has been fully briefed by both parties.

3/ The current holiday pay practice is that officers receive by November 15th of each year payment for ten holidays at time and one-half of their daily rate of pay. As the officers
(continued...)

P.E.R.C. NO. 2011-56

3.

proposed dollar increases ranging from \$500 to \$800 for steps one through seven and to increase step 8 by 4%. The County proposed that officers on step 6 would advance two steps and remaining officers would advance one step. The County also proposed the addition of a \$500 stipend for the Special Emergency Response Team (SERT). With regard to overtime, the County proposed that officers would have the option to refuse mandatory overtime two times a calendar year, but not in emergent situations and not on any of the recognized 13 holidays or on Superbowl Sunday.^{4/} For eligibility for retiree health benefits, the County proposed that employees must have 25 years or more of service in the State pension plan and a period of full-time service of 25 years in the County at the time of retirement.^{5/}

3/ (...continued)
work in a corrections facility that operates 24/7, officers work on holidays that fall on their regularly scheduled days. When an officer's regularly scheduled work day falls on a holiday, they receive an additional full days pay. (Supplemental Award at 7).

4/ The current mandatory overtime practice is that an officer can refuse mandatory overtime one time in a 5 year period. The County asserted that it was encountering shift coverage issues because officers were using holidays and Superbowl Sunday as days they could refuse mandatory overtime. (Supplemental Award at 5 - 6).

5/ Eligibility for retiree health benefits currently requires an employee to have 25 years or more of service in the State pension plan and a period of full-time service of 15 years in the County at the time of retirement.

P.E.R.C. NO. 2011-56

4.

II. The FOP's Proposals

The FOP proposed a four-year agreement. The FOP sought to add an additional step to the top of the salary guide. For 2007, the FOP sought an increase of 4.43%, a \$2000 increase per step and a \$1200 equity adjustment on the top step. For 2008, it sought an increase of 4.24% and a \$250 equity adjustment on the top step. For 2009, it sought an increase of 4.2% and a \$250 equity adjustment on the top step. For 2010, it sought a 4.25% increase and a \$750 equity adjustment on the top step. It also sought to have longevity amounts increase by \$500 in each year of the Agreement. It proposed that the \$1350 hazardous duty pay be rolled into base pay as of January 1, 2007, the uniform allowance increase to \$1400 in 2007 and an additional \$50.00 per year in 2008 and 2010. It also sought shift differentials for 0730 - 1530 hours at \$1250 per year and for 1530 hours-2330 hours at \$2750 per year. Regarding work schedules, it sought to modify the contract to provide for a guaranteed 30 minute uninterrupted lunch/meal period per shift. With regard to overtime, it sought to define "hours worked" to include all hours worked as well as any time on approved leaves of absence, holidays, compensatory time and/or vacation time, as well as to provide officers the option to refuse mandatory overtime two times each year. It also made proposals with regard to which items would be included in base salary for overtime and pension purposes, compensation for

P.E.R.C. NO. 2011-56

5.

vacation leave and terminal leave, Association rights and privileges, working conditions and safety items, and continuation of benefits.

The Arbitrator's Initial Award

On April 2, 2010, the arbitrator issued a 101-page Opinion and Award. After summarizing the parties' proposals and respective arguments on those proposals in detail, the arbitrator awarded a four-year agreement as proposed by the parties with a term of January 1, 2007 through December 31, 2010. The arbitrator awarded a new salary schedule. For 2007, the arbitrator awarded 3% increases to each step except step 7. Step 7 was increased by 4% and a \$1200 equity adjustment was added to that step only. A \$1350 hazardous duty payment was rolled into base pay at each step. All officers on steps 6 and 7 moved to step 8. All percentage adjustments were in addition to the hazardous duty pay and equity adjustment. For 2008, the arbitrator awarded a 3% increase to each step except step 8 which received 4%. For 2009, the arbitrator awarded a 3.5% increase to each step, except step 8 which received 3.75%. For 2010, the arbitrator awarded a 3.5% increase to each step except step 8 which received 4.0%. He also added a new maximum step 9 and all officers on steps 7 and 8 moved to step 9.

The arbitrator also raised the clothing allowance from \$1,250 to \$1,350 and granted all members of the SERT a \$500

P.E.R.C. NO. 2011-56

6.

stipend, effective January 1, 2009. With regard to unused sick leave, effective January 1, 2007, he increased by \$1,000 at 50% of days (total \$13,000); effective January 1, 2008, increased by \$1,000 at 50% of days (total \$14,000); effective January 1, 2009, increased by \$1,000 at 50% (total \$15,000 at 50% of days) and effective January 1, 2010, changed to \$15,000 at 100% of days.

The arbitrator awarded the following provision for overtime:

An officer shall have the option to refuse mandatory overtime two times (2x) per calendar year without being subject to disciplinary action. Overtime refusal shall apply to Thanksgiving Day, Christmas Day and New Year's Day. Overtime refusal shall not apply to the ten (10) remaining holidays or Super Bowl. This provision shall not apply in emergent situations and whether a situation is deemed emergent shall be determined by the Shift Commander.

With regard to retiree health benefits, the arbitrator found that employees hired on or before December 31, 2006 shall be eligible for retiree health benefits if they have 25 or more years of State pension credit and at least 15 years of full-time service with the County, and that employees hired on or after January 1, 2010 will need at least 25 years of service with the County.^{6/} He found that the modification of retiree health benefits as of January 1, 2010 and the elimination of ten holidays from mandatory overtime would reduce the County's

^{6/} The arbitrator later corrected his award to reflect that the health care provision for retirees would be effective December 31, 2009.

P.E.R.C. NO. 2011-56

7.

overall costs. He also awarded shift differentials of \$.50 per hour for 0730 - 1530 hours and \$.55 per hour for 1530 - 2330 hours. The arbitrator awarded the FOP's proposals with regard to working conditions and safety items, continuation of benefits, and work schedules to provide for a guaranteed 30 minute uninterrupted lunch/meal period per shift.

On May 20, 2010, the County filed an appeal of the award. On June 11, the FOP filed a brief in opposition to the appeal. On August 12, we remanded the award to the arbitrator to issue a supplemental Opinion and Award to clarify the basis for his award of the \$1200 equity adjustment. We also asked him to clarify retiree health benefits eligibility requirements for employees hired in 2007, 2008 and 2009 as well as how acceptance of the mandatory overtime proposal will reduce the County's overall costs. P.E.R.C. No. 2011-8, 36 NJPER 307 (¶117 2010).

The Arbitrator's Supplemental Award

On September 1, 2010, the arbitrator issued a supplemental opinion and award. With regard to the \$1200 equity adjustment to step 7 of the salary guide, the arbitrator stated that his determination was made after comparisons to other law enforcement units within the County. He also stated that the equity adjustment was "part of a comprehensive method to add steps to the guide, reduce the \$12,400 bubble step, create a more

P.E.R.C. NO. 2011-56

8.

equitable salary progression and allow for a more affordable salary guide for the County."^{7/}

With regard to retiree health benefits, the arbitrator stated that his original award contained a typographical error and that it should have read that employees hired on or before December 31, 2009 (not 2006) shall be eligible for retiree health benefits if they have 25 or more years of pension credit and at least 15 years of full-time service with the County. He clarified that effective January 1, 2010, employees must have 25 or more years of pension credit with the County to be eligible for retiree health benefits.

With regard to how acceptance of the mandatory overtime proposal will reduce the County's overall costs, the arbitrator stated that it was his intent to save the County money by preventing Corrections Officers from calling out on the ten holidays and Superbowl Sunday, thus preventing the County from having to pay overtime to other officers covering those shifts. However, the arbitrator recognized that since the ten holidays

^{7/} The arbitrator noted the difficulty he encountered in restructuring the salary guide. He stated that while the parties agreed that the guide needed to be restructured, they were unable to come to an agreement as to how to modify it. The arbitrator notes that since the term of this Agreement ends on December 31, 2010, the parties are likely currently engaging in successor negotiations. He recommends that in those negotiations the parties "should be addressing a new salary guide and at the same time creating an incremental pattern that is consistent on every single step." (Initial Award at 83 - 84).

P.E.R.C. NO. 2011-56

9.

are unnamed in the current agreement, it is impossible to determine how the County would be saving money other than on Superbowl Sunday. He then amended the portion of his award pertaining to mandatory overtime as follows:

On Superbowl Sunday Correction Officers assigned to work cannot call out and utilize that day not to appear at work. That means the stick list^{8/} is not being utilized or minimally utilized because of long-term absences on that particular day and all assigned employees will be present. If an Officer does call out sick at least (1) day prior to Superbowl Sunday, Superbowl Sunday, and at least one (1) day after Superbowl Sunday, that Officer must produce a physician's statement. Personal days, vacation days and compensatory days cannot be utilized on Superbowl Sunday without prior approval of the Officer's immediate supervisor. Any verified violations of the above will result in disciplinary action against that Officer.

On September 23, 2010, the County filed a supplemental appeal brief. The FOP relied on the reasoning provided in the supplemental award to support its position.

The Statutory Requirements and Legal Standards for Reviewing Arbitration Awards

N.J.S.A. 34:13A-16g requires that an arbitrator shall state in the award which of the factors are deemed relevant, satisfactorily explain why the others are not relevant, and

^{8/} A stick list, also known as the mandatory overtime list, is a list of officers who will be called for overtime if the County is unable to cover the shift on a volunteer basis. (Supplemental Award at 5).

P.E.R.C. NO. 2011-56

10.

provide an analysis of the evidence on each relevant factor. The statutory factors are as follows:

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

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

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

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

Arriving at an economic award is not a precise mathematical process. Given that the statute sets forth general criteria rather than a formula, the treatment of the parties’ proposals involves judgment and discretion and an arbitrator will rarely be able to demonstrate that an award is the only “correct” one. See Borough of Lodi, P.E.R.C. No. 99-28, 24 NJPER 466 (¶29214 1998). Some of the evidence may be conflicting and an arbitrator’s award

P.E.R.C. NO. 2011-56

12.

is not necessarily flawed because some pieces of evidence, standing alone, might point to a different result. Lodi. Therefore, within the parameters of our review standard, we will defer to the arbitrator's judgment, discretion and labor relations expertise. City of Newark, P.E.R.C. No. 99-97, 25 NJPER 242 (¶30103 1999). However, an arbitrator must provide a reasoned explanation for an award and state what statutory factors he or she considered most important, explain why they were given significant weight, and explain how other evidence or factors were weighed and considered in arriving at the final award. N.J.S.A. 34:13A-16g; N.J.A.C. 19:16-5.9; Lodi.

The County's Arguments and the FOP's Responses

The County argues that the arbitrator provided no analysis and/or reasoning as to how the \$1200 equity adjustment helps maintain a stable work force and also did not assess the financial impact of this aspect of the award. The County also argues that the arbitrator failed to consider comparables in awarding the change in retiree health benefits effective as of 2009 as opposed to 2007, shift differentials, and in not awarding its holiday pay proposal. The County also asserts generally that the arbitrator failed to give due weight or provide sufficient analysis about the lawful authority of the employer, the

P.E.R.C. NO. 2011-56

13.

financial impact of the governing unit and the cost of living.^{9/}

The FOP responds that the equity adjustment was awarded based on a comparable with PBA No. 243. It further asserts that the arbitrator provided sufficient analysis on the comparables submitted by the parties with regard to the items awarded. It also contends that the arbitrator provided extensive analysis on the statutory factors of lawful authority of the employer, the financial impact of the governing unit, and the cost of living.

Analysis

I. The \$1200 Equity Adjustment/Salary Guide Restructuring

The arbitrator stated that the \$1200 equity adjustment was a necessary part of his broader plan to create a new salary guide. He found that the addition of the \$1,200 equity adjustment "was part of a comprehensive method to add steps to the guide, reduce the \$12,400 bubble step [between steps 6 and 7], create a more equitable salary progression and allow for a more affordable guide for the County." He also found that if he had not added the \$1,200 equity adjustment, the \$12,400 bubble

^{9/} The County also asserts the arbitrator did not provide sufficient analysis to justify the \$100 increase in the clothing allowance or the portions of the award relating to working conditions and safety items. However, the arbitrator awarded the County's proposals on both of these issues. The County further contends that the arbitrator did not provide sufficient analysis to justify the payment for unused sick leave and work schedules, but there is no indication in the record that the County opposed these proposals by the FOP.

P.E.R.C. NO. 2011-56

14.

step would have grown to an “unwieldy number.” He states that out of the 176 officers in the bargaining unit, 94 officers are not at maximum. As those 94 officers progress through the salary guide they all would have received the benefit of the bubble step. (Supplemental Award at 4). However, the arbitrator should provide specific reasoning as to how or why the equity adjustment was necessary to modify the guide and achieve better progression between the steps.

Relying on N.J.S.A. 34:13A-16g(2), which addresses comparisons to comparable jurisdictions, the arbitrator determined that the \$1200 equity adjustment was warranted. The comparables used were other law enforcement employees in Atlantic County - - specifically Sheriff’s Officers represented by PBA Local 243 (for which voluntary settlement was reached on April 21, 2006) and Prosecutor’s Officers rank and file and superior officers represented by PBA Local 77 (for which voluntary settlement was reached for both units in 2009). (Supplemental Award at 1 - 2). For PBA Local 243, a \$1200 equity adjustment was added to the top step of the guide. For both superior officers and rank and file officers represented by PBA Local 77, \$2,800 was added to the top step and then a percentage of that \$2,800 was added to each individual step as an equity adjustment. (Supplemental Award at 2 - 3). The arbitrator found that although it is indisputable that corrections officers are not

P.E.R.C. NO. 2011-56

15.

paid at the same level as the Sheriff's officers represented by PBA Local 243, Sheriff's officers represented by PBA Local 243 received a \$1,200 equity adjustment to the top step of the salary guide and therefore a \$1,200 equity adjustment was necessary to maintain a stable work force for the members of FOP Lodge #34. (Award at 83, Supplemental Award at 4). In discussing why the FOP's proposal for a \$2000 increase to each step in 2007 was not awarded, the arbitrator noted that a pattern between PBA Local 243 and FOP Lodge #34 ceased to exist because PBA Local 243 had made a substantial concession in giving up hospital duties. The rank and file officers and the superior officers represented by PBA Local 77 agreed to make health insurance contributions of 1% of their base salary and to take three furlough days in 2009 and three furlough days in 2010. The arbitrator noted that "even though health insurance is not on the table with FOP Lodge 34^{10/}, the fact remains that the salary increases were negotiated by PBA 77 because of give-backs. There are no give-backs from FOP Lodge 34." (Initial Award at 85). There is an unexplained inconsistency in the award in the comparability analysis used by the arbitrator. He justified the award of the \$1200 equity adjustment based on comparables to PBA Local 243 and PBA Local 77, but at the same time acknowledges that those units made

10/ FOP Lodge 34 members do not contribute toward their health insurance premiums.

P.E.R.C. NO. 2011-56

16.

significant concessions and that those types of concessions are not present in this award. The rationale behind this comparabilty analysis should be further explained.

The arbitrator made findings as to how the maximum salary for the FOP ranked against comparable employees. He indicated that his determination on this issue was relevant to his awarding the equity adjustment. (Initial Award at 73). The County argues that in considering how the FOP's maximum salary ranks against other comparables, the arbitrator relied only on a chart that the FOP provided that included three central New Jersey counties. The County argues that those three central New Jersey counties should have been excluded from the arbitrator's analysis since salaries and the cost of living are higher in central New Jersey. The arbitrator should explain his treatment of the County's argument on this issue relating to comparability. Borough of Paramus, P.E.R.C. No. 2010-35, 35 NJPER 431 (¶141 2009).

II. Holiday Pay/Holidays

The County asserts that the basis of their proposal to reduce holiday pay from time and one-half to straight time is that a review of collective negotiations agreements covering other County employees reveals that the only other employees paid time and one-half for holidays are the correction superiors and the correction sergeants represented by FOP Lodge 112. The County contends that all other County employees, including those

P.E.R.C. NO. 2011-56

17.

represented by PBA Local 77, PBA Local 243, CWA Local 1040, the United Workers, JNESCO, AFSCME and Teamsters are paid straight time for holidays. Moreover, the County asserts that in all agreements submitted as comparables outside the County, correction officers receive straight time for holidays. In rejecting the County's proposal on this issue, the arbitrator simply stated "the County's position [with regard to holiday pay] cannot be sustained because they had bargained that in the past and even though we have different economic circumstances now, nothing has been presented to me to have that removed from the equation of benefits." (Initial Award at 87 - 88). The fact that the County has bargained for straight time for holiday pay in the past, standing alone, does not provide adequate justification as to why the arbitrator rejected the County's proposal on this issue. The arbitrator must provide explanation and analysis regarding his treatment of the comparables submitted on this issue. Paramus.

Also regarding the issue of holidays, the arbitrator found that the "elimination of ten holidays from mandatory overtime will reduce the County's overall costs. (Initial Award at 93). However, in his supplemental award, the arbitrator acknowledged that other than on Superbowl Sunday, the mandatory overtime proposal does not result in any cost savings to the County.

P.E.R.C. NO. 2011-56

18.

(Supplemental Award at 7). The arbitrator must indicate how, if at all, this later acknowledgment affects his Initial Award.

III. Shift Differentials

The arbitrator found that FOP 34 unit members are the only County employees who work shifts and do not receive any additional compensation. (Award at 87). The County asserts that no other County employees, law enforcement or otherwise, receive shift differentials. The arbitrator must address this factual dispute. Moreover, Chart G in the record reflects that out of the nine comparable counties submitted by the FOP on this issue, four received shift differentials. The County asserts that out of the sixteen comparables it submitted, six included a shift differential, however this information is not reflected in the award. The arbitrator must address the comparability evidence that was submitted regarding shift differentials. Paramus.

IV. Retiree Health Benefits

The County asserts that the arbitrator failed to consider comparables when awarding the retiree health provision effective December 31, 2009 rather than at the start of the Agreement. It asserts that its proposal is within the parameters of N.J.S.A. 40A:10-23, which gives the County discretion to require up to 25 years of service with the employer in order to receive retiree health benefits. The County asserts that a review of other collective negotiations agreements in the County includes the

P.E.R.C. NO. 2011-56

19.

requirement that an employee have 25 years of service with the County. It also asserts that review of comparables in other jurisdictions reveals that many jurisdictions do not provide retiree health benefits at all, and in those jurisdictions that do provide such benefits, the requirement of 25 years of county service is standard. There is no discussion in the award as to why the retiree health benefits provision was awarded as of December 31, 2009 as opposed to the start of the agreement. The arbitrator should provide his rationale for the timing of this aspect of the award.

V. Consideration of Lawful Authority of the Employer and Financial Impact of the Award

The County generally asserts that the arbitrator failed to provide sufficient analysis of lawful authority of the employer, financial impact of the award, and the cost of living. The arbitrator commented generally on the current status of the economy when he found:

The financial circumstances facing the County, as well as any other County and/or municipality in the State of New Jersey, are not at the level of being draconian, but they are severe. The State of New Jersey is facing a huge deficit and the economy in the County is in a downward spiral. The economic stimulus packages presented by the Obama administration have not created the types of jobs people believe are necessary to keep this County out of a depression.

[Initial Award at 91]

P.E.R.C. NO. 2011-56

20.

On that same issue, he made the following findings when explaining why he rejected the FOP's proposal to increase longevity payments:

The FOP's longevity proposals were unreasonable. We are facing a severe economic problem in the Country with double-digit unemployment and over a \$1 billion dollar deficit in the State budget. State employees were furloughed and State aid has been cut to municipalities and school districts. Compound those issues with the pension debacle and it becomes evident some issues cannot be achieved in today's economic climate.

[Initial Award at 71]

Nonetheless, he ultimately found that the County does have the financial resources to fund a settlement comparable to other settlements within the County. However, he also found that this award is not comparable to the other settlements referenced in the award because there have not been similar concessions made by the FOP. With regard to the financial impact of the governing unit, the arbitrator found that there was no evidence that would require the County to exceed its lawful authority and impose any financial constraints on County residents. He found that the data submitted showed that the County "has a very sound, well thought out financial management program and has created and maintains appropriate reserves." (Initial Award at 92). The award contains a lengthy summary of financial expert witness testimony regarding the County's financial condition. (Initial

P.E.R.C. NO. 2011-56

21.

Award at 88 - 91). However, the arbitrator should identify what part of the witnesses' testimony he relied on in making his findings that the County could fund the award without exceeding its lawful authority and should also reconcile his findings about the general severe state of the economy with the various economic aspects of this award.

VI. Consideration of the Cost of Living

According to the arbitrator, the cost of living as reported on February 12, 2010 by the U.S. Department of Labor, Bureau of Labor Statistics, for Philadelphia-Wilmington-Atlantic City, were as follows: 3.9% for 2006, 2.2% for 2007, 3.4% for 2008 and less than 1% for 2009. The arbitrator found that "the awarded base salary increases, while in some instances [are] marginally higher than the increase in the cost of living, particularly in 2007 and 2008, actually provided for an increase in real earnings and must be measured against the continued delivery of quality service by the County's Corrections Officers." The increases to base salary are more than marginally higher than the increase in cost of living, in 2007, particularly after considering the roll-in of hazardous pay and the equity adjustment into base salary. The increases are also substantially higher than the cost of living in 2009. The arbitrator should correct this discrepancy and provide a more thorough explanation of the relative correlation between cost of living and the awarded increases.

P.E.R.C. NO. 2011-56

22.

In light of all of the issues identified above, we vacate the award and remand it to the arbitrator to make findings consistent with the specific directives set forth above. In following our directives and providing an explanation of his consideration of the evidence and arguments not addressed in the prior award, the arbitrator should analyze all of evidence anew and rebalance all of the statutory factors to the extent necessary to fully comply with N.J.S.A. 34:13A-16g. Borough of Bogota, P.E.R.C. No. 99-20, 24 NJPER 453 (¶29210 1998).

ORDER

The award is vacated and remanded to the arbitrator for reconsideration and issuance of a new award. The new award must be issued within 30 days of this decision.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners, Bonanni, Colligan, Eaton and Eskilson voted in favor of this decision. None opposed. Commissioner Voos abstained. Commissioner Krengel was not present.

ISSUED: February 3, 2011

Trenton, New Jersey

P.E.R.C. NO. 2011-68

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF WALDWICK,

Petitioner,

-and-

Docket No. IA-2010-058

PBA LOCAL 217,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the Borough of Waldwick's request for special permission to appeal an interlocutory ruling of an interest arbitrator. The arbitrator ruled that he had jurisdiction to continue formal interest arbitration proceedings between the Borough and PBA Local 217 pursuant to his appointment through mutual selection in March 2010. The Commission holds that the parties' one-year contract settlement expiring on December 31, 2010 prevented the interest arbitrator from conducting hearings for a successor contract effective January 1, 2011 as the recently amended interest arbitration statute bars mutual selection of an arbitrator. Based on the record, the Commission did not find that the parties agreed to continue the hearing in January 2011 based on the prior statutory language.

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

P.E.R.C. NO. 2011-68

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF WALDWICK,

Petitioner,

-and-

Docket No. IA-2010-058

PBA LOCAL 217,

Respondent.

Appearances:

For the Petitioner, Ruderman & Glickman, P.C. (Vincent M. Avery, of counsel)

For the Respondent, Loccke, Correia, Limsy & Bukosky (Marcia J. Tapia, of counsel)

DECISION

On February 16, 2011, the Borough of Waldwick requested special permission to appeal an interlocutory ruling of an interest arbitrator. The arbitrator ruled that he had jurisdiction to continue formal interest arbitration proceedings between the parties pursuant to his appointment through mutual selection on March 17, 2010. We grant special permission to appeal and vacate the arbitrator's ruling. The following facts are undisputed.

On January 19, 2010, PBA Local 217 filed a Petition to Initiate Compulsory Interest Arbitration pursuant to P.L. 1995 c. 425. The proceeding was commenced to resolve an impasse over the terms of a collective negotiations agreement that expired on

P.E.R.C. NO. 2011-68

2.

December 31, 2009. On March 17, 2010, the parties mutually selected Joseph Licata to serve as the interest arbitrator for a successor agreement. On November 29^{1/}, with the assistance of the arbitrator, the parties reached an agreement for a one-year contract with a term of January 1 through December 31, 2010. At that time, the parties scheduled an interest arbitration hearing for January 25, 2011 for a contract covering January 1, 2011 and beyond. In the interim, P.L. 2010, c. 105^{2/} was passed by the Legislature and signed by the Governor on December 21, 2010.

The recently enacted law, among other things, revises the procedures for the processing of interest arbitration petitions. Specifically, it eliminates the parties' discretion to mutually select an interest arbitrator and requires the Commission to assign an interest arbitrator for the parties by lot. N.J.S.A. 34:13A-16e(1). The new law became effective January 1, 2011. N.J.S.A. 34:13A-16.9. All interest arbitration petitions received on or after January 1 have been processed by this Commission under the procedures set forth in the new law.

On January 25, 2011, the parties appeared before the arbitrator to commence a hearing on the successor contract. The Borough objected to the arbitrator's jurisdiction, citing the

1/ Prior to the November meeting, the Borough counsel objected the parties moving forward because new legislation was proposed.

2/ Codified at N.J.S.A. 34:13A-16, 16.7, 16.8, and 16.9.

P.E.R.C. NO. 2011-68

3.

procedures set forth in the new law. After hearing argument from the parties, the arbitrator ruled that he retained jurisdiction as the one-year agreement entered into by the parties was a stipulation or interim settlement and the parties agreed at the time of the settlement that he would resume hearings under his original appointment in March 2010 pursuant to the prior interest arbitration law. The arbitrator then commenced the hearing.

N.J.S.A. 34:13A-16e(1) as amended provides:

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.

The Borough argues that because the parties entered into a one-year agreement that expired on December 31, 2010, the new law applies and the arbitrator did not have jurisdiction to conduct a hearing for the successor contract.

The PBA responds that the one-year agreement was a mediated settlement for the 2010 contract year only and that since all of the contract years were not resolved in the mediation session, the arbitrator properly retained jurisdiction to continue the hearing. The PBA points to the following colloquy in the transcript of the November 29, 2010 interest arbitration session

P.E.R.C. NO. 2011-68

4.

to support its position that the parties had an understanding that the agreement in question was an interim settlement; the interest arbitration had not ended due to the interim settlement; and the arbitrator retained jurisdiction over the proceedings:

Arbitrator: The parties were able to reach a resolution of their differences with respect to the calendar year 2010. The contract in effect is January 1, 2006 through December 31, 2009. Pursuant to N.J.S.A. 34:13A-16g(4) the Arbitrator records stipulations of the parties. I consider their settlement of the terms and conditions for 2010 to fully resolve the year 2010 while continuing this proceeding with respect to any subsequent years of successor labor agreement.

* * *

Mr. Loccke: The parties have also acknowledged your continued jurisdiction in this matter as interest arbitrator, and we have a tentative date set between the parties for January 25, 2011 as a date set for continued hearing.

* * *

Mr. Ruderman: I agree with the terms of the agreement that's been placed on the record, with the understanding that the proceeding will go forth on the date that we've tentatively agreed upon in early January with the specific understanding that obviously this proceeding may be subject to changes in the law which I argued most vociferously before you prior to us entering into this extended mediation session to reach an agreement for a one year interim decision, for which I commend both sides in their efforts to get this done.

The Borough responds that regardless of whether it is called an interim settlement or a contract, the parties had a one-year

P.E.R.C. NO. 2011-68

5.

agreement that expired on December 31, 2010 and thus the new law applies to interest arbitration proceedings for a contract beginning January 1, 2011. It further asserts that the new law vests the Commission with the sole authority to select an arbitrator to preside over the interest arbitration proceeding.

N.J.A.C. 19:16-5.17 authorizes the Commission to review interim orders of interest arbitrators. The Commission exercises that authority sparingly, in the interests of justice or for good cause shown. Middlesex Cty., P.E.R.C. No. 97-63, 23 NJPER 17(¶28016 1996).

The facts of this case are unique. The parties came to a voluntary resolution and could not have envisioned future statutory changes to assess the consequences of agreeing to a one-year contract. Counsel for the Borough agreed only to the terms of the 2010 contract and not to whether the proceeding would continue pursuant to the statute as it existed on that date. We are unable to find that the parties had a meeting of the minds as to the arbitrator's continued jurisdiction when they agreed to the one-year contract in November 2010. The Borough explicitly anticipated that the proceedings may be affected by changes to the interest arbitration law. Accordingly, we find that the parties most recent agreement expired December 31, 2010 and that their ability to mutually select an interest arbitrator

P.E.R.C. NO. 2011-68

6.

for a future contract expired effective January 1, 2011 with the passage of the new law.

We note that nothing in our decision prevents the parties from reaching a mediated settlement and we encourage them to use mediation to resolve their impasse. If mediation does not result in a settlement, in order to comply with the terms of the new law, a new interest arbitration petition would have to be filed. Having found that the arbitrator did not have jurisdiction to preside over the interest arbitration proceedings, we need not reach the other arguments of the Borough.

ORDER

The Borough of Waldwick's request for special permission to appeal the jurisdictional ruling of the interest arbitrator is granted. The ruling is reversed.

BY ORDER OF THE COMMISSION

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

ISSUED: March 31, 2011

Trenton, New Jersey

P.E.R.C. NO. 2011-70

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF BLOOMINGDALE,

Petitioner,

-and-

Docket No. IA-2011-045

PBA LOCAL 354,

Respondent.

SYNOPSIS

The Chair of the Public Employment Relations Commission denies the request of the Borough of Bloomingdale for special permission to appeal an interest arbitrator's interlocutory ruling. The arbitrator ruled that the parties' last agreement expired December 31, 2010 and therefore N.J.S.A. 34:13A-16.7 did not apply to the current interest arbitration proceeding between the parties. The Chair finds the Borough's request to be untimely and the arbitrator's ruling is in conformance with the interest arbitration law.

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

P.E.R.C. NO. 2011-70

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF BLOOMINGDALE,

Petitioner,

-and-

Docket No. IA-2011-045

PBA LOCAL 354,

Respondent.

Appearances:

For the Petitioner, McManimon & Scotland, L.L.C.,
attorneys (Cecilia I. Lassiter, of counsel)

For the Respondent, Loccke, Correia, Limsky & Bukosky,
attorneys (Marcia J. Tapia, of counsel)

DECISION

On March 24, 2011, the Borough of Bloomingdale requested special permission to appeal an interlocutory ruling of an interest arbitrator. The arbitrator ruled that the parties' contract expired December 31, 2010 and therefore N.J.S.A. 34:13A-16.7^{1/} did not apply to the current interest arbitration

1/ 34:13A-16.7(b) provides:

An arbitrator shall not render any award pursuant to section 3 of P.L.1977, c.85 (C.34:13A-16) which, on an annual basis, increases base salary items by more than 2.0 percent of the aggregate amount expended by the public employer on base salary items for the members of the affected employee organization in the twelve months immediately preceding the expiration of the collective

(continued...)

P.E.R.C. NO. 2011-70

2.

proceeding between the parties. For the foregoing reasons, I deny special permission to appeal. The following facts are undisputed.

The parties' agreement provides "This Agreement shall be deemed to have been in full force and effect from January 1, 2006 through and including December 31, 2010." On February 16, 2011, the PBA filed a Petition to Initiate Compulsory Interest Arbitration. On February 23, pursuant to P.L. 2010 c. 105, codified as N.J.S.A. 34:13A-16e(1), Arbitrator James W. Mastriani was appointed by lot to serve as the interest arbitrator. On March 16, an interest arbitration hearing was held. The Borough has not provided the date of the arbitrator's ruling it seeks to appeal. The PBA states that any oral ruling on the 2% salary cap issue had to be made at the March 16 hearing. Nonetheless, I take notice that on February 25, Arbitrator Mastriani issued a letter to the parties advising them that the 2% cap on base salary set forth in N.J.S.A. 34:13A-16.7(a) and (b) did not apply

1/ (...continued)

negotiation agreement subject to arbitration; provided, however, the parties may agree, or the arbitrator may decide, to distribute the aggregate monetary value of the award over the term of the collective negotiation agreement in unequal annual percentages. An award of an arbitrator shall not include base salary items and non-salary economic issues which were not included in the prior collective negotiations agreement.

P.E.R.C. NO. 2011-70

3.

to the proceeding because the parties' last contract expired December 31, 2010 and the 2% cap is effective January 1, 2011.

N.J.A.C. 19:16-5.17 authorizes the Commission to review interim orders of interest arbitrators. The Commission exercises that authority sparingly, in the interests of justice or for good cause shown. Middlesex Cty., P.E.R.C. No. 97-63, 23 NJPER 17 (¶28016 1996). N.J.A.C. 19:16-5.17(c) gives the Commission Chair the authority to grant or deny special permission to appeal.

The Borough argues that the arbitrator erred in finding that the contract expired on December 31, 2010 because the agreement specifically included the full day December 31 and therefore it must expire on January 1, 2011.

The PBA counters that the Borough's appeal is late as N.J.S.A. 19:16-5.7 provides that requests for special permission to appeal must be made within five days of service of an arbitrator's written ruling or within five days of an oral ruling. The PBA states that if the arbitrator ruled on March 16, 2011, the Borough's appeal was due on or before March 21, 2011. The PBA further asserts that the parties' agreement clearly expired on December 31, 2010 and therefore is not subject to the 2% cap because the contract began and ended before the January 1, 2011 effective date of the new interest arbitration law. The PBA cites to the Commission's "Frequently Asked Questions" regarding the new interest arbitration statute wherein the Commission

P.E.R.C. NO. 2011-70

4.

advises that the 2% base salary cap does not apply to contracts that expired December 31, 2010 and the interest arbitration petition was filed after January 1, 2011.^{2/}

I deny special permission to appeal because the Borough's application is untimely. The parties were put on written notice from the arbitrator on February 25, 2011 that the 2% cap on base salary did not apply to their contract as it expired on December 31, 2010. Special permission to appeal that ruling would have to be filed on or before March 4, 2011.^{3/}

Even if the Borough's application was timely, there is no good cause or interest of justice warranting the granting of special permission to appeal. Middlesex Cty. N.J.S.A. 34:13A-16.9 sets forth that the 2% base salary cap applies to contracts expiring on or after January 1, 2011 only. The arbitrator's ruling that the contract, which expired December 31, 2010, was not subject to the 2% base salary cap is in conformance with the clear directive of the new law. The Borough's argument that the contract expired on January 1, 2011 is contrary to the plain meaning of the contract language.

^{2/} See www.state.nj.us/perc

^{3/} Commission rules require that weekends and holidays are not counted when calculating filing deadlines under seven days. N.J.A.C. 19:10-2.1(a).

P.E.R.C. NO. 2011-70

5.

ORDER

The request of the Borough of Bloomingdale for special permission to appeal the interlocutory ruling of an interest arbitrator is denied.

BY ORDER OF THE COMMISSION

P. Kelly Hatfield, Chair

ISSUED: March 31, 2011

Trenton, New Jersey

P.E.R.C. NO. 2011-75

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF HUNTERDON,

Appellant,

-and-

Docket No. IA-2009-103

FOP LODGE 94,

Respondent.

SYNOPSIS

The Public Employment Relations Commission affirms an interest arbitration award. The County of Hunterdon appealed the award of an incremental salary guide for the Sheriff's officers represented by FOP Lodge 94. The Commission holds that the arbitrator had the authority to award a salary guide and that the award is supported by substantial credible evidence in the record. The Commission notes that it does not perform a de novo review of interest arbitration awards.

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. 2011-75

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF HUNTERDON,

Appellant,

-and-

Docket No. IA-2009-103

FOP LODGE 94,

Respondent.

Appearances:

For the Petitioner, Gaetano M. De Sapio, attorney.

For the Respondent, Mets, Schiro & McGovern, attorneys
(James M. Mets, of counsel)

DECISION

The County of Hunterdon appeals from an interest arbitration award involving a negotiations unit of approximately 15 Sheriff's officers.^{1/} See N.J.S.A. 34:13A-16f(5)(a). The arbitrator issued a conventional arbitration award as he was required to do absent the parties' agreement to use another terminal procedure. N.J.S.A. 34:13A-16d(2).^{2/} A conventional award is crafted by an arbitrator after considering the parties' final offers in light of nine statutory factors. We affirm the award. We note that we

1/ We deny the County's request for oral argument. The issues have been fully briefed.

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

P.E.R.C. NO. 2011-75

2.

are constrained by our review standard to affirm the award. We may not perform a de novo review of the evidence and 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).

The parties stipulated to a three-year agreement effective January 1, 2009 through December 31, 2011. The parties also stipulated to various other language changes to the agreement. The outstanding issues were submitted to the arbitrator in the parties' final offers.

The FOP's main proposal was to establish a salary schedule with annual increments for sheriff's officers effective January 1, 2009, with 5.5% across-the-board salary increases effective January 1, 2010 and 2011. Also proposed was a 5% above-step differential for any officer holding the corporal designation. In addition, the FOP proposed: changes to the Hours of Work, Overtime, Holidays, Leaves of Absence, Medical Benefits, Employee Expenses, Safety, Employee Rights, Uniforms, Attendance Bonus, On-Call Procedures including the use of a County vehicle, Longevity, increased tuition reimbursement, training incentive, EMT incentive, elimination of the employment and reimbursement agreement and a new modified duty article.

The County proposed a 1.5% across-the-board salary increase retroactive to January 1, 2009, but the payment of which to be effective January 1, 2010. The County also proposed that

P.E.R.C. NO. 2011-75

3.

effective January 1, 2011, the County pay employees on a bi-weekly basis with staggered implementation resulting in a ten-day hold back on an employee receiving a pay check. The end result of the new pay schedule is that when an officer leaves the employ of the County, two weeks of pay will be owed to the officer. The County opposed all other contested issues presented by the FOP, including the salary guide proposal.

On January 31, 2011, the arbitrator issued a 82-page Opinion and Award. He noted that the record was extensive, containing 120 documentary exhibits totaling thousands of pages in support of the parties' last offers. After summarizing the parties' proposals and respective arguments on those proposals in detail, the arbitrator compared the proposals and awarded a three-year agreement.

The arbitrator awarded the implementation of the following 11-step incremental salary schedule for 2009 through 2011:

STEP	2009	2010	2011
11	57,500	58,500	60,000
10	54,000	54,000	55,500
9	51,000	51,000	51,000
8	48,500	48,500	48,500
7	46,500	46,500	46,500
6	42,500	42,500	42,500
5	40,500	40,500	40,500
4	37,900	39,000	39,000

P.E.R.C. NO. 2011-75

4.

3	35,500	37,500	37,500
2	33,150	33,150	33,150
1	31,600	31,600	31,600

The arbitrator did not award any salary increase for officers in 2009 and placed officers on the step corresponding to their existing 2008 salary. The arbitrator also awarded the County's proposal for a two-week salary hold-back to be implemented as soon as feasible after the award issued. The arbitrator denied all other proposals.

The County appeals contending that: the arbitrator exceeded his authority in awarding a salary guide; even if the arbitrator had the authority to award a salary guide, it was contrary to the credible evidence in the record; and the economic increase awarded to the FOP is excessive in the current economic climate.

The FOP responds that the County ignored Commission precedent that establishes the arbitrator's authority to award a salary system; the arbitrator's award in adopting the FOP's proposal for a salary guide is supported by substantial credible evidence in the record; the arbitrator's economic award was reasonable; and if the Commission finds an error in the award, a remand is the appropriate remedy.

N.J.S.A. 34:13A-16g requires that an arbitrator shall state in the award which of the factors are deemed relevant, satisfactorily explain why the others are not relevant, and

P.E.R.C. NO. 2011-75

5.

provide an analysis of the evidence on each relevant factor. The statutory factors are as follows:

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

P.E.R.C. NO. 2011-75

6.

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

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

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

Arriving at an economic award is not a precise mathematical process. Given that the statute sets forth general criteria rather than a formula, the treatment of the parties' proposals involves judgment and discretion and an arbitrator will rarely be able to demonstrate that an award is the only "correct" one. See Borough of Lodi, P.E.R.C. No. 99-28, 24 NJPER 466 (¶29214 1998).

P.E.R.C. NO. 2011-75

7.

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. However, an arbitrator must provide a reasoned explanation for an award and state what statutory factors he or she considered most important, explain why they were given significant weight, and explain how other evidence or factors were weighed and considered in arriving at the final award. N.J.S.A. 34:13A-16g; N.J.A.C. 19:16-5.9; Lodi.

The County argues that the arbitrator exceeded his authority in creating an incremental salary guide because the County negotiated the elimination of salary guides with all of its units years ago and the arbitrator's actions will create an incremental payment obligation for the County in 2012. Citing N.J.S.A. 2A:24-8 and 2A:24-9(b), the County contends that the award must be vacated because the award of a salary increment for 2012 was not submitted to the arbitrator rendering the award incomplete.

The FOP responds that its proposal to implement a salary guide containing automatic salary steps is a mandatorily negotiable term and condition of employment that may be submitted to an interest arbitrator; incremental salary step systems are a

P.E.R.C. NO. 2011-75

8.

fundamental component of almost all compensation packages for law enforcement officers; and the County is not bound to continue the salary guide in future negotiations.

We have held that a proposal to implement a salary guide containing automatic salary steps is mandatorily negotiable and may be submitted to interest arbitration. Sussex Cty., P.E.R.C. No. 83-92, 9 NJPER 77 (¶14042 1982), recon. den. P.E.R.C. No. 83-101, 9 NJPER 104 (¶14056 1983) (a salary step system determines the compensation employees will receive over the course of the contract which is a fundamental term and condition of employment). We have also recently examined an interest arbitrator's authority to award salary increases outside the duration of the award. In City of Asbury Park, P.E.R.C. No. 2011-17, 36 NJPER 323 (¶126 2010), we stated:

The collective negotiations process contemplates labor and management sitting down and negotiating terms and conditions of employment for one, two, three or more future years. Parties enter into collective negotiations agreements even though no one can predict with any assurance the exact budget circumstances a public employer will face in future years. For police and fire departments, when the parties cannot reach a voluntary agreement, either party may invoke the interest arbitration process by which a neutral third party sets terms and conditions of employment based on the evidence presented and in light of the nine statutory factors. N.J.S.A. 34:13A-16b(2). As an extension of the collective negotiations process, an arbitrator will also award multi-year contracts. And because of the delays in the interest arbitration process, arbitration

P.E.R.C. NO. 2011-75

9.

awards will often also set terms and conditions of employment retroactively thereby requiring adjustments to the public employer's budgets. Retroactive salary adjustments and future salary increases are inherent in both the collective negotiations process and interest arbitration.

Thus, we find that the arbitrator acted within his conventional arbitration authority to award an incremental salary guide.

Next, the County argues that the arbitrator's analysis in awarding a salary guide is flawed and not supported by substantial credible evidence in the record as a whole because although almost all other sheriffs' officer units have salary guides, Hunterdon County eliminated them years ago and to reintroduce them will upset labor relations in the County; the arbitrator failed to set forth a rational basis for selecting the salaries inserted at each point of the guide; the arbitrator incorrectly shifted the burden of proof in changing the salary structure to the County; the record does not support and the County does not agree that turnover is an issue that needed to be addressed; and the record does not indicate that training costs are an issue for the County.

The FOP responds that the arbitrator found that the interest and welfare of the public favors the award of a salary guide because the public interest is best served when a public employer has a low turnover rate creating a stable workforce

P.E.R.C. NO. 2011-75

10.

particularly in a Courthouse facility in order to maintain high standards of safety and supervision.

In his discussion of interest and welfare of the public, the arbitrator found:

The evidence in the record establishes that all other Sheriff's Officer bargaining units in the State have what is commonly known as an incremental salary schedule. This is the standard method of payment for all other county Sheriff's Officers. This is a term and condition of employment received by all other county Sheriff's Officers. While I am discussing the incremental salary guide issue under the interests and welfare of the public criterion, other criteria also favor its inclusion in the new CBA. The second criterion, (comparison of the wages, salaries, hours, and condition of employment of the employees involved in the arbitration proceedings with the wages, salaries, hours, and conditions of employment of other employees performing the same or similar services) supports the awarding of a salary schedule. The County bears a heavy burden in convincing an arbitrator that a term and condition of employment enjoyed by thousands of other Sheriff's Officers throughout the State should be denied to its Sheriff's Officers. In addition, the incremental salary schedule is the standard form of compensation for all other public safety officers in the State. This grouping includes municipal Police Officers, County Correction Officers, Firefighters, Prosecutor's Detectives, and other County and State police bargaining units.

[Award at 57].

The arbitrator then reviewed the evidence in the record that the FOP presented which established an 85% turnover rate for Sheriff's Officers between 1996 and October 2008. The arbitrator

P.E.R.C. NO. 2011-75

11.

determined that between 2000 and 2005, only four of the 32 officers the County hired were still employed by the County. The arbitrator then reviewed the evidence presented by the County that established its compensation model is to pay more senior officers smaller raises than junior officers. The arbitrator credited the evidence of the FOP and concluded that the current compensation model values inexperience over experience and thus encourages high turnover which produces a continuing spiral of recruitment and training resulting in a significant number of inexperienced Sheriff's officers. The arbitrator then addresses his experience as well as decisions of other arbitrators in assisting public employers in reducing turnover with the establishment of an incremental salary schedule and concluded that the awarding of a salary guide was appropriate.

We conclude that the arbitrator addressed the interest and welfare of the public when he awarded a salary guide. We note that the arbitrator found the FOP's proposed salary schedule deficient in many aspects and that he awarded substantially lower increments and increases than those proposed by the FOP. The arbitrator found that the award of the salary guide is reasonable despite the other County units not having them given his findings on the high turnover rate between 1996 and October 2008 and that the County's non-police units did not have an issue with

P.E.R.C. NO. 2011-75

12.

turnover.^{3/} We note again that the arbitrator has the discretion to weigh the criteria and our review is to determine if he did so and not to substitute our judgment.

The arbitrator's statement that "the County bears a heavy burden in convincing an arbitrator that a term and condition of employment enjoyed by thousands of other Sheriff's officers throughout the State should be denied to its Sheriff's officers"^{4/}, did not shift the burden of proof to the County in awarding the salary guide. The arbitrator accurately recited that the burden of proof to establish a change rested with the party seeking the change at the outset of his analysis. In his justification for awarding the salary guide, the arbitrator found that the FOP met its burden through its presentation of evidence establishing that all other County units have salary guides and the lack of experienced officers employed by the County due to the high turnover rate. The arbitrator then acknowledged the difficult hurdle the County had to rebut the evidence presented by the FOP including a memorandum issued by former Sheriff William D. Doyle, who had attempted in 2004 to re-open the parties' contract, describing that officers were leaving the

^{3/} We note that the arbitrator also awarded an incremental salary guide to the County's Correction officers. That award has also been appealed to the Commission. Docket No. IA-2009-67.

^{4/} Award at 57.

P.E.R.C. NO. 2011-75

13.

County because of financial hardship. Thus, the FOP provided substantial evidence in the record to support the award of a salary guide.

The County also argues that the arbitrator did not correctly apply the evidence involving the comparability factor because the other County units do not have salary guides; the arbitrator engrafted upon the collective negotiations process the concept that all public employers must in all circumstances pay their employees through a step salary guide; and other Counties that have salary guides are being forced into layoffs in the present fiscal environment.

We find that the arbitrator addressed the comparability factor. It was within the arbitrator's discretion to weigh external and internal comparability and make a reasonable determination on the evidence that his award of a salary guide was justified. The evidence was conflicting with external comparability favoring the FOP's salary guide proposal and internal comparability disfavoring it. Our review standard only permits us to determine if the evidence was in the record and not to review it de novo. The arbitrator did not state that all public employers must pay their employees on salary guides. The arbitrator determined that internal comparability justified his award of the County's salary hold-back proposal, but external comparability supported his award of the salary guide.

P.E.R.C. NO. 2011-75

14.

The County also argues that the arbitrator failed to consider and give due weight to the lawful authority of the County by failing to address and/or analyze the ability of the County to implement the terms of the award in the year 2012 and the future as well as the financial impact on the governing unit, its residents and taxpayers because other units will insist on salary guides in future negotiations. See N.J.S.A. 34:13A-16g(5), (6) and (9).

N.J.S.A. 34:13A-16g(5), (6) and (9) require consideration of the employer's lawful authority, in particular consideration of its cap restrictions. Our discussion of Asbury Park above is relevant here. There is no per se bar to awarding terms and conditions of employment for future years based on the record evidence and the current economic trends. The parties presented hundreds of pages of documentation to the arbitrator. The County has not pointed to any particular evidence in the record that requires rejecting the arbitrator's award of incremental increases or that the County can not pay the increases. Town of Kearny, P.E.R.C. No. 2011-37, 36 NJPER 160 (¶160 2010). The arbitrator found and the County does not dispute that it is well managed and financially sound with the ability to reduce its budget and maintain a surplus in 2010. Further, the arbitrator thoroughly examined and acknowledged that the other County units

P.E.R.C. NO. 2011-75

15.

did not have salary guides, but still determined that the record justified his award. We can not disturb that judgment.

Finally, the County argues that the economic award was unreasonable in the current economic climate as it totals 14.96% over three years (\$0 in 2009, \$39,400 in 2010 and \$75,900 in 2011). Citing Irvington PBA v. Town of Irvington, 80 N.J. 271, 296 (1979), the FOP responds that an interest arbitration award is not unreasonable even though an employer may be forced to make economies in order to implement the award. That is true even where municipal officials must determine whether, and to what extent, police personnel or other employees should be laid off, or whether budgetary appropriations for non-payroll costs should be reduced. Id. at 296-297. The County has made economies to avoid layoffs and furloughs including its salary hold-back scheme. Under Irvington, we can not reverse an award because economies may have to be made.

In his discussion of the costs of the award, the arbitrator found:

The cumulative cost of the award is \$115,300 (zero in 2009, \$39,400 in 2010 and \$75,900 in 2011). The cumulative cost of the award is more than \$50,000 less than what the County's cumulative cost would be if it had offered the same annual percentage rate increases to the Sheriff's Officers that it offered to the Correction Officers. The cost of the increments in 2012 (assuming no turnover) is \$41,000. Thus, the cumulative cost is less than the \$165,954 even when the cost of the 2012 increments is included. I have compared

P.E.R.C. NO. 2011-75

16.

the cost of the award to both the County's final offer of 7.5% and what it offered in the Correction Officer case (13.2%) because as stated many times above, I have patterned the outcome of the Sheriff's Officer case on the outcome in the Correction Officers case given the virtually identical evidentiary records. The County could have made the same proposal to the Sheriff's Officers that it made to the Correction Officers. After all, that is the norm in all negotiations and arbitration matters. Employers make similar, if not identical proposals to comparable employee groups.

We recognize that any salary increase places pressure on a public employer's budget. However, an interest arbitration award with a cumulative cost of \$115,300 that is less than the County's offer to another law enforcement unit is not unreasonable and should not create unexpected pressure to the County. We appreciate the County's argument that a 14.96% total increase is higher than the average State-wide increases in 2008, 2009 and 2010, however it must be noted that those statistics cited by the County as a comparison do not include increment costs. Yet, we also note that the base salaries are the second lowest in the State and therefore a 14.96% increase yields a total cost of \$115,300 for a three-year agreement. Finally, we acknowledge that the terms of the new interest arbitration law, P.L. 2010, c. 105 will apply to any impasse that the parties may reach in negotiating a successor agreement. The new law includes the 2% base salary item cap which will contain the costs of the awarded

P.E.R.C. NO. 2011-75

17.

salary guide to 2% if the guide is continued in a successor agreement.

ORDER

The arbitrator's award is affirmed.

BY ORDER OF THE COMMISSION

Commissioners Colligan, Eaton, Krengel and Voos voted in favor of this decision. Chair Hatfield and Commissioner Bonanni voted against this decision. Commissioner Eskilson recused himself.

ISSUED: May 5, 2011

Trenton, New Jersey

P.E.R.C. NO. 2011-76

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF ATLANTIC,

Appellant,

-and-

Docket No. IA-2007-057

FOP LODGE #34,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants, in part, the appeal of the County of Atlantic of an interest arbitration award. The Commission modifies the award by rescinding the \$1200 equity adjustment awarded by the arbitrator finding that it was not supported by substantial credible evidence in the record. The Commission affirms all other aspects of the award.

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

P.E.R.C. NO. 2011-76

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF ATLANTIC,

Appellant,

-and-

Docket No. IA-2007-057

FOP LODGE #34,

Respondent.

Appearances:

For the Appellant, Eric M. Bernstein & Associates,
L.L.C., attorneys (Deborah J. Bracaglia, of counsel)

For the Respondent, Selikoff & Cohen, PA, attorneys
(Keith Waldman, of counsel)

DECISION

On February 3, 2011, we vacated and remanded, for a second time, an interest arbitration award. P.E.R.C. No 2011-56, ____ NJPER ____ (____ 2011). The award had first been remanded in P.E.R.C. No. 2011-8, 36 NJPER 307 (¶117 2010). On March 18, the arbitrator issued a second supplemental award. On April 14, the County of Atlantic appealed the second supplemental award.^{1/} The County's appeal does not challenge the annual percentage salary increases awarded by the arbitrator for the January 1, 2007

^{1/} As the supplemental award issued after P.L. 2010, c. 105 became effective, this appeal has been processed to meet the time requirements of N.J.S.A. 34:13A-16f(5)(a).

P.E.R.C. NO. 2011-76

2.

through December 31, 2010 term of the agreement.^{2/} However, the County asserts generally that the arbitrator did not give due weight to the statutory factors and that the granting of the \$1200 equity adjustment to the top step of the salary guide and shift differentials as well as the arbitrator's refusal to grant its proposal to reduce holiday pay from time and one-half to straight time was not supported by substantial credible evidence in the record. On April 19, the FOP Lodge #34 filed a brief in opposition to the appeal.^{3/} We modify the award to eliminate the arbitrator's granting of the \$1200 equity adjustment. All other aspects of the award are affirmed.^{4/}

In P.E.R.C. No. 2011-56, we directed the arbitrator to provide additional information and analysis regarding several issues. With regard to the award of the \$1200 equity adjustment to the top step of the guide, we asked for specific reasoning as to how or why it was necessary to modify the guide and achieve better progression between the steps; the rationale behind the comparability analysis applied with regard to the \$1200 equity

2/ As reflected in our previous decisions, the parties have been working pursuant to the terms of a collective negotiations agreement that expired on December 31, 2006.

3/ Both parties' requests for oral argument are denied. The matter has been fully briefed.

4/ The County's Amended Notice of Appeal has been accepted since it conformed to its letter brief that was filed within the requisite time period.

P.E.R.C. NO. 2011-76

3.

adjustment; and the treatment of the County's argument that three central New Jersey counties should have been excluded in his comparability analysis. With regard to the arbitrator's denial of the County's proposal to reduce holiday pay from time and one-half to straight time,^{5/} we asked: for an explanation and analysis with regard to the comparables used to decide the issue; and whether his acknowledgment that the mandatory overtime proposal does not result in any cost savings to the County affects his award. Regarding the arbitrator's award of shift differentials^{6/}, we asked for explanations: as to his treatment of the County's argument that no other County employees, law enforcement or otherwise, received shift differentials; and his treatment of the comparability evidence that was submitted regarding shift differentials.^{7/} With regard to consideration of

5/ As reflected in P.E.R.C. No, 2011-56, the current holiday pay practice is that officers receive by November 15th of each year payment for ten holidays at time and one-half of their daily rate of pay. Since the officers work in a facility that operates 24 hours a day, seven days a week, officers work on holidays that fall on regularly scheduled days. When an officer's regularly scheduled work day falls on a holiday, they receive an additional full days pay. (Supp. Award at 7).

6/ As reflected in our prior decisions, the arbitrator awarded shift differentials of \$.50 per hour for 0730 - 1530 hours and \$.55 per hour for 1530 - 2330 hours.

7/ We also asked the arbitrator to explain why the retiree health benefits provision was awarded as of December 31, 2009 as opposed to the start of the agreement on January 1, 2007. As described in our prior decisions, the retiree
(continued...)

P.E.R.C. NO. 2011-76

4.

the lawful authority of the employer and the financial impact of the award, we asked the arbitrator: to identify what part of the expert witnesses' testimony he relied on in making his findings that the County could fund the award without exceeding its lawful authority; and also to reconcile his findings about the general severe state of the economy with the various economic aspects of the award. We also asked for a more thorough explanation of the relative correlation between the cost of living and the awarded increases.

On March 18, 2011, the arbitrator issued a second supplemental award. With regard to the \$1200 equity adjustment, the arbitrator stated that "the equity adjustment is for the top step of the salary guide to keep the workforce stable." (Supp Award2 at 13). As he did in his prior awards, he drew comparisons to PBA 243 and PBA 77, representatives of other law enforcement units in the County. He stated "I fail to understand why a \$1200 equity adjustment is okay for PBA 243 and PBA 77 but it is not okay or acceptable for FOP 34." (Supp Award2 at 14)^{8/}.

7/ (...continued)
health provision awarded by the arbitrator increased the qualifying years of full-time service with the County from 15 to 25 to qualify for retiree health benefits. With regard to the retiree health benefits provision, the arbitrator modified his award and found that the provision should be awarded as of January 1, 2007 instead of January 1, 2009. (Supp Award2 at 2 - 3).

8/ "Initial Award" refers to the arbitrators' initial award
(continued...)

P.E.R.C. NO. 2011-76

5.

In rejecting the County's proposal to reduce holiday pay from time and one-half to straight time, he found a pattern of bargaining existed with the three FOP superior officer units at the correctional facility, and noted that the time and one-half payment has existed since at least 2005. With regard to how the employer would save money in connection with the mandatory overtime proposal, the arbitrator noted that the holidays are not named in the contract. He then reviewed the holidays that are named in nine other law enforcement contracts and other contracts within the County and modified his award to reflect that the named holidays that have appeared in all of the other contracts shall appear in this contract. (Supp Award2 at 7 - 9). He went on to modify his mandatory overtime proposal to read as follows:

An officer shall have the option to refuse mandatory overtime two (2) times per calendar year. Overtime refusal shall apply to Thanksgiving Day, Christmas Day and New Year's Day. Overtime refusal shall not apply to the ten (10) remaining recognized holidays or Superbowl Sunday. On Superbowl Sunday, Corrections Officers assigned to work Superbowl Sunday cannot call out and utilize that day not to appear at work now. This means the stick list is not being utilized or minimally utilized because of long-term absences on that particular day and all assigned employees will be present. If an officer does call out sick at least one day

8/ (...continued)
issued on April 2, 2010, "Supp Award" refers to the first supplemental award issued on September 1, 2010 and "Supp Award2" refers to the second supplemental award issued on March 18, 2011.

P.E.R.C. NO. 2011-76

6.

prior to Superbowl Sunday, and at least one day after Superbowl Sunday, that Officer must present a physician statement. Personal days, vacation days, compensatory days and administrative days cannot be utilized on Superbowl Sunday without the prior approval of the Officer's immediate supervisor. Any verified violation of the above will result in disciplinary action against that officer(s). This provision shall not apply in emergent situations and whether a situation is deemed emergent shall be determined by the Shift Commander.

The arbitrator found that officers not being able to call off from work on the ten recognized holidays, plus the day before Superbowl Sunday, Superbowl Sunday and the day after Superbowl Sunday, saves the County money on overtime. (Supp Award2 at 9 - 12). With regard to shift differentials, the arbitrator acknowledged that no other law enforcement groups employed by the County receive shift differentials. However, he awarded the shift differentials based on comparisons he made to three other non-law enforcement units within the County who work in a facility that operate 24 hours a day, seven days a week. (Supp Award2 at 4 - 7). With regard to the lawful authority of the employer, the arbitrator stated that the County offered 16.9% over four years and that it specifically represented that if its proposal were granted it could meet the lawful authority of the employer standard, as well as not exceed CAP limitations. Based on this representation, and because his award equated to 15.75% and was less than the County's offer, he determined he did not

P.E.R.C. NO. 2011-76

7.

have to go into any in depth analysis of the CAP limitation or the lawful authority of the employer. The arbitrator stated that he relied on the County's expert testimony setting forth that the County's surplus had remained relatively static through 2009 as had the amount utilized to support the budget, and that the County does in fact replenish surplus annually. The arbitrator concluded that given these considerations, the lawful authority of the employer and the cost of living were not the major standards he utilized in arriving at his award. He stated that he placed the heaviest emphasis on the comparability with County employees including law enforcement.

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

- (1) The interests and welfare of the public . . . ;
- (2) Comparison of the wages, salaries, hours, and conditions of employment of the employees with the wages, hours and conditions of employment of other employees performing the same or similar services and with other employees generally:
 - (a) in private employment in general . . . ;
 - (b) in public employment in general . . . ;

P.E.R.C. NO. 2011-76

8.

- (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.

P.E.R.C. NO. 2011-76

9.

Super. 298, 299 (App. Div. 2002), *aff'd* o.b. 177 N.J. 560 (2003), citing Cherry Hill Tp., P.E.R.C. No. 97-119, 23 NJPER 287 (¶28131 1997). An arbitrator must provide a reasoned explanation for an award and state what statutory factors he or she considered most important, explain why they were given significant weight, and explain how other evidence or factors were weighed and considered in arriving at the final award. N.J.S.A. 34:13A-16g; N.J.A.C. 19:16-5.9; Lodi.

The County asserts the following six grounds as the basis for its appeal:

I. The interest arbitration opinion and award fails to give due weight to the statutory factors judged relevant to the resolution of the within dispute.

II. Arbitrator Restaino's supplemental opinion and award is not in compliance with N.J.S.A. 2A:24-8 and 2A:24-9 in that the awards of shift differentials, the \$1200 equity adjustment and the refusal to award the County's holiday pay proposal are not fully supported by substantial credible evidence: therefore the award should be vacated and the within appeal granted.

III. The overwhelming weight of the evidence and the pattern of bargaining within the correctional facility does not support the award of the shift differentials for officers working the 0730 - 1530 and the 1530 - 2330 shifts.

IV. There is no support in the record for the arbitrator's assertion that the workforce at the correctional facilities is not stable and there is no pattern of bargaining between the PBA units and the FOP Lodge 34; therefore, there is no basis for the award of the \$1200 equity adjustment.

P.E.R.C. NO. 2011-76

10.

V. There is no analysis and no support for the arbitrator's refusal to award the County's proposal to reduce holiday pay from time and one-half to straight time.

VI. The supplemental award, like the initial award, fails to adequately analyze the financial impact of the overall award on the citizens, residents and taxpayers of the County.

The FOP responds that the second supplemental award "carefully and decisively addresses each of the stated reasons for the remand." The FOP also seeks post-judgment interest in the event that the County does not make payment within 14 days of confirmation of the award.

Analysis

On January 1, 2011, P.L. 2010, c. 105 became effective. Pursuant to this law, we have 30 days to process an appeal of an interest arbitration award. N.J.S.A. 34:13A-16f(5)(a). Given this time constraint, and in the interest of the parties to finalize the terms of this contract which is already expired, we are modifying the granting of the \$1200 equity adjustment as we are authorized to do pursuant to N.J.S.A. 34:13A-16f (5) (a). Our decision to modify this aspect of the award is due to these unique circumstances where the decision has already been remanded twice and a third remand would not benefit the parties.

We begin with setting forth the economic aspects of the award that have not been appealed by the County:

P.E.R.C. NO. 2011-76

11.

-For 2007, the arbitrator added a new maximum step 8 to the salary guide. All officers on steps 6 and 7 moved to step 8. He awarded 3% increases except for the maximum step which was increased by 4%. A \$1350 hazardous duty payment was rolled into base pay at each step;

- For 2008, he awarded a 3% increase to each step except step 8 which received 4%;

-For 2009, the arbitrator awarded a 3.5% increase to each step, except step 8 which received 3.75%;

-For 2010, the arbitrator awarded a 3.5% increase to each step except step 8 which received 4.0%. He also added a new maximum step 9 and all officers on steps 7 and 8 moved to step 9;

- The clothing allowance was increased from \$1,250 to \$1,350;

-All members of the Special Emergency Response Team were awarded a \$500 stipend, effective January 1, 2009; and

- With regard to unused sick leave, effective January 1, 2007, the arbitrator increased by \$1,000 at 50% of days (total \$13,000); effective January 1, 2008, increased by \$1,000 at 50% of days (total \$14,000); effective January 1, 2009, increased by \$1,000 at 50% (total \$15,000 at 50% of days) and effective January 1, 2010, changed to \$15,000 at 100% of days.

We find that the arbitrator's granting of the \$1200 equity was not supported by substantial credible evidence in the record. The arbitrator premised his award of the \$1200 equity adjustment to the top step of the salary guide "to keep the workforce stable." (Supp. Award2 at 13). However, there is no indication

P.E.R.C. NO. 2011-76

12.

in his initial award, his first supplemental award, or his second supplemental award that the workforce is unstable or is under threat of becoming unstable. The arbitrator states as follows regarding this issue:

While the County objects to me saying there is not a stable workforce, I have no problem with reopening the hearing to review documentation concerning how many correction officers represented by FOP 34 have left in 2007, 2008, 2009 and 2010, and the reasons for them leaving, whether it is for retirement or other reasons. Additionally, when somebody leaves and is replaced, the difference in salary goes to the County. This is the so-called breakage money. I addressed breakage money on pages 55/56 of my [Initial] Award. I also addressed on those pages the impact on average salaries with a high turnover. My experience as an interest arbitrator has shown me that typically corrections officers do not transfer from a municipality, County Sheriff's Office Prosecutor's Office or even the NJ State Police. They are usually hired "off the street" after being interviewed and assessed by the County. After working a specified number of years as a correctional officer, there is a turnover when some move on to a higher paying law enforcement position. Some transfer into a supervisory law enforcement position in the same facility. On the entire pyramid of salaries paid to law enforcement facilities, Corrections Officers [are] towards the bottom. Corrections Officers leave the correctional facility to work for a municipality, a Sheriff's Department, potentially the Prosecutor's Office, and potentially for the State Police. It is my understanding that no one becomes a Corrections Officer who has already served as a Municipal Police Officer or Sheriff's Officer. Therefore, to maintain a stable workforce and to keep the workforce in place

P.E.R.C. NO. 2011-76

13.

I put the \$1200 equity adjustment in the top step of the salary guide.

[Supp. Award2 at 13 - 14]

The above statement represents anecdotal observations by the arbitrator, and is not based on substantial credible evidence supporting a finding that the workforce in this unit is unstable or is in danger of becoming unstable. Moreover, the arbitrator again justified the equity adjustment with comparisons to other law enforcement employees in the County, specifically Sheriff's Officers represented by PBA Local 243 (for which voluntary settlement was reached on April 21, 2006) and Prosecutor's Officers rank and file and superior officers represented by PBA Local 77 (for which voluntary settlement was reached for both units in 2009). (Supp. Award at 1 - 2). For PBA Local 243, a \$1200 equity adjustment was added to the top step of the guide. For both superior officers and rank and file officers represented by PBA Local 77, \$2,800 was added to the top step and then a percentage of that \$2,800 was added to each individual step as an equity adjustment. (Supp. Award at 2 - 3). The arbitrator found that although it is indisputable that corrections officers are not paid at the same level as the Sheriff's officers represented by PBA Local 243, Sheriff's officers represented by PBA Local 243 received a \$1,200 equity adjustment to the top step of the salary guide and therefore a \$1,200 equity adjustment was necessary to maintain a stable work force for the members of FOP Lodge #34.

P.E.R.C. NO. 2011-76

14.

(Initial Award at 83, Supp. Award at 4). However, as the arbitrator noted, PBA Local 243 had made a substantial concession in giving up overtime opportunities resulting from performing hospital duties. The rank and file officers and the superior officers represented by PBA Local 77 agreed to make health insurance contributions of 1% of their base salary and to take three furlough days in 2009 and three furlough days in 2010. The arbitrator noted that "even though health insurance is not on the table with FOP Lodge 34, the fact remains that the salary increases were negotiated by PBA 77 because of give-backs. There are no give-backs from FOP Lodge 34." (Initial Award at 85). The arbitrator himself acknowledges that the unions in the comparisons he used made concessions that are not present in the instant matter. This difference calls into question the arbitrator's use of comparables on this issue. We also note that the arbitrator failed to address the County's argument that three central New Jersey counties should have been excluded in his comparability analysis. Borough of Paramus, P.E.R.C. No. 2010-35, 35 NJPER 431 (¶141 2009).

The arbitrator's award of shift differentials was based on comparisons he made with three County non-law enforcement units whose members are employed at a facility that operates 24 hours a day, seven days a week. The arbitrator's refusal to award the County's proposal to reduce holiday pay from time and one-half to

P.E.R.C. NO. 2011-76

15.

straight time was based on comparisons to the three FOP units of superior officers at the correctional facility. Those aspects of the award are affirmed. Accordingly, we modify the award to eliminate the granting of the \$1200 equity adjustment. All other aspects of the award are affirmed.

ORDER

The award is modified to eliminate the granting of the \$1200 equity adjustment. All other aspects of the award are affirmed.

BY ORDER OF THE COMMISSION

Commissioners Colligan, Eaton, Krengel and Voos voted in favor of this decision. Chair Hatfield and Commissioners Bonanni and Eskilson voted against this decision.

ISSUED: May 13, 2011

Trenton, New Jersey

P.E.R.C. NO. 2011-77

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF BLOOMINGDALE,

Petitioner,

-and-

Docket No. IA-2011-045

PBA LOCAL 354,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies an interest arbitration appeal filed by the Borough of Bloomingdale. The Commission holds that the most recent agreement between the parties expired December 31, 2010 and not January 1, 2011 thus, the arbitrator was not required to apply the 2% salary cap set forth in N.J.S.A. 34:13A-16.7(b) in issuing the interest arbitration award.

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

P.E.R.C. NO. 2011-77

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF BLOOMINGDALE,

Petitioner,

-and-

Docket No. IA-2011-045

PBA LOCAL 354,

Respondent.

Appearances:

For the Petitioner, McManimon & Scotland, L.L.C.,
attorneys (Cecilia I. Lassiter, of counsel)

For the Respondent, Loccke, Correia, Linsky & Bukosky,
attorneys (Leon B. Savetsky, of counsel)

DECISION

On February 16, 2011, PBA Local 354 filed a Petition to Initiate Compulsory Interest Arbitration. The PBA and the Borough of Bloomingdale are parties to a collective negotiations agreement with an expiration date of December 31, 2010.

On February 23, 2011, pursuant to P.L. 2010 c. 105, codified as N.J.S.A. 34:13A-16e(1), James W. Mastriani was appointed by lot to serve as the interest arbitrator. On March 16, an interest arbitration hearing was held. On April 11, Arbitrator Mastriani issued his award setting the terms of a successor agreement covering the period from January 1, 2011 through December 31, 2014.

P.E.R.C. NO. 2011-77

2.

On April 20, 2011, the Borough filed a "Notice of Appeal of Interest Arbitration Award," supported by a brief, certifications and exhibits. On April 27, the PBA filed a brief urging that the award be affirmed. Where an interest arbitration award is appealed, N.J.S.A. 34:13A-16f(5)(a), as amended by P.L. 2010, c. 105, requires that the Commission issue a decision within 30 days after an appeal is filed.

The arbitrator issued a conventional arbitration award as he was required to do in accordance with amendments to the interest arbitration law contained in P.L. 2010 c. 105. N.J.S.A. 34:13A-16d(2).^{1/} A conventional award is crafted by an arbitrator after considering the parties' final offers in light of nine statutory factors. We affirm the award.

The Borough seeks to vacate the award due to the arbitrator's:

[F]ailure to apply the law as written and to consider evidence pertinent to this controversy, . . . Specifically, Arbitrator Mastriani failed to apply the 2% cap on base salary increases pursuant to N.J.S.A. 34:13A-16.7(b) in the issuing of the interest arbitration award.

During the interest arbitration proceedings, the Borough argued to the interest arbitrator that the parties most recent agreement did not expire until January 1, 2011 because it read:

^{1/} Effective January 1, 2001, P.L. 2010, c. 105 eliminated all other methods of interest arbitration and only provides for conventional arbitration.

P.E.R.C. NO. 2011-77

3.

"This Agreement shall be deemed to have been in full force and effect from January 1, 2006 through and including December 31, 2010."

After Arbitrator Mastriani rejected the Borough's contention, it sought special permission to appeal that ruling to the Commission. The Commission Chair denied that application because it was untimely, but also expressed her agreement with the arbitrator's reasoning. Borough of Bloomingdale, P.E.R.C. No. 2011-70, __ NJPER __ (¶____ 3/31/11).^{2/}

The only issue raised by the Borough in this appeal is whether the parties' most recent agreement expired on December 31, 2010 or January 1, 2011, the same issue it raised in its unsuccessful application for special permission to appeal. In response, the PBA asserts that because the Commission Chair, in addition to holding the Borough's application was untimely, also rejected the Borough's arguments, it is barred from raising the issue again before the Commission and should have sought relief from the Appellate Division of Superior Court.

Because the Chair denied special permission to appeal on a procedural ground, we will entertain the merits of the Borough's arguments about the expiration date in this appeal. However, we

^{2/} We deny the Borough's request for oral argument before the Commission as this appeal is the second time it has presented its arguments. No further exposition of the parties' positions is necessary.

P.E.R.C. NO. 2011-77

4.

affirm the award because the Borough has not presented any new arguments or information that casts doubt on the arbitrator's ruling on the expiration date of the parties' prior agreement.

The expiration date of the parties' last agreement becomes significant in light of two new statutes added to the interest arbitration law by P.L. 2010, c. 105.

N.J.S.A. 34:13A-16.7(b) provides:

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

N.J.S.A. 34:13A-16.9 governs the 2% cap on base salary:

This act shall take effect January 1, 2011; provided however, section 2 [C.34:13A-16.7] shall apply only to collective negotiations between a public employer and the exclusive representative of a public police department or public fire department that relate to a negotiated agreement expiring on that effective date or any date thereafter until April 1, 2014, whereupon the provisions of section 2 shall become inoperative for all parties except those whose collective negotiations agreements expired prior to

P.E.R.C. NO. 2011-77

5.

April 1, 2014 but for whom a final settlement has not been reached. When final settlement between the parties in all such negotiations is reached, the provisions of section 2 of this act shall expire. In the case of a party that entered into a contract that expires on the effective date of this act or any date thereafter until April 1, 2014, and where the terms of that contract otherwise meet the criteria set forth in section 2 of this act, that party shall not be subject to the provisions of section 2 when negotiating a future contract.^{3/}

P.E.R.C. No. 2011-70 notes at page 4:

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

Because the parties' prior agreement expired before January 1, 2011, and the duration of the new agreement as set by the arbitration award extends beyond April 1, 2014, the arbitrator was not bound to cap base salary items at 2% annually. The Borough's argument lacks merit.

3/ The Commission has established a set of Frequently Asked Questions on its web site pertaining to the amendments to the interest arbitration law made by P.L. 2010, c. 105. FAQ 16 addresses the import of the 2% cap.
http://www.state.nj.us/perc/FAQ_New_Interest_Arbitration_Procedures_2011.03.14.pdf

P.E.R.C. NO. 2011-77

6.

ORDER

The arbitrator's award is affirmed.

BY ORDER OF THE COMMISSION

ISSUED: May 13, 2011

Trenton, New Jersey

P.E.R.C. NO. 2011-80

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF HUNTERDON,

Appellant,

-and-

Docket No. IA-2009-067

FOP LODGE 29,

Respondent.

SYNOPSIS

The Public Employment Relations Commission affirms an interest arbitration award. The County of Hunterdon appealed an award of an incremental salary guide for correction officers represented by FOP Lodge 29. The Commission finds that the arbitrator had the authority to award the salary guide and that the award was based on substantial credible evidence in the record. The Commission notes that it does not perform a de novo review of interest arbitration awards.

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. 2011-80

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF HUNTERDON,

Appellant,

-and-

Docket No. IA-2009-067

FOP LODGE 29,

Respondent.

Appearances:

For the Appellant, Gaetano M. DeSapio, attorney

For the Respondent, Markowitz & Richman, attorneys
(Matthew D. Areman, of counsel)

DECISION

The County of Hunterdon appeals from an interest arbitration award involving a negotiations unit of approximately 30 correction officers.^{1/} See N.J.S.A. 34:13A-16f(5)(a). The arbitrator issued a conventional arbitration award as he was required to do absent the parties' agreement to use another terminal procedure. N.J.S.A. 34:13A-16d(2).^{2/} A conventional award is crafted by an arbitrator after considering the parties' final offers in light of nine statutory factors. We affirm the

1/ We deny the County's request for oral argument. The issues have been fully briefed.

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

P.E.R.C. NO. 2011-80

2.

award. We note that we are constrained by our review standard to affirm the award. See City of Newark, P.E.R.C. No. 99-97, 25 NJPER 242 (¶30103 1999).

The parties stipulated to a three-year agreement effective January 1, 2009 through December 31, 2011. The parties also stipulated to various other language changes to the agreement. The outstanding issues were submitted to the arbitrator in the parties' final offers.

The FOP's main proposal was to establish a ten-step salary schedule with annual increments, but to forego retroactive pay for 2009. The FOP also proposed a \$200 increase in the Uniform Maintenance Allowance from \$600 to \$800 beginning January 1, 2011.

The County proposed a 7.5% salary increase for officers receiving less than \$40,500 annually over three years in equalized payments of 2.5% per year effective in 2009. For officers receiving more than \$40,500 annually, the County proposed wage increases averaging between 9.38% and 23.10% over three years. The County also proposed that effective January 1, 2011, it would pay employees on a bi-weekly basis with staggered implementation resulting in a ten-day hold back on an employee receiving a pay check. The end result of the new pay schedule is that when an officer leaves the employ of the County, two weeks of pay will be owed to the officer. The County opposed all other

P.E.R.C. NO. 2011-80

3.

contested issues presented by the FOP, including the salary guide proposal.

On October 31, 2010, the arbitrator issued an 86-page Opinion and Award. He noted that the record was extensive, containing 90 documentary exhibits totaling thousands of pages in support of the parties' last offers. After summarizing the parties' proposals and respective arguments on those proposals in detail, the arbitrator compared the proposals and awarded a three-year agreement.

The arbitrator awarded the implementation of the following 11-step incremental salary schedule for 2009 through 2011:

STEP	2009	2010	2011
11	57,500	58,500	60,000
10	54,000	54,000	55,500
9	51,000	51,000	51,000
8	48,500	48,500	48,500
7	46,000	46,000	46,000
6	43,000	43,000	43,000
5	40,500	40,500	40,500
4	38,900	38,900	38,900
3	37,500	37,500	37,500
2	33,648	33,648	33,700
1	31,600	31,600	31,600

The arbitrator did not award any salary increase for officers in 2009 and placed officers on the step corresponding to their existing 2008 salary. The arbitrator also awarded a \$100

P.E.R.C. NO. 2011-80

4.

increase in the Uniform Maintenance Allowance effective January 1, 2011 and the County's proposal for a two-week salary hold-back to be implemented with the first payday in 2011.

The County appeals contending that the arbitrator exceeded his authority in awarding a salary guide and even if the arbitrator had the authority to award a salary guide, it was contrary to the credible evidence in the record.

The FOP responds that the County ignored Commission precedent that establishes the arbitrator's authority to award a salary system and the arbitrator's award in adopting the FOP's proposal for a salary guide is supported by substantial credible evidence in the record.

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

- (1) The interests and welfare of the public . . . ;
- (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 . . . ;

P.E.R.C. NO. 2011-80

5.

- (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

P.E.R.C. NO. 2011-80

6.

whole. Teaneck Tp. v. Teaneck FMBA, Local No. 42, 353 N.J. Super. 298, 299 (App. Div. 2002), aff'd o.b. 177 N.J. 560 (2003), citing Cherry Hill Tp., P.E.R.C. No. 97-119, 23 NJPER 287 (¶28131 1997). Because the Legislature entrusted arbitrators with weighing the evidence, we will not disturb an arbitrator's exercise of discretion unless an appellant demonstrates that the arbitrator did not adhere to these standards. Teaneck, 353 N.J. Super. at 308-309; Cherry Hill.

Arriving at an economic award is not a precise mathematical process. Given that the statute sets forth general criteria rather than a formula, the treatment of the parties' proposals involves judgment and discretion and an arbitrator will rarely be able to demonstrate that an award is the only "correct" one. See Borough of Lodi, P.E.R.C. No. 99-28, 24 NJPER 466 (¶29214 1998). Some of the evidence may be conflicting and an arbitrator's award is not necessarily flawed because some pieces of evidence, standing alone, might point to a different result. Lodi. Therefore, within the parameters of our review standard, we will defer to the arbitrator's judgment, discretion and labor relations expertise. City of Newark. 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

P.E.R.C. NO. 2011-80

7.

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

The County argues that the arbitrator exceeded his authority in creating an incremental salary guide because the County negotiated the elimination of salary guides with all of its units years ago and the arbitrator's actions will create an incremental payment obligation for the County in 2012. Under N.J.S.A. 2A:24-8 and 2A:24-9(b), the County contends that the award must be vacated because the award of a salary increment for 2012 was not submitted to the arbitrator rendering the award incomplete.

The FOP responds that its proposal to implement a salary guide containing automatic salary steps was properly before the arbitrator pursuant to Commission case law.

We have held that a proposal to implement a salary guide containing automatic salary steps is mandatorily negotiable and may be submitted to interest arbitration. Sussex Cty., P.E.R.C. No. 83-92, 9 NJPER 77 (¶14042 1982), recon. den. P.E.R.C. No. 83-101, 9 NJPER 104 (¶14056 1983) (a salary step system determines the compensation employees will receive over the course of the contract which is a fundamental term and condition of employment). We have also recently examined an interest arbitrator's authority to award salary increases outside the

P.E.R.C. NO. 2011-80

8.

duration of the award. In City of Asbury Park, P.E.R.C. No. 2011-17, 36 NJPER 323 (¶126 2010), we stated:

The collective negotiations process contemplates labor and management sitting down and negotiating terms and conditions of employment for one, two, three or more future years. Parties enter into collective negotiations agreements even though no one can predict with any assurance the exact budget circumstances a public employer will face in future years. For police and fire departments, when the parties cannot reach a voluntary agreement, either party may invoke the interest arbitration process by which a neutral third party sets terms and conditions of employment based on the evidence presented and in light of the nine statutory factors. N.J.S.A. 34:13A-16b(2). As an extension of the collective negotiations process, an arbitrator will also award multi-year contracts. And because of the delays in the interest arbitration process, arbitration awards will often also set terms and conditions of employment retroactively thereby requiring adjustments to the public employer's budgets. Retroactive salary adjustments and future salary increases are inherent in both the collective negotiations process and interest arbitration.

Thus, we find that the arbitrator acted within his conventional arbitration authority to award an incremental salary guide.

Next, the County argues that the arbitrator's analysis in awarding a salary guide is flawed and not supported by substantial credible evidence in the record as a whole because although almost all other Correction officer units have salary guides, Hunterdon County eliminated them years ago and to reintroduce them will upset labor relations in the County; the

P.E.R.C. NO. 2011-80

9.

arbitrator failed to set forth a rational basis for selecting the salaries inserted at each point of the guide; the arbitrator incorrectly shifted the burden of proof in changing the salary structure to the County; the record does not support and the County does not agree that turnover is an issue that needed to be addressed; and the record does not indicate that training costs are an issue for the County.

The FOP responds that the arbitrator thoroughly discussed each factor with respect to his award of the salary guide and found that the interest and welfare of the public favors the award of a salary guide because the public interest is best served when a public employer has a low turnover rate creating a stable workforce particularly in a jail facility in order to maintain high standards of safety and supervision; the cost of the salary guide was less than the County's proposal; and the arbitrator explained his basis for selecting the salaries inserted at each step of the guide.

In his discussion of interest and welfare of the public, the arbitrator found:

The evidence in the record establishes that all other Correction Officer bargaining units in the State have what is commonly known as an incremental salary schedule. This is the standard method of payment for all other county Correction's Officers. This is a term and condition of employment received by all other Correction Officers. While I am discussing the incremental salary guide issue under the interests and welfare of the public

P.E.R.C. NO. 2011-80

10.

criterion, other criteria also favor its inclusion in the new CBA. The second criterion, (comparison of the wages, salaries, hours, and condition of employment of the employees involved in the arbitration proceedings with the wages, salaries, hours, and conditions of employment of other employees performing the same or similar services) supports the awarding of a salary schedule. The County bears a heavy burden in convincing an arbitrator that a term and condition of employment enjoyed by thousands of other Correction Officers in all other correctional facilities throughout the State should be denied to 30 Correction Officers in Hunterdon County. In addition, the incremental salary schedule is the standard form of compensation for all other public safety officers in the State. This grouping includes municipal Police Officers, County Correction Officers, Firefighters, Prosecutor's Detectives, and other County and State police bargaining units.

[Award at 62].

The arbitrator then reviewed the evidence in the record that the FOP presented which established a 60-70% turnover rate for Correction Officers in the past ten years. Between 2000 and 2010, approximately 100 officers were hired for a 30-officer unit and 28 of the current officers were hired after January 1, 2000. The arbitrator then reviewed the evidence presented by the County that established its compensation model is to pay more senior officers smaller raises than junior officers. The arbitrator credited the evidence of the FOP and concluded that the current compensation model values inexperience over experience and thus encourages high turnover which produces a continuing spiral of

P.E.R.C. NO. 2011-80

11.

recruitment and training resulting in a significant number of inexperienced Correction officers. The arbitrator then addressed his experience as well as decisions of other arbitrators in assisting public employers in reducing turnover with the establishment of an incremental salary schedule and concluded that the awarding of a salary guide was appropriate.

We conclude that the arbitrator addressed the interest and welfare of the public when he awarded a salary guide. The arbitrator found that the award of the salary guide is reasonable despite the other County units not having them given his findings on the high turnover rate and that the County's non-police units did not have an issue with turnover.^{3/} We note again that the arbitrator has the discretion to weigh the criteria and our review is to determine if he did so and not to substitute our judgment. Newark.

The arbitrator's statement that "[t]he County bears a heavy burden in convincing an arbitrator that a term and condition of employment enjoyed by thousands of other Correction Officers in all other correctional facilities throughout the State should be denied to 30 Correction Officers in Hunterdon County," did not shift the burden of proof to the County in awarding the salary

^{3/} We note that the arbitrator also awarded an incremental salary guide to the County's Sheriff's Officers. That award was also appealed and affirmed by the Commission. P.E.R.C. No. 2011-__ , __ NJPER __ (¶__ 2011)

P.E.R.C. NO. 2011-80

12.

guide. The arbitrator accurately recited that the burden of proof to establish a change rested with the party seeking the change at the outset of his analysis. In his justification for awarding the salary guide, the arbitrator found that the FOP met its burden through its presentation of evidence establishing that all other County units have salary guides and the lack of experienced officers employed by the County due to the high turnover rate. The arbitrator then acknowledged the difficult hurdle the County had to rebut the evidence presented establishing the turnover rate. Thus, the FOP provided substantial evidence in the record to support the award of a salary guide.

The County also argues that the arbitrator failed to consider and give due weight to the lawful authority of the County by failing to address and/or analyze the ability of the County to implement the terms of the award in the year 2012 and the future as well as the financial impact on the governing unit, its residents and taxpayers because other units will insist on salary guides in future negotiations. See N.J.S.A. 34:13A-16g(5) (6) and (9).

N.J.S.A. 34:13A-16g(5) (6) and (9) require consideration of the employer's lawful authority and financial impact on the governing unit, its residents and taxpayers, in particular consideration of its cap restrictions. Our discussion of Asbury

P.E.R.C. NO. 2011-80

13.

Park above is relevant here. There is no per se bar to awarding terms and conditions of employment for future years based on the record evidence and the current economic trends. The parties presented thousands of pages of documentation to the arbitrator. The County has not pointed to any particular evidence in the record that requires rejecting the arbitrator's award of incremental increases or that the County can not pay the increases. Town of Kearny, P.E.R.C. No. 2011-37, 36 NJPER 160 (¶160 2010). The arbitrator found and the County does not dispute that it is well managed and financially sound with the ability to reduce its budget and maintain a surplus in 2010. Further, the arbitrator thoroughly examined and acknowledged that the other County units did not have salary guides, but still determined that the record justified his award. We can not disturb that judgment.

Finally, the County argues that the economic award was greater than the average State-wide increases in 2008, 2009 and 2010. It must be noted that those statistics cited by the County as a comparison do not include increment costs. We also note that the base salaries are the lowest in the State and therefore a 3.73% to 11.45% increase depending on the step of the guide yields a total cost of \$236,336 for a three-year agreement- a figure the County does not dispute is \$100,000 less than its offer. We recognize that any salary increase places pressure on

P.E.R.C. NO. 2011-80

14.

a public employer's budget. However, an interest arbitration award with a cumulative cost that is less than the County's final offer in total cost and percentage raise is not unreasonable and should not create unexpected pressure to the County.

Finally, we acknowledge that the terms of the new interest arbitration law, P.L. 2010, c. 105 will apply to any impasse that the parties' may reach in negotiating a successor agreement. The new law includes the 2% base salary item cap which will contain the costs of the awarded salary guide to 2% if the guide is continued in a successor agreement.

ORDER

The arbitrator's award is affirmed.

BY ORDER OF THE COMMISSION

Commissioners Colligan, Eaton, Krengel and Voos voted in favor of this decision. Chair Hatfield and Commissioner Eskilson voted against this decision. Commissioner Bonanni was not present.

ISSUED: May 26, 2011

Trenton, New Jersey

P.E.R.C. NO. 2011-85

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

THE BOROUGH OF SPOTSWOOD,

Respondent,

-and-

Docket No. IA-2011-048

POLICE BENEVOLENT ASSOCIATION,
LOCAL 225,

Appellant.

SYNOPSIS

The Public Employment Relations Commission affirms an interest arbitration award. The Police Benevolent Association, Local 225 appealed the award asserting that the arbitrator did not adequately apply the statutory factors; failed to separately determine whether the total net economic change for each year of the agreement was reasonable; the award is not based upon substantial credible evidence in the record; and the award violates N.J.S.A. 2A:24-9(d). The Commission holds that the arbitrator adequately applied the statutory factors and determined the total net annual economic change and was supported by substantial credible evidence in the record.

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

P.E.R.C. NO. 2011-85

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

THE BOROUGH OF SPOTSWOOD,

Respondent,

-and-

Docket No. IA-2011-048

POLICE BENEVOLENT ASSOCIATION,
LOCAL 225,

Appellant.

Appearances:

For the Respondent, Apruzzese, McDermott, Mastro &
Murphy (Arthur R. Thibault, Jr. Esq., of counsel)

For the Appellant, Loccke, Correia, Limsky & Bukosky
(Leon B. Savetsky, of counsel)

DECISION

The Police Benevolent Association, Local 225 appeals from an interest arbitration award involving a negotiations unit of police officers. See N.J.S.A. 34:13A-16f(5)(a). The arbitrator issued a conventional arbitration award. N.J.S.A. 34:13A-16d(2). A conventional award is crafted by an arbitrator after considering the parties' final offers in light of nine statutory factors. We affirm the arbitrator's award.

The PBA proposed a four-year contract from January 1, 2011 through December 31, 2014. It proposed a 3.5% across-the-board

P.E.R.C. NO. 2011-85

2.

wage increase effective on January 1 of each calendar year.^{1/} It also proposed the following: increase the cap on terminal leave from \$12,000 to \$15,000; increase maximum compensatory time bank from sixty to eighty hours; increase extra duty rate for outside contractors to \$60 per hour and add a provision for a minimum of four hours for such contracted duty; and deletion of the current requirement for 72 hours of notice for vacation leave and replace it with the following provision: "employees may use accumulated compensatory time at any time at the Employee's sole option subject to prior Departmental approval. Prior Departmental approval, or requests made with less than three (3) day's notice shall all be subject to Departmental Discretion and not subject to grievance."

The Borough proposed a contract term of three years. It proposed the following wage increases: 0% for 2011, 1% for 2012 and 1.55% for 2013. It also proposed the addition of two new steps in the current salary range. The Borough also proposed to modify the provisions of the grievance procedure at paragraph J so that any grievance not presented for arbitration within 10

^{1/} On January 1, 2011, P.L. 2010, c. 105 became effective. This law imposes a 2% cap on base salary. This award was not subject to the base salary cap because the contract expired on December 31, 2010. However, because the petition for interest arbitration was filed after the effective date of the law, the interest arbitration proceedings and the appeal process are subject to the law's accelerated processing requirements.

P.E.R.C. NO. 2011-85

3.

days of response at Step 4 shall be deemed abandoned and a bar to arbitration. It also proposed to freeze longevity at the 2011 rate and convert it to a flat dollar amount for employees currently receiving longevity. Employees not receiving longevity in 2011 and new hires would not be eligible for longevity. With regard to overtime, it proposed that overtime for being called in to work for a holiday shall be at two times the member's regular rate of pay and also proposed a clarification that overtime will be paid to a member to attend a disciplinary hearing when requested/ordered to do so by the Borough, but not by the PBA. It also proposed to reduce holidays to eight by eliminating Martin Luther King's Birthday; Washington's Birthday; Good Friday; election day and the Day after Thanksgiving, and any snow day declared by the Borough will not result in a day off for the officers. The Borough requested sick leave for new hires to be reduced to ten days and to clarify that personal days must be used in the year earned or they will be forfeited. Regarding vacations, the Borough wanted vacation days for new hires to be as follows:

1-6 years: 10 vacation days;

7-15 years, 15 vacation days; and

16 years or more, 20 vacation days.

The Borough also wanted to cap the selling back of vacation days to five per year once an employee has used at least ten vacation

P.E.R.C. NO. 2011-85

4.

days. For health insurance, the Borough proposed that effective 1/1/11, all employees must contribute the greater of 2% of their salary or 10% of the actual costs of the health care plan they select. On 1/1/12 the 10% rises to 20% and on 1/1/13 the 20% rises to 30%, unless the 2% of pay is greater. All employees must select NJDIRECT 15 plan or pay the difference if a more costly plan is selected. For employees hired after 1/1/11 no medical benefits will be provided for spouses of retirees. The Borough also proposed the elimination of the education incentive, compensatory time off for an employee's birthday, and parts of the PBA Expenses provision.

On May 23, 2011, the arbitrator issued a 12-page Decision and Award. The arbitrator initially noted that "the imposition of a 2% budget enlargement is effective in this matter but the 2% limit on the increase of police compensation was deemed not applicable in the case by PERC." After summarizing the parties' proposals and respective arguments on those proposals, the arbitrator compared the proposals and awarded a three-year agreement from January 1, 2011 through December 31, 2013. He awarded the following wage increases: 0% for 2011, 2% beginning on July 1, 2012, and 2% for 2013. The arbitrator granted the Borough's proposal regarding the freezing of longevity payments at current rates and conversion to flat dollars for employees receiving longevity. He also awarded the elimination of

P.E.R.C. NO. 2011-85

5.

longevity for employees not presently receiving longevity pay. He granted the Borough's proposal that any snow day declared by the Borough will not result in a day off for the officers. He rejected the Borough's proposal to reduce sick leave for new hires to 10 days. He determined that personal days granted must be used on the year in which they are earned except if extended by the Chief of Police, whose determination shall not become grievable. Regarding overtime, he found that overtime will not be paid for officers called in to attend a disciplinary hearing by the PBA without prior approval by the Chief. He granted the Borough's proposal on terminal leave. He granted the Borough's proposal regarding the modification of vacation allowances. Regarding health insurance, he awarded that as of July 31, 2011, the Borough shall provide the NJDIRECT 15 plan for health insurance with an employee contribution of 2% of base salary.^{2/} Should an employee select another plan which has higher premium costs the difference in cost shall be paid by the employee making such choice. The arbitrator removed the education incentive and the provision concerning PBA expenses, and he eliminated compensatory time off for a birthday. He also raised the payment for extra duty for outside contractors from \$50 to \$55 with a minimum assignment of two hours for such duty.

^{2/} The arbitrator issued a corrected award clarifying that the 2% employee contribution is of base salary and not of the health insurance premium.

P.E.R.C. NO. 2011-85

6.

The PBA appeals and asserts that the arbitrator failed to adequately apply the statutory factors set forth in N.J.S.A. 34:13A-16g. The PBA also argues that the arbitrator failed to separately determine whether the total net annual economic change for each year of the agreement was reasonable. It further contends that the award is not based on substantial credible evidence in the record and violates N.J.S.A. 2A:24-8(d).

The Borough responds that the arbitrator adequately discussed the statutory criteria and why his award was reasonable thereunder and the award is supported by substantial credible evidence in the record.^{3/}

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

- (1) The interests and welfare of the public
 . . . ;

^{3/} The Borough also asserts that the PBA's appeal should be rejected as untimely. FAQs on P.L. 2010, c. 105 are posted on PERC's website. FAQ #12 notes a change from prior practice in that a party appealing an interest arbitration award must now file its brief along with its Notice of Appeal. The PBA's Notice of Appeal was filed on May 31, 2011 without its brief. Since we have not yet engaged in formal rulemaking in response to P.L. 2010, c. 105, we permitted the PBA to file its brief by June 2. N.J.A.C. 19:10-3.1a.

P.E.R.C. NO. 2011-85

7.

- (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

P.E.R.C. NO. 2011-85

8.

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

Arriving at an economic award is not a precise mathematical process. Given that the statute sets forth general criteria rather than a formula, the treatment of the parties’ proposals involves judgment and discretion and an arbitrator will rarely be able to demonstrate that an award is the only “correct” one. See Borough of Lodi, P.E.R.C. No. 99-28, 24 NJPER 466 (¶29214 1998). Some of the evidence may be conflicting and an arbitrator’s award is not necessarily flawed because some pieces of evidence, standing alone, might point to a different result. Lodi. Therefore, within the parameters of our review standard, we will

P.E.R.C. NO. 2011-85

9.

defer to the arbitrator's judgment, discretion and labor relations expertise. City of Newark. However, an arbitrator must provide a reasoned explanation for an award and state what statutory factors he or she considered most important, explain why they were given significant weight, and explain how other evidence or factors were weighed and considered in arriving at the final award. N.J.S.A. 34:13A-16g; N.J.A.C. 19:16-5.9; Lodi.

The PBA contends that the arbitrator made his salary increase determinations, as well as the other economic determinations, without any reasonable analysis of the evidence. However, the award sets forth that the arbitrator comprehensively analyzed the statutory factors and primarily placed emphasis on the interests and welfare of the public and comparability to public employment in the same jurisdiction. N.J.S.A. 34:13A-16g (1) and (2)(c). With regard to the interests and welfare of the public, the arbitrator found, in pertinent part, as follows:

The reasons for the fiscal conservatism of the employer are deep seated concerns for the needs of its residents and of the fiscal health of the Borough. While the PBA may legitimately challenge the efficacy of those convictions its expression of such challenges does not confirm that they are inaccurate or improper. The long range view of the Borough's leadership is that the future is increasingly dim from a financial view point. It has estimated imbalance in its 2012 budget forecast of more than \$600,000. Much of the increases are beyond its control and if realized or extended will have the effect of the need to raise property taxes more drastically than the 7% applied in 2010.

P.E.R.C. NO. 2011-85

10.

The Borough has viewed this as a major problem for its citizens many of whom are seniors whose lifestyle and ability to absorb tax hikes is limited by dependence on income supported by Social Security. It is also concerned that higher taxes may not survive challenges to tax levies by citizens and has experienced resistance from the business sector already. There are also concerns as to the possible impact of the reduction of credit rating should the Borough not maintain acceptable levels of fiscal stability and reserves.

[Award at 8].

With regard to comparability to public employees in the same jurisdiction, the arbitrator placed substantial weight on the Borough's negotiated agreement with Local 888, which represents blue and white collar Borough employees. Local 888 agreed to the demand for Borough's announced program of zero wage increases for 2011. Local 888 also made concessions of four holidays and five to seven personal days. In response to the PBA's argument that there are only four steps to maximum pay in the salary guide for the Local 888 contract while there are seven in the PBA contract, the arbitrator compared the salary ranges and incremental movement of the contracts. He noted that the "range increases in the police unit at the lowest level are greater than the total lifetime change provided for non-police personnel." He found that "it serves no justifiable end to treat all who have sacrificed in their negotiations of give backs and very modest contractual terms or those in the non-represented

P.E.R.C. NO. 2011-85

11.

group of employees who also endured a year of no increases to the obvious disparity of treatment requested by the PBA." (Award at 8). The arbitrator went on to note:

While there is expected resistance from the PBA it must be noted that there was a great deal of financial analysis by competent, well-trained personnel who provided the basic information upon which the decision to institute rigid fiscal controls was arrived. That all managerial, professional personnel and members of Local 888 were convinced of the need for this posture including a no increase in pay for a year and some substantial modifications of terms and conditions of employment speaks convincingly as to the universally perceived need for such action. Part of the underlying concerns of the Borough are a reflection of the taxpayers resistance to paying more for services but more importantly is the loss of revenue attributed to the reduction of the value of taxable real estate properties as well as the loss of tax income from what was the largest manufacturer in the Borough and the threat of further claims for tax relief including one from the now highest tax payer which has indicated its assessment will likely be appealed, jeopardizing the \$300,000 tax income from that source. Coupled with this is the fact that there are very few available areas for development of new taxable properties and a recent record of that source dwindling even as improvements to some properties have provided a modicum of relief.

[Award at 7].

The arbitrator found the factor of comparability to other employers inconsequential given the Borough's unique financial

P.E.R.C. NO. 2011-85

12.

circumstances. However, the arbitrator did note that the wage distinctions between Borough officers and officers in comparable jurisdictions "are not huge and there is no exact replication of the conditions or demands placed on officers in various locations." (Award at 7). He went on to find "that the fiscal conditions and actions of its management in Spotswood require more consideration than matching the pay increases in other communities. . . ."

The PBA argues that there was absolutely no showing of any adverse financial impact on the Borough, its residents and taxpayers. N.J.S.A. 34:13A-16g (6). However, the arbitrator found this statutory factor to be an important consideration. He noted that a large portion of the Borough's budget is directly tied to police function and that the levy cap is expected to be exceeded by \$623,000 for 2012 with factoring in the Borough's proposals only. He noted that the total appropriations requirement for the Borough for 2012 is higher than 2011 because of anticipated increases in salary and wages of \$154,000, much of which involves commitments as to negotiated increases, as well as a \$77,000 increase in pensions and an increase of \$218,000 related to anticipated costs of health care insurance. (Award at 10). With regard to the Borough's surplus, the arbitrator noted as follows:

The Borough provided details demonstrating the steep reduction of its surplus accounts

in recent years where year end surplus of \$1,677,714 in 2008 fell to \$1,538,175 in 2009 and again fell in 2010 to \$1,341, 431. Further, the 2011 figure is reduced to \$1,058,931 and the expectation for the 2012 year is a further reduction to \$913,937. These figures represented a dangerous trend and limited actual resource from an accounting perspective which could have substantial negative impact on the fiscal stability of the Borough and which very well would result in higher borrowing costs as well.

[Award at 6].

The arbitrator also considered the overall compensation received by the officers. N.J.S.A. 34:16A-16g (3). Regarding this statutory factor he found as follows:

I feel it to be of interest to note that an officer in Spotswood, in the middle of those who are at maximum salary structure, is receiving a salary and benefits package exceeding \$140,000 without overtime and as much as \$178,000 with overtime; and there are ten of the officers at the rank of patrolman who are of the maximum salary step, nine of whom earned, inclusive of overtime and benefits, total compensation in excess of \$165,000 in 2010. The one who earned less has total income costs of \$143,986.52.

[Award at 9].

The PBA also contends that the arbitrator completely failed to consider the effect of the officer's 1.5% health insurance contribution as a part of the monetary package. However, the arbitrator specifically noted that if he automatically increased base salary to cover the required 1.5% payment for health

P.E.R.C. NO. 2011-85

14.

insurance contributions it would be contrary to the legislative intent of the law imposing the contribution. (Award at 7).

Although the PBA asserts that the arbitrator failed to consider the lawful authority of the employer, the arbitrator engaged in a discussion of this factor with respect to the constraints imposed by the Local Government Cap Law. The arbitrator also considered the statutory factors of cost-of-living and continuity of employment, and provided analysis as to why he placed minimal emphasis on these factors. (Award at 9 - 10).

Finally, the PBA asserts that, as required by N.J.S.A. 34:13A-16d (2), the arbitrator failed to "separately" determine whether the total net annual economic changes for each year of the agreement are reasonable under the nine statutory factors. However, in the recently enacted revisions to the interest arbitration law set forth by P.L. 2010, c. 105, the requirement to "separately" make such a determination was deleted. The award discusses the economic aspects of the award and the proposals put forth by the PBA and the Borough. The arbitrator's comprehensive analysis on the statutory factors, particularly with respect to the interests and welfare of the public and internal comparability, provides clear evidence as to why he found the economic changes set forth by the award to be reasonable.

P.E.R.C. NO. 2011-85

15.

For the reasons discussed above, we reject the PBA's assertions that the award was not based on substantial, credible evidence in the record and should be vacated pursuant to N.J.S.A. 2A:24-8(d). The award is affirmed.

ORDER

The arbitrator's award is affirmed.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Eskilson, Krengel and Voos voted in favor of this decision. None opposed. Commissioner Colligan recused himself. Commissioner Wall was not present.

ISSUED: June 30, 2011

Trenton, New Jersey

P.E.R.C. NO. 2011-87

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF FORT LEE,

Appellant/Respondent,

-and-

Docket No. IA-2007-087

PBA LOCAL NO. 245,

Respondent/Movant.

SYNOPSIS

The Public Employment Relations Commission grants a motion to dismiss an appeal of additional rulings made by an interest arbitrator to complete an award originally issued on December 18, 2010. The Commission holds that it lacks jurisdiction to decide the issues the Borough appeals as they have already been addressed by the Commission or determined by the Appellate Division.

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. 2011-87

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF FORT LEE,

Appellant/Respondent,

-and-

Docket No. IA-2007-087

PBA LOCAL NO. 245,

Respondent/Movant.

Appearances:

For the Appellant/Respondent, DeCotiis, Fitzpatrick,
Cole & Wisler, LLP, attorneys (J. Sheldon Cohen, of
counsel)

For the Respondent/Movant, Loccke, Correia, Limsky &
Bukosky, attorneys (Leon B. Savetsky, of counsel)

DECISION ON MOTION TO DISMISS

The Borough of Fort Lee seeks to appeal additional rulings made by an interest arbitrator on December 21, 2010, to complete an interest arbitration award originally issued on December 18, 2008.^{1/} PBA Local No. 245 moves to dismiss the Borough's appeal. We grant that motion.

^{1/} The December 18, 2008 award was appealed to the Commission, and, following a remand and a supplemental award, was affirmed by the Commission and the Appellate Division of the Superior Court. See Fort Lee and PBA Local No. 245, P.E.R.C. No. 2009-64, 35 NJPER 149 (¶55 2009), appeal of decision on remand, P.E.R.C. No. 2010-17, 35 NJPER 352 (¶118 2009), aff'd 2011 N.J. Super. Unpub. LEXIS 931 (2011). Supreme Court review was not sought.

P.E.R.C. NO. 2011-87

2.

In his December 18, 2008 award, which established the terms of a collective negotiations agreement from January 1, 2007 through December 31, 2010, Arbitrator Robert M. Glasson directed the Borough and the PBA to meet and attempt to reach agreement on contract language with regard to his award on Health Benefits, Health Insurance Opt-Out, Legal Representation Plan, Holiday Pay. The arbitrator ruled:

I shall retain jurisdiction in the event the parties fail to agree on the final language within 30 days of receipt of the award.^{2/}

Because the parties had been unable to agree on contract language on the four topics, the arbitrator issued a "Supplemental Interest Arbitration Decision" on December 21, 2010 that established contract language on those issues.^{3/}

On January 4, 2011 the Borough submitted a "Notice of Appeal" to the Commission asserting, inter alia, that the arbitrator lacked jurisdiction to issue his December 21, 2010 decision.

2/ On Health Benefits, the arbitrator's order read:

I shall retain jurisdiction to resolve any disputes over the specific terms of the health insurance and prescription drug coverages including the language to be included in the 2007-2010 CBA in the event the parties fail to agree within thirty days of the receipt of the award.

3/ The arbitrator recites the unsuccessful efforts of the parties to obtain agreements on contract language on these four issues.

P.E.R.C. NO. 2011-87

3.

On January 11, 2011, the PBA filed a Motion to Dismiss the Notice of Appeal asserting that it sought reconsideration of issues that had already been decided and/or were pending before the Appellate Division and should not be brought before the Commission.

The Commission requested the parties to address whether the December 21, 2010 decision was an appealable interest arbitration award and whether the Commission had jurisdiction in light of the then pending appeal before the Appellate Division. On January 25 and 28, 2011, respectively, the Borough and the PBA submitted responses. After the Appellate Division's April 15 decision affirming the Commission's decisions upholding the interest arbitration award, the Borough and the PBA submitted additional statements of position.

The Borough primarily makes procedural and jurisdictional arguments asserting that the arbitrator's December 21, 2010 decision was null and void. It contends that once the arbitrator's original December 18, 2008 and supplemental award issued on July 6, 2009 following our remand, the arbitrator lacked jurisdiction to issue further rulings.

The PBA responds that the arbitrator's retention of jurisdiction was a proper exercise of his authority and was within the rules and procedures governing interest arbitration

P.E.R.C. NO. 2011-87

4.

proceedings. It asserts that the Borough's latest application is another attempt to attack an award that has been affirmed by both the Commission and the Appellate Division of Superior Court.

The arbitrator's order that the parties attempt to agree upon language on Health Benefits, Health Insurance Opt-Out, Legal Representation Plan, Holiday Pay was part of his initial award. The Borough had an opportunity to appeal that aspect of his award and did so at least with respect to the Legal Representation Plan. Our decision rejected that aspect of the appeal. See P.E.R.C. No. 2009-64 at 18-19, 35 NJPER at 153. In addition, the opinion of the Superior Court, Appellate Division, upholding our decisions affirming the arbitrator's awards also mentions the arbitrator's remand to develop language on the Legal Defense Plan. 2011 N.J. Super. Unpub. LEXIS 931 at 7, 15.^{4/}

4/ The Court's opinion misstates the time frame of the remand ordered by the arbitrator. It reads:

The arbitrator remanded this issue for the parties to develop procedures for implementation of the legal defense insurance program. He retained jurisdiction for thirty days in the event of a disagreement.

[2011 N.J. Super. Unpub. LEXIS 931 at 7, n.5]

As noted at page 2 of this decision the arbitrator ordered:

I shall retain jurisdiction in the event the parties fail to agree on the final language within 30 days of receipt of the award.

(continued...)

P.E.R.C. NO. 2011-87

5.

Accordingly, the Borough's arguments that the arbitrator exceeded his authority by retaining jurisdiction over the four issues addressed in his December 21, 2010 decision had already been presented to us and to the Appellate Division on the Legal Defense Plan and could have been raised with respect to the other three issue as well. In addition the points raised by the Borough's January 4, 2011 "Notice of Appeal" asserting that the award conflicts with elements of P.L. 2010, c. 2 was also addressed by the Appellate Division opinion,^{5/} and is also the subject of pending, related litigation.^{6/}

Accordingly, as the issues raised by the Borough have already been determined by, or are pending before appellate tribunals, we lack jurisdiction over the Borough's application.

4/ (...continued)

The parties inability to reach an agreement within a 30 day window triggered the arbitrator's authority to complete his award. His jurisdiction did not end after thirty days.

5/ See 2011 N.J. Super. Unpub. LEXIS 931 at 18, n.10.

6/ See Fort Lee Policemen's Benevolent Ass'n, Local 245 v. Borough of Fort Lee, 2010 N.J. Super. Unpub. LEXIS 3144 (Ch. Div., Oct. 12, 2010), appeal pending, Appellate Division Docket No. A-1646-10T3.

P.E.R.C. NO. 2011-87

6.

ORDER

The Borough of Fort Lee's "Notice of Appeal" filed on January 4, 2011 is hereby dismissed.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Eskilson, Krengel and Voos voted in favor of this decision. None opposed. Commissioner Colligan recused himself. Commissioner Wall was not present.

ISSUED: June 30, 2011

Trenton, New Jersey

P.E.R.C. NO. 2011-92

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF ESSEX and
ESSEX COUNTY SHERIFF,

Appellants,

-and-

Docket No. IA-2008-098

ESSEX COUNTY SHERIFF'S
OFFICERS, PBA LOCAL 183,

Respondent.

SYNOPSIS

The Public Employment Relations Commission remands an interest arbitration award to the arbitrator to analyze the employer's entire health benefits proposal for all years of the agreement. The arbitrator must issue his supplemental decision by July 15, 2001. The parties have seven days from receipt of the supplemental award to file any appeal.

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

P.E.R.C. NO. 2011-92

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF ESSEX and
ESSEX COUNTY SHERIFF,

Appellants,

-and-

Docket No. IA-2008-098

ESSEX COUNTY SHERIFF'S
OFFICERS, PBA LOCAL 183,

Respondent.

Appearances:

For the Appellants, Genova, Burns & Giantomasi,
attorneys (Angelo J. Genova, of counsel; Brian W.
Kronick and Joseph M. Hannon, on the brief)

For the Respondent, Loccke, Correia, Limsky & Bukosky,
attorneys (Leon B. Savetsky, of counsel)

DECISION

The County of Essex and Essex County Sheriff appeal from an interest arbitration award involving a unit of approximately 359 sheriff's officers represented by Essex County Sheriff's Officers, PBA Local 183.^{1/} Pursuant to N.J.S.A. 40A:9-117.6, these officers are appointed by the County Sheriff subject to the County's budget. We remand the award to the arbitrator to analyze the employer's entire health benefits proposal for all

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

P.E.R.C. NO. 2011-92

2.

years of the agreement. The arbitrator's supplemental award is due July 15, 2011.

The arbitrator issued a conventional award as he was required to do absent the parties' agreement to use another terminal procedure. N.J.S.A. 34:13A-16d(2).^{2/} A conventional award is crafted by an arbitrator after considering the parties' final offers in light of nine statutory factors. The parties' final offers are as follows.

The PBA proposed a four-year contract with a 4.5% across-the-board wage increase effective January 1 of each year; a four-hour minimum for court appearances paid at the overtime rate if an officer is off-duty; the same vacation schedule as the rank and file members of the Essex County Prosecutor's Office; codification into the contract of the current practice of the PBA President being assigned full-time to the PBA Office; 100 tours be provided to the PBA without loss of regular compensation to be utilized for PBA business for unit members at the control of the PBA President; codification into the contract of the current practice to provide free parking for members' personal vehicles within reasonable proximity of their work locations; a separate paycheck procedure for retroactive pay awarded; and a Maternity/Paternity provision for the contract.

^{2/} Effective January 1, 2011, P.L. 2010, c. 105 eliminated all other methods of interest arbitration and only provides for conventional arbitration.

P.E.R.C. NO. 2011-92

3.

The County proposed a three-year contract with a 2% increase on January 1, 2008 and 0% increases for 2009 and 2010. Regarding health benefits, it proposed an increase in prescription drug co-pays, prior authorization for certain prescription drugs, 2% of pensionable salary premium contribution for single coverage; removal of the rate cap freezing contributions at 1993 rates beginning in 2008, 25% co-pay for dependent coverage, and a 15% contribution of the difference between the County selected HMO and the full cost of the selected plan, a waiver of the 2% contribution if an employee has other health coverage, elimination of the Traditional Plan for new hires, and continuation of mandatory second surgical opinion and pre-admission review programs. The County also proposed a 24/7 work schedule for each Division; that overtime be paid only when an employee works more than 40 hours in a week; elimination of overtime for weekend assignments and the day off provided during the week after a weekend assignment; and removal of Lincoln's Birthday, Good Friday, Election Day and the Friday after Thanksgiving as paid holidays.

The arbitrator issued a 102-page Opinion and Award. He noted the record was extensive, the parties were provided with the opportunity to argue orally, present voluminous documentary evidence and present witness testimony over five hearing dates. After summarizing the parties' proposals and respective arguments

P.E.R.C. NO. 2011-92

4.

on those proposals in detail, the arbitrator analyzed them in relation to the statutory factors and awarded a three-year agreement from January 1, 2008 through December 31, 2010.

The arbitrator awarded 2.85% wage increases effective January 1, 2008; 0% for January 1, 2009 through September 1, 2009; 2.75% effective September 1, 2009 and 2.5% effective January 1, 2010. The arbitrator also awarded the PBA's proposal to have retroactive pay issued in a separate paycheck; 1.5% premium contributions in accordance with P.L. 2010, c. 2, effective May 21, 2010; no change in prescription co-pay; two hours overtime minimum for required court appearances on officer's off-duty hours; and reference in the written contract to the current practice of free parking without change or expansion to the benefit.

The County appeals arguing that: the arbitrator did not properly apply the statutory criteria; did not resolve all unsettled issues between the parties; created an improper presumption that the County's work schedule proposal should not be awarded in arbitration; premised his award on a material mistake of fact; and improperly relied upon evidence submitted by the PBA that was not credible. Finally, the County argues that the issue of wage increases and financial terms of employment are preempted by statute and the New Jersey Constitution.

P.E.R.C. NO. 2011-92

5.

The PBA responds that the arbitrator gave due weight to the statutory criteria; the arbitrator did not make any mistakes of fact; and the award was based on substantial credible evidence in the record as a whole.

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

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

P.E.R.C. NO. 2011-92

6.

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

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

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

P.E.R.C. NO. 2011-92

7.

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

Statutory and Constitutional Preemption

First, we will address the County's argument that the issues of wage increases and other financial terms of employment were not properly before the arbitrator as they are preempted by County Statutes and the New Jersey Constitution. Specifically,

P.E.R.C. NO. 2011-92

8.

the County asserts that N.J.S.A. 40:20-1^{3/}, 40A:9-10^{4/}, 40:41A-41^{5/}, 40A:41A-36^{6/} and N.J. Const. Art. 4, §7, par. 11, which

3/ This statute provides:

The property, finances and affairs of every county shall be managed, controlled and governed by a board elected therein, to be known as "the board of chosen freeholders of the county of (specifying name of county)", and the executive and legislative powers of the county shall be vested in that board of chosen freeholders, except where by law any specific powers or duties are imposed or vested in a Constitutional officer.

The board of chosen freeholders of any county which has created the office of county administrator, pursuant to the provisions of *N.J.S. 40A:9-42*, may, by resolution, delegate to that office such executive and administrative powers, duties, functions and responsibilities as the board may deem appropriate.

4/ This statute provides:

Except as otherwise provided by law, the board of chosen freeholders of the county or the governing body of the municipality shall fix the amount of salary, wages or other compensation to be paid to county and municipal officers and employees unless they are to serve without compensation.

5/ This statute provides:

The board of freeholders:

a. Shall advise and consent to all appointment by the executive for which board confirmation is specified under this article;

(continued...)

5/ (...continued)

- b. Shall pass in accordance with this act whatever ordinances and resolutions it deems necessary and proper for the good governance of the county;
- c. Shall appoint a clerk to the board who shall keep the records and minutes of the board, and who shall serve at the pleasure of the board or for such term, not to exceed 3 years, as may be provided by the administrative code; provided, however, that an ordinance providing for the adoption of any such term shall not be enacted between October 1 of any year and January 1 of the succeeding year;
- d. May appoint counsel to the board, if such position is created by the administrative code, to serve at the pleasure of the board;
- e. May pass a resolution of disapproval or dismissal, subject to the provisions of section 87b. of this act;
- f. May override a veto of the county executive by a two-thirds vote of its full membership;
- g. Shall approve the annual operating and capital budgets pursuant to the Local Budget Law.

6/ This statute provides:

The executive power of the county shall be exercised by the county executive. He shall:

- a. Report annually to the board of freeholders and to the people on the state of the county, and the work of the previous year; he shall also recommend to the board whatever action or programs he deems necessary for the improvement of the county and the welfare of its residents. He may from time to time at his discretion recommend any course of action or programs he deems necessary or desirable for the county to

(continued...)

6/ (...continued)

undertake;

- b. Prepare and submit to the board for its consideration and adoption an annual operating budget and a capital budget, establish the schedules and procedures to be followed by all county departments, offices and agencies in connection therewith, and supervise and administer all phases of the budgetary process;
- c. Enforce the county charter, the county's laws and all general laws applicable thereto;
- d. Supervise the care and custody of all county property, institutions and agencies;
- e. Supervise the collection of revenues, audit and control all disbursements and expenditures and prepare a complete account of all expenditures;
- f. Sign all contracts, bonds or other instruments requiring the consent of the county;
- g. Review, analyze and forecast trends of county services and finances and programs of all boards, commissions, agencies and other county bodies, and report and recommend thereon to the board;
- h. Develop, install and maintain centralized budgeting, personnel and purchasing procedures as may be authorized by the administrative code;
- i. Negotiate contracts for the county subject to board approval; make recommendations concerning the nature and location of county improvements and execute improvements determined by the board;
- j. Assure that all terms and conditions, imposed in favor of the county or its inhabitants in any statute, franchise or other contract, are faithfully kept and performed;

(continued...)

P.E.R.C. NO. 2011-92

11.

requires that the statutes be liberally construed, preempts arbitration to the extent it allows the Arbitrator to issue an award with respect to wages and other financial terms of employment that exceeds the County's final offer.

The PBA responds that the County's argument is the same position presented with respect to the 2004 interest arbitration award wherein the County argued that the Interest Arbitration Reform Act was unconstitutional. See County of Essex, P.E.R.C. No. 2005-52, 31 NJPER 86 (¶41 2005).

We reject the County's argument because the statutes do not specifically set the salaries of the employees. As a general rule, an otherwise negotiable topic cannot be the subject of a negotiated agreement if it is preempted by legislation. However, the mere existence of legislation relating to a given term or condition of employment does not automatically preclude negotiations. Negotiation is preempted only if the regulation fixes a term and condition of employment "expressly, specifically and comprehensively." Council of New Jersey State College Locals v. State Bd. of Higher Ed., 91 N.J. 38, 30 (1982). The legislative provision must "speak in the imperative and leave nothing to the discretion of the public employer." In re IFPTE

6/ (...continued)

k. Serve as an ex-officio nonvoting member of all appointive bodies in county government.

P.E.R.C. NO. 2011-92

12.

Local 195 v. State 88 N.J. 393, 403-04, 443 A.2d 187 (1982), quoting State v. State Supervisory Employees Ass'n, 78 N.J. 54, 80 (1978). If the legislation, which encompasses agency regulations, contemplates discretionary limits or sets a minimum or maximum term or condition, then negotiation will be confined within these limits. Id. at 80-82, 393 A.2d 233. See N.J.S.A. 34:13A-8.1. Thus, the rule established is that legislation "which expressly set[s] terms and conditions of employment...for public employees may not be contravened by negotiated agreement." State Supervisory, 78 N.J. at 80. [Id. at 44]. Here, the statutes cited by the County are a delegation of fiscal authority to manage the County's finances and do not specifically set the salaries of the employees. We also note that the Legislature could have excluded Counties from the definition of public employer in the New Jersey Employer-Employee Relations Act including the interest arbitration statute if it so intended.

The Wage Award

The County appeals the wage award arguing that the arbitrator failed to properly consider or give due weight to the interest and welfare of the public and failed to properly consider or give due weight to the financial impact factor. Specifically, the County asserts that although the arbitrator stated he gave the interest and welfare of the public factor the greatest weight, he put too great an emphasis on the need to

P.E.R.C. NO. 2011-92

13.

attract and retain highly qualified personnel and issued an award that the County could not fund when its affect on other negotiations units is considered. The County asserts that the arbitrator failed to consider the effect the award would have on other units and the County's overall budget.

This case was processed under the 1996 Reform Act legislation which reflected the Legislature's intent that arbitrators focus on a full range of statutory factors and not just comparability of salaries or ability to pay. PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71, 85-86; Washington Tp. v. New Jersey PBA Local 206, 137 N.J. 88 (1994); Fox v. Morris Cty., 266 N.J. Super. at 516-517; Cherry Hill. An arbitrator must consider the financial evidence and explain how he or she weighed the financial impact and lawful authority criteria, along with the other factors deemed relevant. However, the Reform Act does not require an arbitrator to award the amount the employer has budgeted. Middlesex Cty., P.E.R.C. No. 98-46, 23 NJPER 595 (¶28293 1997). Further, an arbitrator does not have the statutory authority to direct the employer as to how it will fund the award. See Irvington PBA v. Town of Irvington, 80 N.J. 271, 296 (1979) (in formulating how to pay for an award, municipal officials must determine whether appropriations for non-payroll costs should be reduced or whether and to what extent, public safety or other personnel should be laid off).

P.E.R.C. NO. 2011-92

14.

The County generally states that it presented undisputed evidence on the historical impact of the award, but does not offer particularized arguments and evidence concerning the payroll costs of other units or how the arbitrator's award will affect those units.

We find that the arbitrator adequately evaluated all the statutory criteria; explained why he gave more weight to some factors and less to others; and issued a comprehensive award that reasonably determined the issues and is supported by substantial credible evidence as to the wage award. The arbitrator stated he awarded moderate wage increases based upon the public interest in fiscal responsibility even though the comparability criterion supported higher wage increases than those awarded. He further found that the evidence presented did not establish that his award conflicted with the lawful authority of the employer or the statutory CAP law. The arbitrator correctly found that he only has jurisdiction for the unit before him and cannot apply the criteria to other impasses as there is no evidentiary record with respect to the other units. We are satisfied that the arbitrator considered the County's evidence and argument. The arbitrator specifically stated that when considering a criterion such as the lawful authority of the employer, he must consider, at least subjectively, that there will be costs attributable to the new contracts in other bargaining units even though the costs are not

P.E.R.C. NO. 2011-92

15.

definitively predictable. The arbitrator acknowledged that the proportionally small costs of the increases to this unit cannot be assumed to be the only further costs resulting from new terms and conditions of employment for the employer. We do not perform a de novo review of the evidence and defer to the arbitrator's judgment, discretion and labor relations expertise where he weighed all the statutory criteria and his award is supported by evidence in the record as a whole. City of Newark, P.E.R.C. No. 99-77, 25 NJPER 242 (¶30103 1999). The arbitrator awarded what he found to be lower than average salary increases that the County could fund without any impact on its taxpayers. The County has not shown that the evidence compelled the award of its final offer or that it was not supported by substantial credible evidence in the record.

The Work Schedule

The County appeals the arbitrator's denial of its work schedule proposal because it alleges he did not carefully consider the fiscal, operational, supervisory and managerial implications of the proposal as well as its impact on employee morale and working conditions. Teaneck. It further asserts that the arbitrator improperly assumed that interest arbitration was not the appropriate forum in which to make a determination regarding the County's proposal.

P.E.R.C. NO. 2011-92

16.

The PBA responds that the arbitrator did not simply dismiss the County's work schedule proposal by directing the parties to resolve this issue through negotiations as the arbitrator took notice of the provision in the expired collective negotiations agreement arising from the previous interest arbitration award that called for the formation of a joint scheduling committee to meet and discuss the feasibility of any proposed change to the existing schedule.

The party proposing a work schedule change has the burden of justifying it. Clifton; Teaneck. Cf. Hillsdale. That burden is consistent with the fact that interest arbitration is an extension of the negotiations process and that, within the context of the statutory criteria, an interest arbitrator should fashion an award that the parties, as reasonable negotiators, might have agreed to. Hudson Cty. Prosecutor, P.E.R.C. No. 98-88, 24 NJPER 78 (¶29043 1997); City of Trenton, P.E.R.C. No. 2010-73, 36 NJPER 130(¶50 2010). Over the course of a negotiations relationship between a particular employer and majority representative, department work schedules are not routinely or frequently changed and they should not be changed by an arbitrator without strong reasons.

We are satisfied the arbitrator considered the argument and evidence of the County with regard to the proposed work schedule change. The arbitrator did not ignore the evidence, he rejected

P.E.R.C. NO. 2011-92

17.

the County's proposal for lack of evidentiary support because there was no evidence in the record that the County availed itself of the joint committee procedure set in place by the previous arbitrator. Without first availing itself of that mechanism to resolve the dispute, the arbitrator did not find that the employer's arguments compelled his awarding of a new work schedule. The arbitrator did not refuse to rule on the issue as he did award a joint committee to address the work schedule issue that the employer may avail itself of. In finding that this was an appropriate result supported by the record, we are mindful that an employer has a managerial prerogative to make work schedule changes where negotiations over such changes would substantially limit governmental policy. Essex Cty.; Maplewood Tp., P.E.R.C. No. 97-80, 23 NJPER 106, 113 (¶28054 1997); City of North Wildwood, P.E.R.C. No. 97-83, 23 NJPER 119 (¶28057 1997) (restraining arbitration over work schedule change effected to provide a command presence on weekends). We are also mindful that if the parties are unable to reach agreement through the joint committee mechanism awarded, the parties may avail themselves of the new interest arbitration procedures to achieve a prompt resolution of the impasse as this agreement has already expired. See P.L. 2010, c. 105.

The Health Benefits Proposal

The County appeals the arbitrator's health benefits award arguing that the arbitrator failed to analyze the County's health insurance and prescription drug proposal prior to the effective date of P.L. 2010, c. 2. It also asserts that the arbitrator erroneously assumed that the legislation preempted an award on this issue.

The PBA responds that the arbitrator did deal with the issue of health benefits as he took notice of the Legislature's mandatory 1.5% contribution and found that this was more than adequate to meet the County's reasonable need for cost containment beginning in 2010.

With respect to health benefits, the arbitrator stated:

At this point it is important to discuss the issue of health benefits and the Employer's proposal to address employees' contributions toward premiums. The County has presented a complicated and comprehensive proposal with respect to contributions to health insurance premiums. However, earlier this calendar year, 2010, the State Legislature enacted a statutory approach to health insurance contributions by public employees, see Chapter 2, P.L. 2010. The record herein otherwise would have been supportive of the establishment of a system of flat dollar contributions, relating to the specific coverage provided each employee, rather than a percentage of salary. That would have provided the Employer with a significant measure of cost containment in the area of health insurance benefits. It is likely that this Arbitrator would have awarded such a plan. However, the State Legislature has, as a practical (rather than legal) matter,

P.E.R.C. NO. 2011-92

19.

pre-empted that issue with respect to the impasse at hand. The Arbitrator believes that the legislative approach, now in effect for unit employees, cannot be reasonably reconciled with the approach that was likely to have been awarded under the record herein. Further, the 1.5% of salary contribution, provided for in the statute, is more than adequate to address the reasonable need for cost containment in the contract at hand. Therefore, the Arbitrator determines that all health insurance contributions under the contract, effective upon the implementation date of the statutory contributions, shall be consistent with those provided for by Chapter 2, P.L. 2010. This will provide the Employer with a new substantial cost containment factor in 2010.

[Award at 70].

We agree that the arbitrator did not provide a reasoned explanation for his award of the statutory 1.5% contribution towards premium and remand the award for further explanation as to why the evidence did not support the other aspects of the employer's healthcare proposal. The arbitrator specifically stated that he did not find that the new legislation legally preempted the health benefits issue, but practically speaking preempted. The arbitrator was required to award at least the 1.5% contribution and was prohibited from rejecting the County's proposal outright or ordering less than the 1.5% contribution. He reasoned:

The record herein established ample evidence of the financial pressure placed upon the Employer by the cost of health insurance benefits. The issue is deemed to impact the public interest, comparability, financial

impact and continuity and stability of employment criteria. Had the State Legislature not intervened, the Arbitrator would have constructed a system of flat dollar contributions by all unit members receiving health benefits that would have produced substantial cost containment for the employer. However, the statutory imposition of contributions by all employees to their health insurance premiums has changed the negotiations landscape with respect to health insurance costs. The County has already attained substantial cost containment within this contract period and additional provisions are not now warranted. The impact of the contribution of 1.5% of base salary is quite significant. The Arbitrator determines that all health insurance contributions under the contract, effective upon the implementation date of the statutory contributions, shall be consistent with those provided for by Chapter 2, P.L. 2010. It is assumed that these contributions shall be in accordance with a Section 125 account and paid in pre-tax dollars. The Employer is provided, by operation of law, with a new substantial cost containment factor in 2010. The record otherwise would have supported the establishment of a significant level of premium contributions, albeit in a different format. The Employer has proposed certain changes in the Prescription Drug Plan. The Arbitrator finds that the record does not support the implementation of those changes at this time. The substantial savings with respect to the health insurance component are recognized as sufficiently addressing the fiscal responsibility and financial impact factors concerning health benefits. Further, the comparison evidence presented by the County (comparing with other Sheriff's Departments) establishes that the current prescription co-pay is solidly within the norm. In fact, the co-pay levels are at the upper end of the range. The evidence does not support any change in the prescription co-pay benefit in this contract. The current contract provision shall remain unchanged.

P.E.R.C. NO. 2011-92

21.

[Award at 85].

The arbitrator stated that his initial impression of the case was to award flat dollar contributions rather than a percentage of salary for health insurance cost containment. The arbitrator needs to address why he could not reconcile the County's offer with the new legislation when the County's offer included 2% premium contributions as well as the other cost containments - including the elimination of the Traditional Plan for new hires and elimination of the rate cap. The 1.5% statutory contribution is a floor and not a ceiling and the arbitrator must analyze the employer's proposal and not simply award what the legislation requires without further analysis.

Holiday Proposal

The County appeals the arbitrator's denial of its proposal to eliminate four holidays arguing that the arbitrator failed to consider or give due weight to the relevant statutory criteria. It asserts that the arbitrator did not analyze or consider any factors other than comparability with other jurisdictions in analyzing the holiday proposal.

With respect to the holiday proposal, the arbitrator stated:

The County has proposed the elimination of four of the current fourteen holidays provided by the collective bargaining agreement. There is simply no evidence that supports the implementation of this measure. The County's own document, Exhibit C-81

P.E.R.C. NO. 2011-92

22.

reveals that the range of holidays for Sheriff's Officers among the counties in New Jersey is from 13 to 15 days. Further, the most common level of benefit is 14 days, as in this contract. Additionally, the average of all the Sheriff's Officers' units is 13.8 days, almost exactly the 14 days received herein. The record provides no convincing basis for the reduction in benefits sought by the Employer, other than it would reduce its expenses. The proposal shall not be awarded herein.

[Award at 93].

We reject this ground for appeal. The County does not identify any economic evidence that it presented that would compel the arbitrator to award its proposal. The County objects to the arbitrator's use of comparability evidence with other Sheriff's departments to support his rejection of the proposal, but asks this Commission to credit its comparability evidence of other units that have agreed to eliminate holidays in negotiations.

Minimum Overtime for Off-Duty Court

The County appeals the award of the PBA's proposal for minimum overtime for court appearances arguing that the arbitrator simply compromised on the PBA's proposal of a 4-hour minimum by awarding a 2-hour minimum without any consideration of the issue in connection with the other economic issues.

The PBA responds that the evidence established that many of the Sheriff's officers who are required to attend court on their off-duty time are required to travel one to one and one-half

P.E.R.C. NO. 2011-92

23.

hours for cases that are often disposed of or adjourned or otherwise handled in less than one hour.

We reject this basis for appeal. The arbitrator reviewed the evidence and found the concept of minimum overtime for court appearances to be reasonable, especially under the public interest, comparability and continuity and stability of employment. Comparing the current practice in Essex County with Bergen and Hudson Counties where officers receive four hours of overtime for off-duty court with other counties that receive two hours overtime for off-duty court and considering the low incidence in which it occurs, the arbitrator awarded two hours finding that it did not pose a significant economic cost to the County. The arbitrator justified his award pointing to credible evidence in the record and did not simply compromise the PBA's proposal.

Mistake of Fact

The County also asserts that the arbitrator premised his award on a material mistake of fact in violation of the standards set forth in N.J.S.A. 2A:24-8 and N.J.S.A. 2A:24-9 thus resulting in an award procured by undue means. Specifically, the County contends that the arbitrator erred when he analyzed a chart provided by the County during his comparability discussion that showed the Essex County Sheriff's officers comparative top step salaries with other County Sheriff's department in the State.

P.E.R.C. NO. 2011-92

24.

The arbitrator concluded that based on the chart, Essex County ranked seventh of the 21 counties, but evidence from Passaic and Morris counties was not available for 2007. The arbitrator concluded that in 2007, Essex would be ranked ninth because Passaic and Morris were ranked higher in previous years.

The PBA responds that the arbitrator's statement is accurate since he did state that Passaic and Morris were ranked higher in prior years and that if it remained constant would move Essex to ninth.

N.J.S.A. 34:13A-16f(5)(a) states that an appeal may be based on an alleged violation of N.J.S.A. 2A:24-8, which in turn states that an award shall be vacated where it was procured by corruption, fraud, or undue means; where there was evidence of arbitrator partiality, corruption or misconduct; or where the arbitrator exceeded or so imperfectly executed his or her powers that a final and definite award was not made. In the public sector, "undue means" has been enlarged to include conformance to statutes and regulations. Old Bridge Tp. Bd. of Ed. v. Old Bridge Ed. Ass'n, 98 N.J. 523, 527 (1985).

We do not find that the arbitrator made a mistake of fact that would require us to find the award was procured by undue means. The County has not provided any evidence to establish the salaries for Passaic and Morris counties were not greater than Essex County in 2007. Further, the arbitrator did not give the

P.E.R.C. NO. 2011-92

25.

comparability data significant weight finding that it favored wage increases higher than what he awarded. He found the interest and welfare of the public and the financial impact to be most relevant.

Objection to Evidence

Next, the County asserts that the arbitrator improperly relied upon evidence submitted by the PBA despite the lack of personal knowledge of the PBA's witness and lack of foundation for the evidence. The County objects to the PBA's presentation of the testimony of the PBA President through a Power Point presentation. The arbitrator ruled that elements of the presentation that were arguments rather than fact would not be given evidentiary value. In his award, the arbitrator cited to a list introduced by the PBA of 30 Sheriff's officers who resigned since 2006 and who accepted employment at other law enforcement agencies. In fashioning the wage award, the arbitrator credited this list which the County asserts is unreliable evidence.

We are not persuaded that the arbitrator should not have relied upon the PBA's exhibit regarding unit member turnover. The Rules of Evidence are not strictly applied in arbitration proceedings. Fox, 266 N.J. Super. 1, 15, n.7; Essex Cty. The County has not pointed to any evidence in the record or provided us with an argument that the PBA exhibit contained erroneous

P.E.R.C. NO. 2011-92

26.

information. Thus, we defer to the arbitrator's weighing of the evidence.

ORDER

The interest arbitration award is remanded to the arbitrator for further analysis of the County's health benefits proposal. The arbitrator must issue a decision by July 15. The parties have seven days from receipt of the award to file any appeal.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni and Eskilson voted in favor of this decision. Commissioners Krengel and Voos voted against this decision. Commissioner Colligan recused himself. Commissioner Wall was not present.

ISSUED: June 30, 2011

Trenton, New Jersey

P.E.R.C. NO. 2012-1

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF NORTH ARLINGTON,

Appellant,

-and-

Docket No. IA-2011-050

POLICE BENEVOLENT ASSOCIATION
LOCAL 95,

Respondent.

SYNOPSIS

The Public Employment Relations Commission vacates an interest arbitration award and remands it to the interest arbitrator to issue a new decision within 45 days. The Borough appealed the award to the Commission asserting that the arbitrator relied on an inaccurate exhibit in making his award on economic issues. The Commission agrees that the exhibit introduced into evidence at the arbitration hearing was inaccurate and mislead the arbitrator who performed his duties diligently and in a timely manner. Thus, the circumstances require that the interest arbitration award be set aside.

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

P.E.R.C. NO. 2012-1

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF NORTH ARLINGTON,

Appellant,

-and-

Docket No. IA-2011-050

POLICE BENEVOLENT ASSOCIATION
LOCAL 95,

Respondent.

Appearances:

For the Appellant, Pearce Law, LLC, attorneys (Randy T. Pearce, of counsel and on the brief, Gregory A. Randazzo, on the brief)

For the Respondent, Loccke, Correia, Limsky & Bukosky, attorneys (Leon B. Savetsky, of counsel)

DECISION

The Borough of North Arlington appeals from an interest arbitration award involving a negotiations unit of approximately 28 police officers. See N.J.S.A. 34:13A-16f(5)(a). On June 13, 2011, the arbitrator issued a conventional arbitration award within 45 days of his appointment, as he was required to do for all interest arbitration cases filed after January 1, 2011, the effective date of P.L. 2011, c. 105.

On June 20, 2011, the Borough appealed the award to the Commission and submitted a supporting brief and exhibits. On June 27, the PBA filed a brief and affidavit opposing the

P.E.R.C. NO. 2012-1

2.

Borough's appeal.^{1/} For the following reasons, we vacate the award and remand the case to the arbitrator to issue a new decision because it appears that he relied on information contained in an exhibit that did not accurately reflect the contents of the actual document. Accordingly, the award must be set aside.

In arriving at his award on salary increases and several other issues in dispute, the arbitrator referred to part of a purported contract between the Borough and the Chief of Police that set his working conditions from December 31, 2009 through December 15, 2015. The contract has 21 separately numbered articles, some of which contain handwritten modifications, accompanied by the initials of each party.

The Borough asserts that the PBA gave the arbitrator a doctored version of the agreement (Exhibit P-34) that removed Article 20 (Continuation of Benefits) and substituted a chart entitled "Borough of North Arlington, Chief of Police Costout for the years 2010 through 2015."^{2/} The Borough has submitted both

^{1/} As part of its Notice of Appeal, the Borough requested oral argument. We deny that request.

^{2/} For each year, the chart purports to show the amount or value of Base Salary, Longevity, Holiday Pay, Clothing Allowance, Personal Car, Sick Pay Allowance. It totals these amounts and after the first year shows the annual increases expressed both in dollar amounts and percentage increases. It also shows a potential payout on retirement for unused vacation leave.

P.E.R.C. NO. 2012-1

3.

the doctored contract with the chart and what it asserts to be the actual contract.

The PBA does not directly address whether the document it introduced at the arbitration hearing accurately reflects, in all respects, the actual contract between the Borough and the Chief. It argues that the Township was given a copy of P-34 at the arbitration hearing, did not object to it being moved into evidence and had from the May 31, 2011 arbitration hearing to the submission of briefs on June 6 to object to it and/or respond.^{3/} It also asserts that the Borough has not submitted a certification or affidavit questioning the accuracy of the figures on the page in dispute or in support of its assertions.

In his award, the arbitrator made these observations about the working conditions enjoyed by the Chief:

There is an added consideration as to a choice between 3.5% increases each year and 0% as offered.^{4/} The Borough entered an Agreement with the Chief of Police for a six year term in which he is granted 2.8% increase in salary in 2010 and 3% annual increases each year from 2011 through 2015. In addition he is to receive 12% of salary as longevity pay and 36 vacation days, as well as other benefits equivalent to those

3/ The PBA does not assert that any witness presented testimony focusing specifically on the "Borough of North Arlington, Chief of Police Costout for the years 2010 through 2015," that was part of Exhibit P-34.

4/ The Borough offered no salary increases for the term of the agreement with the PBA. The arbitrator awarded a contract covering the years 2011, 2012 and 2013.

P.E.R.C. NO. 2012-1

4.

negotiated by PBA Local 95. This Agreement went into effect as of December 31, 2009 and expires on December 31, 2015. There is a special benefit which the Chief also enjoys. That is an unmarked automobile to be used for work and personal use. The Borough agreed to pay all costs associated with this grant including insurance, maintenance, fuel and any repairs. On the report of his salary this is listed at a value of \$4500 per year which I feel is an understatement.

[Award at 7-8].

* * *

One of the key considerations I believe should be made is that any employees, particularly those doing related work, should be considered with some sense of equity. This will preclude the development of poor or disrespectful relationships and strengthen the cooperative working partnership of such personnel. To do otherwise would have the opposite effect. This does not mean they must be in lock-step, but given reasonably comparable consideration. A hand-out of a six year salary plan to the Chief does not measure up to the proposed three or four year plan the Borough has suggested for the corps of police under the Chief's control and leadership. This is especially pertinent at a time when the officers have been asked to do much with fewer and fewer personnel. It can only be seen as unfair to them and would most likely be reflected in their diminished commitment to succeed in their service to the public. I do not translate this reasoning into a mandate for precisely equivalent consideration but it certainly leads me away from a determination that no increase in pay for the duration of the new Agreement is reasonable or defensible.

[Id. at 8]

* * *

P.E.R.C. NO. 2012-1

5.

The demand for elimination of clothing allowance is another story. In the first place it has been a staple element of all police Agreements for many years. In the second place the Borough saw it to be appropriate, for the higher paid with less likelihood of clothing damage than are the patrolmen, when it gave the Chief a six year contract which included same. I therefore reject that demand.

As to the terminal leave demand there is ample evidence that this type of compensation is endemic in police contracts and this Employer has made the attempt to have the allowance reduced substantially in this procedure. The key argument presented has to do with the costs involved at a time when the Borough is trying to find ways to economize in order to avoid pressure to raise taxes. However, the agreement it made with the Chief, previously mentioned, provides the same type of plan that the subordinates have.

[Id. at 10]

From these passages, it is apparent that the "costout" document reviewing the terms of the Borough's agreement with the Chief was a key factor in the arbitrator's decision to reject the Borough's proposals on wages and clothing allowance and for the complete end of the terminal leave benefit.

We conclude that Exhibit P-34 is not an accurate reflection of the employment agreement between the Chief and the Borough. We further conclude that the actual agreement does not contain the "Borough of North Arlington, Chief of Police Costout for the years 2010 through 2015."

P.E.R.C. NO. 2012-1

6.

We do not fault the interest arbitrator for relying upon Exhibit P-34 in issuing his award. He diligently performed his duties meeting the statutorily imposed deadlines, but issued a decision based on a mistake as to the true contents of an exhibit placed in evidence. The arbitrator's reliance on a doctored version of the Borough-Chief employment agreement as a key factor in his reasoning, requires that the interest arbitration award be set aside.

Our decision should not be viewed as a determination that the terms and conditions of employment of the Chief, and the Borough's expenses in providing those benefits, should not be weighed by the arbitrator in fashioning an award. Nor do we hold that the disputed "costout" chart cannot be entered into evidence if it is properly authenticated. However, placing the document inside another, separate document deprived the Borough of an opportunity to counter any portions of the document it disputes, or explain the items it might concede are accurate. Given the short period of time between the hearing and the submission of post-hearing briefs, we cannot fault the employer for not noticing and calling to the arbitrator's attention, that the next to last page of a familiar, 22-page document had been altered..^{5/}

^{5/} The Borough, citing Teamsters Local Union #11 v. Abad, 135 N.J. Super. 552 (Ch. Div. 1975), asserts that the award was procured by fraud. We note that the Appellate Division did not sustain that decision, holding that a determination of
(continued...)

P.E.R.C. NO. 2012-1

7.

Given the circumstances under which we vacate this award, it is not necessary at this time to apply the standard of review applicable to the substantive terms of an interest arbitration award. If an appeal is filed after a new award is issued, we will apply the appropriate standard of review.

ORDER

A. The interest arbitration award issued June 13, 2011 is vacated.

B. We remand this case to the arbitrator to issue a new award within 45 days of this decision.

BY ORDER OF THE COMMISSION

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

ISSUED: July 19, 2011

Trenton, New Jersey

5/ (...continued)
fraud should not have been made without a plenary hearing. See Teamsters Local Union #11 v. Abad, 144 N.J. Super. 239 (App. Div. 1976). In addition, the reference to fraud as a means of overturning an arbitration award is more commonly used when the arbitrator is accused of fraudulent behavior. See Hough v. Osswald, 198 Ill. App. 3d 1056, 1990 Ill. App. LEXIS 700, (Ill. App. Ct. 1st Dist. 1990).

P.E.R.C. NO. 2012-4

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF NORTH ARLINGTON,

Respondent,

-and-

Docket No. IA-2011-050

POLICE BENEVOLENT ASSOCIATION
LOCAL 95,

Movant.

SYNOPSIS

The Public Employment Relations Commission denies PBA Local 95's motion for reconsideration of P.E.R.C. No. 2012-1, 37 NJPER ____ (¶____ 2012). In that decision, the Commission vacated and remanded an interest arbitration award. The Commission holds that the PBA has not established extraordinary circumstances warranting reconsideration.

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

P.E.R.C. NO. 2012-4

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF NORTH ARLINGTON,

Respondent,

-and-

Docket No. IA-2011-050

POLICE BENEVOLENT ASSOCIATION
LOCAL 95,

Movant.

Appearances:

For the Respondent, Pearce Law, LLC, attorneys (Randy T. Pearce, of counsel and on the brief)

For the Movant, Loccke, Correia, Limsy & Bukosky, attorneys (Leon B. Savetsky, of counsel)

DECISION

On July 19, 2011, we vacated an interest arbitration award and remanded the case to the interest arbitrator to issue a new award within 45 days after our decision. P.E.R.C. No. 2012-1, 37 NJPER ____ (¶ ____ 2012). On July 22, Police Benevolent Association Local 95 moved for reconsideration. On July 27, the Borough of North Arlington filed a response opposing the PBA's motion. We deny the motion as the PBA has not met the standards to warrant granting a motion for reconsideration.

The PBA asserts that in setting aside the award the Commission improperly relied on allegations that were not supported by certifications or affidavits. It also asserts that

P.E.R.C. NO. 2012-4

2.

the decision inappropriately characterized an exhibit entered into evidence at the arbitration hearing as "doctored." It claims that authenticating testimony concerning the exhibit was presented and was unchallenged.

The Borough responds that there is no provision addressing motions for reconsideration of Commission decisions reviewing arbitration awards while rules governing other proceedings within the Commission's jurisdiction, expressly permit motions for reconsideration.^{1/} It contends that the PBA's application simply reiterates the arguments it made while the Commission was considering the Borough's appeal of the interest arbitration award. It points out that the PBA again does not refute the Borough's contention that the "cost-out" document placed into Exhibit P-34 is not part of the actual employment contract between the police chief and the Borough.

There is no rule governing motions for reconsideration of Commission decisions reviewing interest arbitration awards. But, Skulski v. Nolan, 68 N.J. 179, 195 (1975) holds:

Barring statutory regulation the power [of reconsideration] may be invoked by administrative agencies to serve the ends of essential justice and the policy of the law. But there must be reasonable diligence.

^{1/} The Borough cites, inter alia, N.J.A.C. 19:13-3.11 (scope of negotiations); N.J.A.C. 19:14-8.4 (unfair practice);

P.E.R.C. NO. 2012-4

3.

Because we remanded the case to the arbitrator to issue a new decision within 45 days, our decision was interlocutory, not final. Granting a motion for reconsideration would further delay interest arbitration proceedings that must be completed within strict, statutorily-mandated time limits.

Reconsideration will be granted in extraordinary circumstances and cases of exceptional importance. We rarely grant reconsideration where agency proceedings are ongoing and the decision is not yet a final agency ruling. Cf. City of Passaic, P.E.R.C. No. 2004-50, 30 NJPER 67 (¶21 2004).

The PBA's application presents only arguments and assertions that were raised when we ruled on the Borough's appeal.^{2/} It does not meet the standards required for reconsideration.

ORDER

The PBA's motion for reconsideration is denied.

BY ORDER OF THE COMMISSION

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

ISSUED: August 11, 2011

Trenton, New Jersey

^{2/} The PBA asserts that "The exhibit was presented through a witness who testified and identified it..." That statement presumably refers to P-34, which included the disputed "cost-out" document. But it does not say that its witness separately identified, and presented testimony about, the "cost-out" document.

P.E.R.C. NO. 2012-15

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MERCER COUNTY PROSECUTOR,

Appellant,

-and-

Docket No. IA-2010-069
IA-2010-070

PROSECUTOR'S DETECTIVES AND
INVESTIGATORS PBA LOCAL 339 and
PROSECUTOR'S SUPERIOR OFFICERS
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission affirms an interest arbitration award establishing the terms and conditions of employment for successor agreements between the County of Mercer and the Prosecutor's Detectives and Investigators PBA Local 339 and the Prosecutor's Superior Officers Association. The employer appealed the award arguing that the arbitrator did not properly consider or give due weight to the interest and welfare of the public in deciding the wage award; did not adequately explain where the County is going to find the money to fund the increases; did not properly consider or give due weight to the financial impact factor; did not properly consider or give due weight to the lawful authority factor; and did not consider or give due weight to the statutory restrictions factor. The Commission affirms the award noting that it defers to the arbitrator's judgment in his application of the statutory factors and his confidence that the award will not present a cap limitation issue for the employer.

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

P.E.R.C. NO. 2012-15

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MERCER COUNTY PROSECUTOR,

Appellant,

-and-

Docket No. IA-2010-069
IA-2010-070

PROSECUTOR'S DETECTIVES AND
INVESTIGATORS PBA LOCAL 339 and
PROSECUTOR'S SUPERIOR OFFICERS
ASSOCIATION,

Respondent.

Appearances:

For the Appellant, Genova, Burns & Giantomasi,
attorneys (Brian W. Kronick, of counsel; David K.
Broderick, on the brief)

For the Respondent, Loccke, Correia, Limsky &
Bukosky, attorneys (Leon B. Savetsky, of
counsel)

DECISION

On September 16, 2011, the Mercer County Prosecutor ("employer") appealed from an interest arbitration award involving units of 38 detectives and investigators and 13 superior officers employed by the Mercer County Prosecutor's office and represented by the Prosecutor's Detective and Investigators PBA Local 339 and the Prosecutor's Superior Officers Association. ("Associations") The arbitrator issued a conventional award as he was required to do absent the parties' agreement to use another terminal procedure. N.J.S.A. 34:13A-

P.E.R.C. NO. 2012-15

2.

16d(2).^{1/} A conventional award is crafted by an arbitrator after considering the parties' final offers in light of nine statutory factors. We affirm the award.

The employer proposed a three-year agreement covering January 1, 2010 through December 31, 2012 with: a 0% wage increase on base pay and a step freeze for 2010; 0% increase on base pay with movement on the steps for 2011; and a 2% total cost increase, inclusive of step increments, longevity and law enforcement longevity for 2012. It further proposed: that Article 6.3 be amended to reflect the past practice that step movement shall be on July 1 of each year; deletion of Health Benefits language related to the employer paying full and partial cost for certain plans; amending Article 7.5 to provide for the payment of accumulated unused sick time up to a maximum of \$15,000; a new dental program provision to provide for three (3) types of coverage: (1) Basic Dental Coverage (as defined by the current dental contract); (2) Premium Dental Insurance; and (3) Eastern Dental Insurance with the County paying the cost of the basic dental program and the employee responsible for the difference in premium of the other plans. Finally, the employer proposed combining Lincoln's Birthday and Washington's Birthday

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

P.E.R.C. NO. 2012-15

3.

into one President's Day Holiday and removing the day after Thanksgiving as a paid holiday.

The Associations proposed a four-year contract with a duration from January 1, 2010 through December 31, 2013 and providing for 3.5% across-the-board wage increases effective January 1 of each year. The Associations also proposed: changing the definition of "reasonable notice" for schedule changes to be 72 hours from the start of the previously scheduled shift or the new shift designated, whichever occurs first; inclusion of "stepmother, stepfather or any other relative who lives in the employee's household" to the definition of bereavement leave; provide that an employee may request personal leave at any time subject to managerial discretion and approval; eliminate the prohibition on taking a personal day in conjunction with vacation; and provide that seniority shall be given preference in layoffs, recall, vacation, and scheduling.

On September 6, 2011, the arbitrator issued an 82-page Opinion and Award. He noted the record contained extensive and voluminous documentary evidence, direct testimonial evidence from several witnesses and testimony contained in the transcripts of a parallel proceeding that was incorporated into the record by stipulation.

After summarizing the parties' offers and reviewing in detail their respective supporting arguments, the arbitrator

P.E.R.C. NO. 2012-15

4.

awarded a four-year agreement covering January 1, 2010 through December 31, 2013 with a 0% salary increase for 2010, 2% for 2011, 2.5% for 2012 and 2.5% for 2013. He also awarded: the employer's proposal to reflect the existing past practice that step movement be applied annually on July 1; that the Health Benefits provisions for the contracts be modified to expressly provide that the health benefits program shall be consistent with P.L. 2010, c. 2^{2/} and P.L. 2011, c. 78^{3/}; added stepmother and stepfather to the list of immediate family members in the Bereavement provision; that personal days may be taken in conjunction with vacation leave subject to prior Departmental approval; and revised Article 11.2 (PBA) and Article 10.2 (SOA) to include the following clause:

2/ P.L. 2010, c. 2 took effect on May 21, 2010. It provides:

Commencing on the effective date of P.L. 2010, c.2 and upon the expiration of any applicable binding collective negotiations agreement in force on that effective date, employees of an employer other than the State shall pay 1.5 percent of base salary, through the withholding of the contribution, for health benefits coverage provided under P.L. 1961, c.49 (C.52:14-17.25 et seq.), notwithstanding any other amount that may be required additionally pursuant to this paragraph by means of a binding collective negotiations agreement or the modification of payment obligations.

3/ P.L. 2011, c. 78 took effect on June 28, 2011 and provides for increased pension and health care contributions from public employees.

P.E.R.C. NO. 2012-15

5.

Seniority will be given preference in layoffs, recall, vacation and scheduling, provided that it is expressly understood that the prosecutor has the authority, *as a matter of sole discretion*, to determine exceptions to the use of seniority based on personnel needs relating to specific skill sets, experience and/or specialized training. Such discretion shall not be unreasonably exercised.

All other proposals were denied due to the arbitrator finding that there was not sufficient evidence to support their implementation.

The employer appeals contending that the arbitrator did not properly apply the statutory criteria in issuing the award. Specifically, the employer argues: that the arbitrator did not properly consider or give due weight to the interest and welfare of the public in deciding the wage award; did not adequately explain where the County is going to find the money to fund the increases; did not properly consider or give due weight to the financial impact factor; did not properly consider or give due weight to the lawful authority factor; and did not consider or give due weight to the statutory restrictions factor. The Associations respond that the arbitrator properly considered those statutory factors.

N.J.S.A. 34:13A-16g requires that an arbitrator shall state in the award which of the factors are deemed relevant, satisfactorily explain why the others are not relevant, and

P.E.R.C. NO. 2012-15

6.

provide an analysis of the evidence on each relevant factor. The statutory factors are as follows:

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

P.E.R.C. NO. 2012-15

7.

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

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

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

Arriving at an economic award is not a precise mathematical process. Given that the statute sets forth general criteria rather than a formula, the treatment of the parties’ proposals involves judgment and discretion and an arbitrator will rarely be able to demonstrate that an award is the only “correct” one. See Borough of Lodi, P.E.R.C. No. 99-28, 24 NJPER 466 (¶29214 1998). Some of the evidence may be conflicting and an arbitrator’s award

P.E.R.C. NO. 2012-15

8.

is not necessarily flawed because some pieces of evidence, standing alone, might point to a different result. Lodi. Therefore, within the parameters of our review standard, we will defer to the arbitrator's judgment, discretion and labor relations expertise. City of Newark, P.E.R.C. No. 99-97, 26 NJPER 242 (¶30103 1999). However, an arbitrator must provide a reasoned explanation for an award and state what statutory factors he or she considered most important, explain why they were given significant weight, and explain how other evidence or factors were weighed and considered in arriving at the final award. N.J.S.A. 34:13A-16g; N.J.A.C. 19:16-5.9; Lodi.

The employer objects to two aspects of the award - wages and duration. It asserts that the arbitrator did not properly apply the interest and welfare of the public, financial impact, and the lawful authority of the employer because the arbitrator ignored the evidence of the employer's precarious financial situation that includes increased labor and public safety costs, decreasing revenues and a budget deficit. Further, it asserts that the arbitrator did not adequately explain where the County would get the money to fund the wage increases.

We reject these grounds for appeal. The arbitrator found that his award would not present a problem with respect to the Cap Law limitations on the County's budget as the overall County budget will be reduced from receiving significant health benefit

P.E.R.C. NO. 2012-15

9.

contributions, the incremental costs of the award are low because most members of the unit do not receive increments, and there will be personnel changes as the unit ages. The arbitrator stated:

[T]here is absolutely nothing to indicate that the package awarded herein will present a Cap problem. The evidence of the history of retirements and other personnel changes, with lower cost replacements, provides reason in combination with other factors, to confidently find that these increases present no Cap problems.

[Award at 42].

The arbitrator reviewed the financial information set forth by the County and found that the cost of each percentage awarded equaled 0.0155% of the total County budget. The employer has not disputed these figures or pointed to any record evidence to establish that the award itself places it outside the cap. Further, the tax levy cap is applied to the County budget as a whole and not to each of its components. Town of Kearny, P.E.R.C. No. 2011-37, 36 NJPER 413 (¶160 2010). We must defer to the arbitrator's expertise and review of the evidence. Since the arbitrator has found that the award will not present a Cap limitation problem, we defer to his judgment.

It is also not the obligation of an interest arbitrator to direct an employer as to how to fund an award. An interest arbitration award is not unreasonable even though an employer may be forced to make economies in order to implement the award.

P.E.R.C. NO. 2012-15

10.

Kearny; Irvington PBA v. Town of Irvington, 80 N.J. 271, 296 (1979). That is true even where municipal officials must determine whether, and to what extent, police personnel or other employees should be laid off, or whether budgetary appropriations for non-payroll costs should be reduced. Id. We recognize that any salary increase places pressure on a public employer's cap limitations. However, the employer has not presented any specific evidence or argument for us to conclude that the arbitrator erred in his finding that the award would not present a cap problem.

The employer also argues that the arbitrator did not take into consideration the effect the award will have on other negotiations units and the costs associated with other negotiations. The Associations respond that the evidence did not support this argument as there is no established history of pattern negotiations between the Prosecutor's employees and corrections personnel.^{4/}

We reject this argument. In discussing his wage award, the arbitrator stated:

The calculations are based upon the two bargaining units that are the parties to this impasse but the judgments made herein are made with the understanding that these two

^{4/} Even though the County funds the Prosecutor's office, the Prosecutor is a separate employer. See Middlesex Cty. Prosecutor, P.E.R.C. No. 91-22, 15 NJPER 491 (¶21214 1990) aff'd 255 N.J. Super. 333 (App. Div. 1992).

P.E.R.C. NO. 2012-15

11.

units do not function alone in a vacuum but that they are part of a more complex labor relations structure within an overall County budget.

[Award at 59-60].

The arbitrator clearly took the effect his award may have on impasses with other County law enforcement units into consideration. We find that he adequately evaluated all the statutory criteria; explained why he gave more weight to some factors and less to others; and issued a comprehensive award that reasonably determined the issues and is supported by substantial credible evidence in the record as to the wage award. The arbitrator only had jurisdiction to decide the impasse on the evidence and record between these parties. He may subjectively consider that there are costs associated to other units in his award, but to consider evidence presented as to other units and for practical purposes - a separate employer - would be outside his authority. Essex Cty, P.E.R.C. No. 2011-92 __ NJPER __ (¶____ 2011).

The employer also objects to the arbitrator's award of a fourth year arguing that it could potentially be damaging to the County's financial well-being. However, the arbitrator found that it was in the public interest to order a four-year contract to provide an opportunity for the employer to face the 2012 and 2013 budgets with knowledge as to personnel costs so that it may construct future budgets with a greater degree of certainty as a

P.E.R.C. NO. 2012-15

12.

three-year agreement would put the parties right back in negotiations next year.

We reject this argument. There is no per se bar to awarding terms and conditions of employment for future years based on the record evidence and current economic trends. We recognize that there can only be limited hard economic data for 2012 and 2013. We have continually held that the collective negotiations process contemplates the parties agreeing to future years even though no one can predict with any assurance the exact budget circumstances a public employer will face in future years. Kearny; City of Asbury Park, P.E.R.C. No. 2011-17, 36 NJPER 323 (¶126 2010). Here, the employer presented volumes of documents and it has not pointed to any particular evidence in the record that requires rejecting the contract term that was awarded.

ORDER

The interest arbitration award is affirmed.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Krengel and Voos voted in favor of this decision. Commissioners Bonanni and Eskilson voted against this decision. Commissioners Jones and Wall were not present.

ISSUED: October 14, 2011

Trenton, New Jersey

P.E.R.C. NO. 2012-16

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF NORTH ARLINGTON,

Appellant,

-and-

Docket No. IA-2011-050

POLICE BENEVOLENT ASSOCIATION
LOCAL 95,

Respondent.

SYNOPSIS

The Public Employment Relations Commission affirms an interest arbitration award. The Commission had remanded the initial award, P.E.R.C. No. 2012-1, finding that it appeared the arbitrator relied on an inaccurate exhibit to support his wage increase. The Borough of North Arlington appealed the award on remand arguing that the arbitrator continued to rely on the inaccurate document. The Commission affirms finding that the arbitrator satisfactorily explained the basis for his award that did not include the alleged inaccurate document.

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

P.E.R.C. NO. 2012-16

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF NORTH ARLINGTON,

Appellant,

-and-

Docket No. IA-2011-050

POLICE BENEVOLENT ASSOCIATION
LOCAL 95,

Respondent.

Appearances:

For the Appellant, Pearce Law, LLC, attorneys (Randy T. Pearce, of counsel and on the brief)

For the Respondent, Loccke, Correia, Limsy & Bukosky, attorneys (Leon B. Savetsky, of counsel)

DECISION

On July 19, 2011, we vacated an interest arbitration award and remanded the case to the interest arbitrator to issue a new award within 45 days. Borough of N. Arlington, P.E.R.C. No. 2012-1, 37 NJPER ____ (¶____ 2012).^{1/} On September 6, 2011, the interest arbitrator issued a supplemental award clarifying his reasoning and explaining that his initial award was not based solely on figures contained in a version of a purported contract between the Borough and the Chief of Police which the Borough

^{1/} On August 11, 2011 we denied a motion for reconsideration filed by Police Benevolent Association Local 95. Borough of N. Arlington, P.E.R.C. No. 2012-4, 2011 NJ PERC LEXIS 121, 37 NJPER ____ (¶____ 2012).

P.E.R.C. NO. 2012-16

2.

alleged was doctored. The agreement set the Chief's working conditions from December 31, 2009 through December 15, 2015.^{2/}

The award covers the calendar years 2011 through 2013.

On September 15, 2011, the Borough filed an appeal seeking to vacate the award. On September 22, Police Benevolent Association Local 95 filed a response urging that we affirm the award. We deny the Borough's appeal and affirm the award.^{3/}

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

- (1) The interests and welfare of the public . . . ;
- (2) Comparison of the wages, salaries, hours, and conditions of employment of the employees with the wages, hours and conditions of employment of other employees performing the same or similar services and with other employees generally:
 - (a) in private employment in general . . . ;

^{2/} That document portrayed the Chief as the recipient of annual percentage increases of 2.8% for 2011 and 3% for 2012 and 2013. In the brief submitted in support of its appeal of the initial award, the Borough noted that Article 14 of its agreement with the Chief provides that his base salary will be 9% greater than the next ranking superior officer, but at least 9% greater than the base salary of a Captain.

^{3/} We deny the Borough's request for oral argument.

P.E.R.C. NO. 2012-16

3.

- (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

P.E.R.C. NO. 2012-16

4.

whole. Teaneck Tp. v. Teaneck FMBA, Local No. 42, 353 N.J. Super. 298, 299 (App. Div. 2002), aff'd o.b. 177 N.J. 560 (2003), citing Cherry Hill Tp., P.E.R.C. No. 97-119, 23 NJPER 287 (¶28131 1997). Because the Legislature entrusted arbitrators with weighing the evidence, we will not disturb an arbitrator's exercise of discretion unless an appellant demonstrates that the arbitrator did not adhere to these standards. Teaneck, 353 N.J. Super. at 308-309; Cherry Hill.

Arriving at an economic award is not a precise mathematical process. Given that the statute sets forth general criteria rather than a formula, the treatment of the parties' proposals involves judgment and discretion and an arbitrator will rarely be able to demonstrate that an award is the only "correct" one. See Borough of Lodi, P.E.R.C. No. 99-28, 24 NJPER 466 (¶29214 1998). Some of the evidence may be conflicting and an arbitrator's award is not necessarily flawed because some pieces of evidence, standing alone, might point to a different result. Lodi. Therefore, within the parameters of our review standard, we will defer to the arbitrator's judgment, discretion and labor relations expertise. City of Newark. 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

P.E.R.C. NO. 2012-16

5.

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

In challenging the arbitrator's award the Borough focuses on the annual percentage increases contained in the initial award and argues that those figures should have been modified in the award after remand given the arbitrator's reliance on the allegedly doctored version of P-34. It disputes the arbitrator's explanation that the perceived increases in the Chief's compensation were not the basis of the increases awarded to the PBA in his award after remand.

The PBA responds that the supplemental award demonstrates that any perceived increases in the chief's base salary were not a factor in the percentage increases. It notes that the arbitrator awarded 0% in the first year of the agreement and explained that savings from changes in the health benefit provider would be sufficient to support 2.5% increases in each of the last two years covered by the award. The PBA also refers to the arbitrator's discussion of the Borough's financial condition in the initial award including savings from anticipated retirements.

Addressing the contention that his initial award was closely linked to the perceived increases awarded or to be provided to the Chief, the arbitrator wrote:

While it is certainly true that I mentioned justification of the increases in part on the treatment of the Chief, it must be obvious that this was not seen as a mandate for the

P.E.R.C. NO. 2012-16

6.

rank and file as my award was 0% in 2011 and delayed increases in each of the next two years, neither of which equaled 3%. My explanation for this is stated in the [initial] Award. "There shall be no across the Board increase in 2011. In 2012 the impacts from savings from the modified Health Benefits change will be sufficient to support an increase of 2.5% effective on April 1, 2012 and a second 2.5% increase effective on April 1, 2013." Further my comment in support of these increases makes no mention of any salary changes for the chief. Instead I explained the basis for those increases as, "It is my best judgment that without the modification of the Health Benefits Plan (which the Union had resisted) I could not have justified these increases."

[Supplemental Award at 2]

The Borough has not pointed to any record evidence that would require us to modify or vacate the award. It does not question the reliance on health insurance cost savings as a means of funding the 2.5% increases. Nor has it provided us with any argument as to how the arbitrator misapplied or failed to consider the factors listed in N.J.S.A. 34:13A-16(g). Under the standards of review we find that the award should be upheld.

ORDER

The arbitrator's award is affirmed.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Eskilson, Krengel and Voos voted in favor of this decision. None opposed. Commissioners Jones and Wall were not present.

ISSUED: October 14, 2011

Trenton, New Jersey

P.E.R.C. NO. 2012-18

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF CAMDEN,

Appellant,

-and-

Docket No. IA-2009-065

THE INTERNATIONAL ASSOCIATION
OF FIREFIGHTERS, LOCAL 788,

Respondent.

SYNOPSIS

The Public Employment Relations Commission affirms an interest arbitration award that sets the terms and conditions of employment for a successor contract between the City of Camden and the International Association of Firefighters, Local 788.

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

P.E.R.C. NO. 2012-18

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF CAMDEN,

Appellant,

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THE INTERNATIONAL ASSOCIATION OF
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Respondent.

Appearances:

For the Appellant, Brown and Connery, LLP (William M.
Tambussi, of counsel)

For the Respondent, Kroll Heineman LLC (Raymond G.
Heineman, of counsel)

DECISION

On August 23, 2011, the City of Camden appealed from an interest arbitration award involving a unit of fire fighters represented by the International Association of Firefighters, Local 788.^{1/} The arbitrator issued a conventional award, as he was required to do. N.J.S.A. 34:13A-16d(2). A conventional award is crafted by an arbitrator after considering the parties

^{1/} This appeal was initially processed to meet the 30-day time requirement pursuant to N.J.S.A. 34:13A-16f(5)(a). A draft decision vacating the Award and remanding it to a new arbitrator was presented at the Commission's September 22, 2011 meeting. Because that draft decision did not gain a majority vote of the Commission, this alternative draft was presented at the Commission's next regularly scheduled meeting on October 27, 2011.

P.E.R.C. NO. 2012-18

2.

final offers in light of the nine statutory factors. This decision affirms the award.

Procedural and Factual History

The parties collective negotiations agreement expired on December 31, 2008, and the arbitrator was appointed by mutual request of the parties on April 29, 2009. The arbitrator first met with the parties in August 2009. On October 15, a mediation session was conducted to assist the parties with exchanging positions on non-economic issues. In November, a new Mayor was elected and the City requested an adjournment of the mediation session scheduled for November 24. On December 15, another mediation session was conducted. Award at 1 - 3.

In 2002, the City began operating under the Municipal Rehabilitation and Economic Recovery Act ("MRERA"), N.J.S.A. 52:27BBB-1 et seq. Under MRERA, the City is recognized as a distinct municipality facing severe distress and suffering a dramatic shortfall of revenue. The City's property tax revenue was approximately 20 million dollars and was matched against budget demands exceeding 170 million dollars. MRERA transferred the oversight of all of the City's operations and functions from local officials to a Chief Operating Officer appointed by the Governor. In January 2010, MRERA's application to the City was amended from "rehabilitation to recovery." The City's Mayor assumed the powers of the Chief Operating Officer, who was no

P.E.R.C. NO. 2012-18

3.

longer on site with veto power over the budget. However, such veto power was transferred to the Commissioner of the Department of Community Affairs. Award at 19 - 21, 46.

The City requested an adjournment of the first and second interest arbitration hearings scheduled for January 14 and February 26, 2010 based on the new State administration taking office. On March 9, the first interest arbitration hearing was conducted. In May, the arbitrator toured the City with IAFF representatives to visit firehouses, inspect work conditions, observe training sessions, and to become acquainted with specialized firefighting equipment. Also in May, the City submitted an economic proposal that reflected severe cuts to compensation and benefits. The IAFF also submitted a proposal and noted that the unit was already behind a 3.75% increase received by the City's police officers in 2009. The parties agreed to submit their respective economic proposals to the arbitrator to issue a non-binding recommendation for voluntary settlement. On November 17, the arbitrator issued a recommended settlement which was accepted by the IAFF but rejected by the City as beyond its fiscal means. Award at 3 - 10.

Final interest arbitration hearings were scheduled to commence on February 1, 2011, however, the City requested an adjournment to adequately prepare its case. A mediation session was conducted on February 9th. The arbitrator scheduled another

P.E.R.C. NO. 2012-18

4.

interest arbitration hearing for February 28th, and the City requested a three-month adjournment until the City passed the 2011 budget. The arbitrator denied the request, and the City filed an interlocutory appeal of his ruling.

On April 12th, the City submitted its final proposal, and on April 18th, the final interest arbitration hearing was conducted. At that hearing, the City's Director of Finance testified. Award at 11. He testified that beginning in 2010 State aid and other forms of aid to the City had significantly decreased and the City has been put on a path to become more self-sufficient. He also testified as to the City's significant costs stemming from pension and health care benefits and the payment of cumulative leave balances. He stated that in January 2011, the City implemented personnel layoffs of 108 civilian employees, 67 firefighters, and 168 police officers. In his recollection there had never been layoffs of public safety personnel in the past. 31 firefighters were returned to work when the City received \$2.5 million dollars from the South Jersey Port for 2011.^{2/} \$500,000 returned an additional 15 firefighters to work for the balance of 2011. 16 additional firefighters were returned to work through a \$5.1 million dollar grant received from the Federal Emergency Management Agency. The condition of

^{2/} 50 police officers were also returned to work from the money received from South Jersey Port.

P.E.R.C. NO. 2012-18

5.

accepting the FEMA grant was that whatever staffing levels were in place at the time the grant application was made had to be maintained. Award at 46 - 49.

The Parties Final Proposals

A. The City's Proposals

The following represents the City's final proposals:

- Five year contract term;
- Effective July 1, 2011, all salaries and step increases for the term of the agreement shall be frozen;
- Effective December 31, 2011, elimination of longevity payments for current and future employees.
- Effective May 22, 2010, all employees shall contribute 1.5% of their base salary toward the cost of health insurance benefits, and effective July 1, 2011, the employee shall be responsible for 30% of the total cost of health insurance benefits (medical and prescription);
- Effective July 1, 2011, a \$15,000 cap for payment upon retirement for unused sick, vacation and holiday leave;
- A requirement that vacation time must be taken in the year earned. Effective January 1, 2009 and applied retroactively to all vacation time accrued after December 31, 1996, vacation days not utilized or otherwise affirmatively deferred by the City shall expire without compensation at

P.E.R.C. NO. 2012-18

6.

the end of the following calendar year after said days are earned;

- Effective January 1, 2009 and applied retroactively to all holiday time accrued after December 31, 1996, holidays carried over and not utilized shall expire without compensation at the end of the following calendar year after said days are earned;
- Reduction from 13 to 11 paid holidays;
- Insertion of a Management Rights clause.
- Limit injury leave to incapacity or inability to work occurring within one year giving rise to the injury or sickness;
- Language setting forth that the City is not required to create or maintain light-duty assignments where such assignments do not exist or are not efficient to the operations of the Department.

B. IAFF's Proposals

IAFF submitted the following final proposals:

- Increase wages for all employees by 3.75% for 2009, 2.5% for 2010, 2.5% for 2011 and 4% for 2010;
- For employees hired before January 1, 2009, accumulation of vacation and holiday time shall be capped at the amount of time on the City's records as of December 31, 2008. For employees retiring prior to the execution of the Agreement,

P.E.R.C. NO. 2012-18

7.

accumulated vacation or holiday time prior to December 31, 2008 shall be paid in full upon retirement.

- Employees shall receive payment for unused accumulated sick leave at the time of retirement up to \$15,000 or the amount accumulated by the employee, whichever is greater;
- Increase co-payments for generic prescriptions to \$10.00 and brand name prescriptions to \$17.00;
- Effective upon the execution of the agreement, employees shall contribute 1.5% of their bases salary as a contribution for health insurance and increase co-payments for doctor' visits to \$10.00.

The Arbitrator's Award

On August 14, 2011, the arbitrator issued his Opinion and Award. The terms of the Award are as follows:

- Wage increases of 2.5% as of January 1, 2009, and 2.0% as of January 1, 2010, 2011 and 2012. The 2009, 2010 and 2011 increase shall be implemented immediately, however, retroactive wage payments shall be made only to January 1, 2011 based on the modifications to the salary guide as of that date^{3/};

3/ Footnote 57 on page 52 of the Award details how to calculate the base wage rate for retroactive salary payments intended by the Award for all steps and pay rates outlined in Schedule A of the collective negotiations agreement which expired on December 31, 2008.

P.E.R.C. NO. 2012-18

8.

- Increase co-payments for generic prescriptions to \$10.00 and brand name prescriptions to \$17.00;
- Effective upon the execution of the agreement, employees shall contribute 1.5% of their bases salary as a contribution for health insurance and increase co-payments for doctor' visits to \$20.00.
- Effective January 1, 2010 and except for present employees employed prior to January 1, 2009, a cap on accumulated sick time of \$15,000;
- As of January 1, 2009, employees may accumulate 15 vacation days to be carried over in the following year, but for no longer than the next year unless deferred by written notice to the employee by the Department and then the accumulated days shall expire at the end of the following calendar year if not used. For employees hired before January 1, 2009, accumulated vacation days shall be capped at the amount of time on the City's records as of December 31, 2008, and such employees shall to permitted to utilize such time prior to retirement. For employees retiring prior to the execution of the Agreement the accumulated vacation time prior to December 31, 2008 shall be paid in full upon retirement.

P.E.R.C. NO. 2012-18

9.

The City's Arguments on Appeal and IAFF's Response

On August 23, 2011, the City appealed the award. The City asserts that the award is not based on substantial credible evidence in the record. Further, the City asserts that the arbitrator failed to apply the statutory factors, and violated the standards in N.J.S.A. 2A:24-8 by misapplying the law regarding health insurance contributions, naming the State as a party to the arbitration, and having a bias in favor of the union that originated during the mediation process.

The union responds that the arbitrator based his award on substantial credible evidence in the record. It further asserts that the arbitrator gave due weight to the statutory factors; the arbitrator did not exceed his authority by naming the State as a party to the arbitration and acted impartially in reaching his award.

The Statutory Requirements and Legal Standards for Reviewing Interest Arbitration Awards

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

(1) The interests and welfare of the public
. . . ;

(2) Comparison of the wages, salaries,
hours, and conditions of employment of

P.E.R.C. NO. 2012-18

10.

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

P.E.R.C. NO. 2012-18

11.

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

Arriving at an economic award is not a precise mathematical process. Given that the statute sets forth general criteria rather than a formula, the treatment of the parties’ proposals involves judgment and discretion and an arbitrator will rarely be able to demonstrate that an award is the only “correct” one. See Borough of Lodi, P.E.R.C. No. 99-28, 24 NJPER 466 (¶ 29214 1998). Some of the evidence may be conflicting and an arbitrator’s award is not necessarily flawed because some pieces of evidence, standing alone, might point to a different result. Lodi.

P.E.R.C. NO. 2012-18

12.

Therefore, within the parameters of our review standard, we will defer to the arbitrator's judgment, discretion and labor relations expertise. City of Newark, P.E.R.C. No. 99-97, 25 NJPER 242 (¶ 30103 1999). However, an arbitrator must provide a reasoned explanation for an award and state what statutory factors he or she considered most important, explain why they were given significant weight, and explain how other evidence or factors were weighed and considered in arriving at the final award. N.J.S.A. 34:13A-16g; N.J.A.C. 19:16-5.9; Lodi.

Analysis

The arbitrator is statutorily mandated to provide independent analysis on each of the statutory factors. N.J.S.A. 34:13A-16g. The arbitrator provided a lengthy summary of the procedural history and the various arguments advanced by the parties regarding each of the statutory factors. In the portion of the Award entitled "Conclusion", the arbitrator began with acknowledging the City's dire financial condition and the critical functions served by the firefighters and the ever increasing challenges they face. He primarily focused on the statutory factors addressing the interests and welfare of the public and the continuity and stability of employment. N.J.S.A. 34:13A-16g (1), (8).

At the Commission's September 22, 2011 meeting, a draft decision was presented. That draft decision was moved, seconded,

P.E.R.C. NO. 2012-18

13.

and discussed, but did not gain a majority vote of the Commission.^{4/} The majority of the Commission found the arbitrator's opinion regarding the City's dependence on State aid to be a realistic assessment of the City's financial position. The majority of the Commission also found that the arbitrator provided adequate legal analysis on the statutory factors. Therefore, this decision affirms the Award.^{5/6/}

ORDER

The interest arbitration award is affirmed.

BY ORDER OF THE COMMISSION

Commissioners Jones, Krengel and Wall voted in favor of this decision. Chair Hatfield and Commissioner Bonanni voted against this decision. Commissioner Eskilson recused himself. Commissioner Voos was not present.

ISSUED: October 27, 2011

Trenton, New Jersey

^{4/} See the Appendix to this decision.

^{5/} We note that the Award did not address the relevance of the new schedule of employee health care contributions set forth in P.L. 2011, c. 78. That law became effective on June 28, 2011 and increases employees' share of health benefit premiums and pension contributions. Employees working from an expired agreement as of the effective date of the law are subject to the phase in of the new schedule of employee health care contributions. P.L. 2011, c. 78, § 42. The Award in this case was issued on August 14, 2011. As of June 28, 2011, unit members were working pursuant to the terms of a contract that expired on December 31, 2008.

^{6/} Given the arbitrator's naming the State as a party to the Award and his finding that the State should participate in funding the Award, we find it necessary to put the Attorney General's Office on notice of the Award and this decision.

P.E.R.C. NO. 2012-18

14.

Appendix

- City of Camden and the International Association of Firefighters, Local 788, Draft Decision presented to the Commission at its September 22, 2011 meeting.

P.E.R.C. NO.

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

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Appellant,

-and-

Docket No. IA-2009-065

THE INTERNATIONAL ASSOCIATION OF
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Appearances:

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DECISION

On August 23, 2011, the City of Camden appealed from an interest arbitration award involving a unit of fire fighters represented by the International Association of Firefighters, Local 788.^{1/} The arbitrator issued a conventional award, as he was required to do. N.J.S.A. 34:13A-16d(2). A conventional award is crafted by an arbitrator after considering the parties final offers in light of the nine statutory factors. We vacate the award and remand it to a new arbitrator.

^{1/} This appeal has been processed to meet the time requirements of N.J.S.A. 34:13A-16f(5)(a).

P.E.R.C. NO.

2.

Procedural and Factual History

The parties collective negotiations agreement expired on December 31, 2008, and the arbitrator was appointed by mutual request of the parties on April 29, 2009. The arbitrator first met with the parties in August 2009. On October 15, a mediation session was conducted to assist the parties with exchanging positions on non-economic issues. In November, a new Mayor was elected and the City requested an adjournment of the mediation session scheduled for November 24. On December 15, another mediation session was conducted. Award at 1 - 3.

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P.E.R.C. NO.

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P.E.R.C. NO.

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P.E.R.C. NO.

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The Parties Final Proposals

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P.E.R.C. NO.

6.

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- Limit injury leave to incapacity or inability to work occurring within one year giving rise to the injury or sickness;
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B. IAFF's Proposals

IAFF submitted the following final proposals:

- Increase wages for all employees by 3.75% for 2009, 2.5% for 2010, 2.5% for 2011 and 4% for 2010;
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P.E.R.C. NO.

7.

- Employees shall receive payment for unused accumulated sick leave at the time of retirement up to \$15,000 or the amount accumulated by the employee, whichever is greater;
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- Increase co-payments for generic prescriptions to \$10.00 and brand name prescriptions to \$17.00;

^{3/} Footnote 57 on page 52 of the Award details how to calculate the base wage rate for retroactive salary payments intended by the Award for all steps and pay rates outlined in Schedule A of the collective negotiations agreement which expired on December 31, 2008.

P.E.R.C. NO.

8.

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P.E.R.C. NO.

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(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 . . . ;

P.E.R.C. NO.

10.

(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

P.E.R.C. NO.

11.

supported by substantial credible evidence in the record as a whole. Teaneck Tp. v. Teaneck FMBA, Local No. 42, 353 N.J. Super. 298, 299 (App. Div. 2002), aff'd o.b. 177 N.J. 560 (2003), citing Cherry Hill Tp., P.E.R.C. No. 97-119, 23 NJPER 287 (¶ 28131 1997). Because the Legislature entrusted arbitrators with weighing the evidence, we will not disturb an arbitrator's exercise of discretion unless an appellant demonstrates that the arbitrator did not adhere to these standards. Teaneck, 353 N.J. Super. at 308-309; Cherry Hill.

Arriving at an economic award is not a precise mathematical process. Given that the statute sets forth general criteria rather than a formula, the treatment of the parties' proposals involves judgment and discretion and an arbitrator will rarely be able to demonstrate that an award is the only "correct" one. See Borough of Lodi, P.E.R.C. No. 99-28, 24 NJPER 466 (¶ 29214 1998). Some of the evidence may be conflicting and an arbitrator's award is not necessarily flawed because some pieces of evidence, standing alone, might point to a different result. Lodi. Therefore, within the parameters of our review standard, we will defer to the arbitrator's judgment, discretion and labor relations expertise. City of Newark, P.E.R.C. No. 99-97, 25 NJPER 242 (¶ 30103 1999). However, an arbitrator must provide a reasoned explanation for an award and state what statutory

P.E.R.C. NO.

12.

factors he or she considered most important, explain why they were given significant weight, and explain how other evidence or factors were weighed and considered in arriving at the final award. N.J.S.A. 34:13A-16g; N.J.A.C. 19:16-5.9; Lodi.

Analysis

Given the above cited standards for reviewing interest arbitration awards, we conclude that the award must be vacated and remanded to a new arbitrator. A disservice was imposed upon the parties by the rendering of an Award that could not withstand review on appeal, particularly in light of the extensive procedural history in this case.

As a general matter, the fatal flaw with the Award is that the arbitrator did not do what he is statutorily mandated to do - - to provide an independent analysis of each of the relevant statutory factors and then explain how the evidence and each relevant factor was considered in arriving at his award.

N.J.S.A. 34:13A-16(g). If he found a particular factor to be irrelevant, he should have provided reasoning as to why that factor was found to be irrelevant. While he described at length the arguments of the parties, he failed to address such arguments and explain why he accepted or rejected a specific argument. Borough of Paramus, P.E.R.C. No. 2010-35, 35 NJPER 431 (¶149 2009); County of Passaic, P.E.R.C. No. 2010-42, 35 NJPER 451 (¶141 2009). The arbitrator provides some discussion which

P.E.R.C. NO.

13.

supports his findings regarding the interests and welfare of the public and the continuity and stability of employment, but the award is bereft of any meaningful discussion of the arbitrator's analysis of the evidence regarding comparison of wages, salaries, hours and conditions of employment; overall compensation presently received; stipulations of the parties; lawful authority of the City; financial impact on the City, its residents and taxpayers; cost of living; and the statutory restrictions imposed on the City. N.J.S.A. 34:13A-16(g). On remand, all of the statutory factors must be adequately addressed and analyzed.

The arbitrator's summary of the procedural history and the various arguments advanced by the parties regarding each of the statutory factors constitutes the largest part of the Award. In the portion of the Award entitled "Conclusion", the arbitrator begins with acknowledging the City's dire financial condition and the critical functions served by the firefighters and the ever increasing challenges they face. He summarizes the testimony of the City's Director of Finance. He states generally that he found such testimony to be reliable. However, he also provides what amounts largely to improper discourse when he made the following findings:

But, even if this arbitrator were to consider "freezes in wages (or zero increases), together with deep reductions in previously negotiated contractual benefits, would the City of Camden be in a stable budgetary position or, more relevant to this interest

P.E.R.C. NO.

14.

arbitration, would the City find financial stability if granted nearly 20% reductions or concessions in the Firefighters salary budget? With extensive experience in interest arbitration and the ability to review a record, this Arbitrator is not convinced that any level of concessions by the Firefighters or an award by the arbitrator would place the City in a stable budgetary position. Why? Because despite the efforts of the City Administration, the IAFF and the residents of Camden, there is a fourth party to this arbitration which, in reality, controls the fiscal condition of the City. It is the State of New Jersey (for purposes of reference herein, Governor Chris Christie and the State Legislature) which funds the budget shortfall and controls the ultimate amount of money to aid the City and grant Camden its operational ability. And irrespective of the level of success in progressing toward economic stability or independence, it is the final decision of the State of New Jersey, achieved through the State budget process (Governor and Legislature) and aid programs administered primarily through the Commissioner of the Department of Community Affairs, which permits the City to operate. As such, the State of New Jersey is the fourth party to this Interest Arbitration.

[Award at 45]

The arbitrator continued on this same path later in his conclusions when he found as follows:

To alleviate any misunderstanding or confusion, this Arbitrator does not contend that these increases fit within the City's ability to pay from its present tax base nor could be funded by greater bargaining unit concessions. Indeed, the City alone does not have sufficient funds to meet the modest, but reasonable, increases granted. But, when the record was finalized and the evidence reviewed, this arbitrator reached three clear and realistic conclusions: 1) The City must

P.E.R.C. NO.

15.

continue an appropriate level of fire services, irrespective of budgetary shortages, in order to protect the City of Camden, its residents and property; 2) Firefighters should be granted reasonable increases in base wages, together with the obligation of paying for a portion of their health coverage, as their responsibilities continue to grow and their duties expand; and, perhaps most important, 3) The State must affirmatively provide for the City of Camden what the City cannot provide for itself.

[Award at 58]

The above quoted passages in which the arbitrator names the State as a fourth party to the proceedings and finds that the State should participate in funding the Award are illustrations of the pontificating that set the tone of most of his conclusions. The City and IAFF are the only parties to this Award, and the arbitrator exceeded his jurisdiction in naming the State as a fourth party to the Award. Without the City's ability to fund the Award, its terms are rendered meaningless. Further, the arbitrator's naming the State as the fourth party to the Award and finding that the State should participate in funding it is inconsistent with his general finding that the testimony of the City's Director of Finance was reliable. That testimony established that beginning in 2010 when MRERA's application to the City was amended from "rehabilitation to recovery," State aid and other forms of aid to the City were greatly reduced, and the City was attempting to become more self-sufficient. The arbitrator also improperly opined about longevity pay and the development and history of accumulated benefit days and why such

P.E.R.C. NO.

16.

a benefit is advantageous to public employers. What the arbitrator did not do was apply each of the statutory factors and provide adequate independent analysis to support the terms of the Award. N.J.S.A. 34:13A-16(g).

The other significant flaw in the Award was the arbitrator's failure to address the relevance of the new schedule of employee health care contributions set forth in P.L. 2011, c. 78. That law became effective on June 28, 2011 and increases employees' share of health benefit premiums and pension contributions. Employees working from an expired agreement as of the effective date of the law are subject to the phase in of the new schedule of employee health care contributions.^{4/} P.L. 2011, c. 78, § 42. The Award in this case was issued on August 14, 2011. As of June 28, 2011, unit members were working pursuant to the terms of a contract that expired on December 31, 2008.

Since this matter is being remanded to a new arbitrator on the ground that the arbitrator failed to apply the criteria specified in N.J.S.A. 34:13A-16g, we need not reach the question of whether N.J.S.A. 2A:24-8 has been violated.

4/ Unit members are currently contributing 1.5% of their base salaries toward the cost of health insurance premiums. If an existing 1.5% of base salary contribution is greater than the first year of the phase in at 25% of the new contribution rate, the 1.5% of base salary contribution continues to be paid until the new contribution rate is greater. P.L. 2011, c. 78, § 42; Local Finance Notice 2011-20, pgs. 4 - 5.

P.E.R.C. NO.

17.

ORDER

The interest arbitration award is vacated and remanded to a new arbitrator for issuance of a new award in accordance with the directives set forth in this decision. The new award is due within 45 days of the date of this decision.

BY ORDER OF THE COMMISSION

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

ISSUED:

Trenton, New Jersey

P.E.R.C. NO. 2012-33

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF MILLTOWN,

Appellant,

-and-

Docket No. IA-2010-051

POLICEMEN'S BENEVOLENT ASSOCIATION
LOCAL NO. 338,

Respondent.

SYNOPSIS

The Public Employment Relations Commission vacates and remands an interest arbitration award to the arbitrator for reconsideration and issuance of a new award. The arbitrator has 45 days to issue a new award that must explain which of the statutory factors were deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor.

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

P.E.R.C. NO. 2012-33

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF MILLTOWN,

Appellant,

-and-

Docket No. IA-2010-051

POLICEMEN'S BENEVOLENT ASSOCIATION
LOCAL NO. 338,

Respondent.

Appearances:

For the Appellant, Apruzzese, McDermott, Mastro & Murphy, P.C., attorneys (Arthur R. Thibault, Jr., of counsel; Jonathan F. Cohen, on the brief)

For the Respondent, Loccke, Correia, Limskey & Bukosky, attorneys (Leon B. Savetsky, of counsel and on the brief)

DECISION

On November 29, 2011, the Borough of Milltown ("Borough") appealed from an interest arbitration award involving a unit of police officers represented by the Policemen's Benevolent Association ("PBA"), Local No. 338.^{1/} The arbitrator issued a conventional award, as he was required to do. N.J.S.A. 34:13A-16d(2). A conventional award is crafted by an arbitrator after considering the parties' final offers in light of the nine

^{1/} This appeal has been processed to meet the time requirements of N.J.S.A. 34:13A-16f(5)(a).

P.E.R.C. NO. 2012-33

2.

statutory factors. We vacate the award and remand it back to the arbitrator to issue a new decision within 45 days.

Procedural and Factual History

The parties collective negotiations agreement expired on December 31, 2009; the PBA filed for interest arbitration on January 19, 2010 and the arbitrator was appointed by mutual request of the parties on March 10, 2010. The arbitrator first conducted a number of mediation sessions with the parties wherein a settlement was reached but failed to be ratified. The arbitrator next convened a formal interest arbitration hearing on May 13, 2011. The parties submitted extensive post-hearing arguments on behalf of their final positions and the arbitrator's Award was issued on November 21, 2011.

The Parties Final Proposals

The PBA's Proposals

1. A four (4) year contract to commence January 1, 2010 and to provide a 3.5% across the board increase at each rank, step and position effective each January 1.
2. A modification of Longevity (J-1, Article VII) by adding a twenty four (24) year step at an additional 2%, for a total of 10% at that level.

The Borough's Proposals

A three (3) year contract - January 1, 2010 - December 31, 2012

1. Article IV-Wages

P.E.R.C. NO. 2012-33

3.

- a. Wage increases as follows for each year of the contract for all employees. 2010-0%, 2011-0%, 2012-1.5%
- b. Add one new step for new hires between step 4 and step 5 in the current salary guide.

2. Article X- Medical Benefits

Add to Section A:

Effective May 21, 2010 all unit employees shall contribute 1.5% of their base salary toward the cost of health insurance.

The Arbitrator's Award

The terms of the Award are as follows:

1. Duration of the contract shall be three years. January 1, 2010 through December 31, 2012.
2. A three percent (3%) across the board retroactive wage increase as of June 1, 2010. A three (3%) across the board retroactive wage increase as of April 1, 2011 and a three (3%) across the board wage increase as of April 1, 2012.
3. Add a twenty fourth (24) top step of longevity with an additional 2% for a total of 10% effective December 21, 2012.
4. An additional step on the existing salary guide between step 5 and step 6 of the guide eliminating the bubble step for newly hired employees.
5. Health care premium cost contribution of 1.5% of base salary by all members of the Bargaining Unit as of June, 30, 2010.

(Additionally, the previously agreed upon PBA contract proposals, agreed upon before and during the mediation process as contained in PBA proposal (P1) #s 2, 4A and B, 5B and 8 shall be incorporated in the new agreement.)

P.E.R.C. NO. 2012-33

4.

The Borough's Arguments on Appeal and PBA's Response

On November 28, 2011, the Borough appealed the award. The Borough asserts that the Arbitrator failed to apply the criteria specified in N.J.S.A. 34:13A-16(g) and/or to comply with N.J.S.A. 2A:24-8(d) and 2A:24-9(b). Specifically, the Borough alleges that: the arbitrator did not appropriately consider and apply the interest and welfare of the public criterion when he awarded a contract that exceeds the 2% tax levy cap; the award failed to consider and give due weight to the Borough's ability to pay the Award and its lawful authority to do so given the 2% cap and the Borough's appropriation limits; the Award was issued under undue means because a material mistake in fact appeared on the face of the Award regarding the arbitrator's analysis of N.J.S.A. 34:13a-16(g)(2); the arbitrator's analysis of the overall compensation of the unit demonstrated a misunderstanding of the pertinent criterion; the Award's application of a "set off" for the state mandated 1.5% base salary contravenes legislative intent and demonstrates a misunderstanding of the relevant criteria by the arbitrator; the arbitrator never considered the annual or overall cost increase of the award; the arbitrator failed to give due weight to the criterion requiring that Borough police officer salary increases be measured against cost of living increases; inadequate consideration was paid to the criterion of continuity and stability of employment of Borough police officers; and that the arbitrator's Award be either

P.E.R.C. NO. 2012-33

5.

modified pursuant to N.J.A.C. 19:16-.8.3 to eliminate the unaffordable wage increases, or, in the alternative, that the Award be vacated and remanded for reconsideration and issuance of a new award that addresses the evidential record and provides analysis of the statutory criteria that support the arbitrator's award.

The PBA responds that: the arbitrator considered and gave due weight to each of the statutory criteria set forth in N.J.S.A. 34:13a-16(g)(1) through (9); the arbitrator did not violate the standards set forth in N.J.S.A. 2A:24-8 and 2A:24-9; and that the arbitrator's Award should be affirmed.

The Statutory Requirements and Legal Standards for Reviewing Interest Arbitration Awards

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

(1) The interests and welfare of the public

. . . ;

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

P.E.R.C. NO. 2012-33

6.

- (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

P.E.R.C. NO. 2012-33

7.

supported by substantial credible evidence in the record as a whole. Teaneck Tp. v. Teaneck FMBA, Local No. 42, 353 N.J. Super. 298, 299 (App. Div. 2002), aff'd o.b. 177 N.J. 560 (2003), citing Cherry Hill Tp., P.E.R.C. No. 97-119, 23 NJPER 287 (¶28131 1997). Because the Legislature entrusted arbitrators with weighing the evidence, we will not disturb an arbitrator's exercise of discretion unless an appellant demonstrates that the arbitrator did not adhere to these standards. Teaneck, 353 N.J. Super. at 308-309; Cherry Hill.

Arriving at an economic award is not a precise mathematical process. Given that the statute sets forth general criteria rather than a formula, the treatment of the parties' proposals involves judgment and discretion and an arbitrator will rarely be able to demonstrate that an award is the only "correct" one. See Borough of Lodi, P.E.R.C. No. 99-28, 24 NJPER 466 (¶29214 1998). Some of the evidence may be conflicting and an arbitrator's award is not necessarily flawed because some pieces of evidence, standing alone, might point to a different result. Lodi. Therefore, within the parameters of our review standard, we will defer to the arbitrator's judgment, discretion and labor relations expertise. City of Newark, P.E.R.C. No. 99-97, 25 NJPER 242 (¶30103 1999). However, an arbitrator must provide a reasoned explanation for an award and state what statutory factors he or she considered most important, explain why they were given significant weight, and explain how other evidence or

P.E.R.C. NO. 2012-33

8.

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

Analysis

Within this framework, we conclude that the Award must be vacated and the matter remanded back to the arbitrator. In his Opinion, the arbitrator provided the procedural history of the instant interest arbitration, the proposals of the parties, reproduced N.J.S.A. 34:13A-16g as the statutory criteria and reproduced verbatim the positions of the PBA and the Borough from their respective post hearing briefs. The arbitrator, however, did not provide an independent analysis of all of the relevant factors and how he weighed each of them against the evidence presented to reach his Award.

First, the arbitrator failed to sufficiently consider the limitations imposed on the Borough's property tax levy pursuant to N.J.S.A. 40A:4-45.45 and the other factors as required by N.J.S.A. 34:13A-16g(6)^{2/}. The arbitrator's analysis does not

2/ N.J.S.A. 34:13A-16g(6) provides:

The financial impact on the governing unit, its residents, the limitations imposed upon the local unit's property tax levy pursuant to section 10 of P.L.2007, c.62 (C.40A:4-45.45), and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take into account, to the extent that evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element or, in the case of a county, the

(continued...)

P.E.R.C. NO. 2012-33

9.

satisfactorily discuss the required factors. This is especially problematic since N.J.S.A. 34:13A-16g^{3/} specifically requires that the arbitrator address these factors. It should be noted that the parties introduced a total of 128 exhibits into evidence, many of which were relevant to this paragraph, and the arbitrator stated that he gave this paragraph "significant weight." The arbitrator's analysis under paragraph 6 (with the statutory language omitted) is as follows:

Criteria g6. The Financial Impact on the Governing Unit, its Residents and Taxpayers, would not be immediately devastated even if the entire PBA proposal were to be awarded. However, as stated above, given the negative economic prospects being able to afford the increase in a given year is not necessarily the controlling factor in determining its reasonableness. When all the statutory factors are taken into consideration the 3%

2/ (...continued)
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.

3/ N.J.S.A. 34:13A-16g provides in pertinent part:

...in every interest arbitration proceeding, the parties shall introduce evidence regarding the factor set forth in paragraph (6) of this subsection and the arbitrator *shall* analyze and consider the factors set forth in paragraph (6) of this subsection in any award. (Emphasis added).

delayed-start wage increase each year in a three-year contract, appears in this case, to be more reasonable than the 0% proposed by the Borough.

For the above stated reasons and being aware of the general obvious budget difficulties in all the municipalities in the State of New Jersey, I gave this Criterion and the arguments of the Borough significant weight. As a result of the continued existence of negative economic circumstances, I have more confidence that the late-start base wage increases herein are appropriate.

Second, the arbitrator's analysis under paragraphs (5) and (9)^{4/} includes:

Criteria g5 and g9, require the Arbitrator's consideration of the limitations imposed upon the Employer by PL 1976, c. 68 (C. 40A:4-45.1 et seq.) In the case of g5 and Section 10 of PL 2007, c. 62 C. 40A:4-45.45) for Criteria g9.

In this regard the PBA presented the Annual Financial Statement for 2010 in evidence indicating in part in Sheet 19 an amount of budget flexibility supported by the 2009 Report of Audit indicating that the tax rate has remained essentially flat. The PBA

4/ N.J.S.A. 34:13A-16g(5) provides:

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

N.J.S.A. 34:13A-16g(9) provides:

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

argued that as demonstrated by (AFS Sheet 9), the Borough has "an excellent cash position" and is below CAP Levy.

Third, the arbitrator also indicated in his analysis that another unit, the Office Professional Employees International Union Local 32 ("OPEIU"), which represents civilian employees of the Borough, received a 2.75% wage increase in 2010. The arbitrator, however, neglected to mention in his analysis that all Borough employees, except police sworn personnel, police dispatchers and crossing guards, were required to take nine furlough days without pay during 2010 which effectively reduced OPEIU members annual salaries by approximately 3.65%.

Fourth, the arbitrator failed to mention and address the relevance of the new schedule of employee health care contributions set forth in P.L. 2011, c. 78. That law became effective on June 28, 2011 and increases employees' share of health benefit premiums and pension contributions. Employees working from an expired agreement as of the effective date of the law are subject to the phase in of the new schedule of employee health care contributions. P.L. 2011, c. 78, § 42. Additionally, the arbitrator erroneously indicated in his Award at paragraph 5 that the prior 1.5% base salary health care premium cost contribution would begin on June 30, 2010, whereas the statute requires implementation of the contribution on May 21, 2010.

P.E.R.C. NO. 2012-33

12.

On remand, the arbitrator shall comply with N.J.S.A. 34:13A-16g and indicate which of the factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of all of the relevant evidence on each relevant factor; the arbitrator must also address the arguments of the parties and explain why he accepts or rejects each specific argument; and the arbitrator shall specifically, and with the appropriate detail, analyze and consider all the factors set forth in N.J.S.A. 34:13A-16g(6) and then explain how all of the relevant evidence and each relevant factor was considered in arriving at his award.

Finally, given the remand on the ground that the arbitrator failed to satisfactorily comply with the criteria specified in N.J.S.A. 34:13A-16g, we need not reach the question of whether those same reasons would also violate N.J.S.A. 2A:24-8 and 2A:24-9.

ORDER

The interest arbitration award is vacated and remanded to the arbitrator for reconsideration and issuance of a new award in

P.E.R.C. NO. 2012-33

13.

accordance with the directives set forth in this decision. The new award is due within 45 days of the date of this decision.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Eskilson and Krengel voted in favor of this decision. None opposed. Commissioners Jones and Wall recused themselves. Commissioner Voos was not present.

ISSUED: December 28, 2011

Trenton, New Jersey

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1212-09T1

IN THE MATTER OF THE
BOROUGH OF FORT LEE,

Appellant,

and

PBA LOCAL NO. 245,

Respondent.

Argued September 22, 2010 - Decided April 15, 2011

Before Judges Cuff, Sapp-Peterson, and
Simonelli.

On appeal from a Final Decision of the New
Jersey Public Employment Relations
Commission, P.E.R.C. No. 2010-17.

J.S. Lee Cohen argued the cause for appellant
(DeCotiis, FitzPatrick & Cole, L.L.P.,
attorneys; Mr. Cohen, of counsel; Joseph G.
Buro and Erik Corlett, on the brief).

Leon B. Savetsky argued the cause for
respondent PBA Local No. 245 (Loccke Correia
Schlager Linsky & Bukosky, attorneys; Mr.
Savetsky, of counsel and on the brief).

Ira W. Mintz, General Counsel, argued the
cause for respondent New Jersey Public
Employment Relations Commission.

PER CURIAM

This matter involves a public sector compulsory interest arbitration award rendered pursuant to the Police and Fire Public Interest Arbitration Reform Act (Act), N.J.S.A. 34:13A-14 to -16.6.¹ Appellant Borough of Fort Lee (Borough) appeals from two decisions of the Public Employment Relations Commission (PERC): (1) the initial decision of May 28, 2009, remanding the matter to the arbitrator; and (2) the supplemental decision of September 24, 2009, affirming the arbitrator's award. We affirm.

Respondent PBA Local 235 (PBA) represents approximately 100 Borough police officers. The Borough and the PBA are parties to a 2003-2006 collective bargaining agreement (CBA), which expired on December 31, 2006. Their attempt to negotiate a successor agreement for the period January 1, 2007 to December 31, 2010 failed. As a result, the PBA filed a petition with PERC seeking compulsory public interest arbitration pursuant to the Act. In accordance with N.J.A.C. 19:16-5.6, the parties mutually selected, and PERC appointed, an arbitrator.

¹ The Act was amended in 2010 and effective January 1, 2011, adding sections -16.7 to 16.9. These amendments do not apply to this appeal.

The parties stipulated to a four-year successor agreement for the period January 1, 2007 to December 31, 2010, but differed on salary and other items. The PBA proposed an across-the-board 5% salary increase in each year on each rank, step, and position. The Borough proposed an across-the-board 3% increase on January 1 and a 1% increase on June 1 of each year, and a freeze on starting pay/academy step for new hires. The Borough's proposal would result in a 16% salary increase over four years.

The PBA also proposed folding holiday pay into base salary as compensated time to be paid with regular payroll and utilized for all computation purposes, including overtime and pensions.² The Borough opposed this proposal because of its financial impact on overtime and pension contributions. It filed a scope of negotiations petition with PERC seeking a determination that this proposal is an illegal subject for negotiation and outside the arbitrator's jurisdiction. PERC dismissed the petition as untimely pursuant to N.J.A.C. 19:16-5.5(c), but noted that "both parties recognize that the placement of holiday pay into base pay is mandatorily negotiable and that only the Division on

² Under the previous CBA, officers were paid for their unused holidays in December or received time off.

Pensions [and Benefits] may determine whether that form of holiday pay is creditable for pension purposes."

The PBA also proposed a medical opt-out provision of 50% of the amount of premium the Borough saved to be paid to the opting-out officer no later than November in each calendar year; the establishment of an IRS Plan Code Section 125(b) Cafeteria Plan to allow for the voluntary allocation on a pre-tax basis; a \$100 annual increase in clothing allowance from 2007 to 2010; and a modification of Article XLII to require the Borough to pay the PBA \$150 annually to provide legal services.

The Borough did not propose a medical opt-out provision; rather, it proposed a health and prescription plan that would transfer officers from the PBA Traditional and Direct Access plans to the less-costly civilian Traditional and Direct Access plans, effective July 1, 2008. It also proposed paying \$150 per year per officer toward legal defense insurance to be purchased by the officers through the PBA.

The arbitrator acknowledged that he must decide the dispute giving due weight to the factors listed in N.J.S.A. 34:13A-16g.³ Those factors are as follows:

- (1) The interests and welfare of the public. . . .

³ We refer to the statute in effect at the time of the arbitrator's award.

(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 and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator . . . shall take into account . . . 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 . . . 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-16g.]

After extensively analyzing the parties' respective proposals, arguments and evidence, the arbitrator rendered a decision on December 18, 2008, making the following award for salary and fold-in of holiday pay:

2007: 3% increase effective January 1, 2007, and 1% effective July 1, 2007;

2008: 3% increase effective January 1, 2008, and 1% effective July 1, 2008;

2009: inclusion of holiday pay in base salary effective January 1, 2009 by 5% increase, plus 2.5%, and 1% effective July 1, 2009; effective January 1, 2009, new

hires would be subject to a new salary schedule;⁴ and

2010: 2.5% increase effective January 1, 2010, and 1% effective July 1, 2010.

The arbitrator also analyzed the Borough's and PBA's respective health and prescription plans and awarded the Borough's health and prescription plan proposal effective January 1, 2009. He also awarded the PBA's medical opt-out proposal, effective January 1, 2009, applicable to both the medical insurance and prescription plans; required the Borough to contribute \$150 annually per officer for the purchase of legal defense insurance, effective January 1, 2009;⁵ and denied the PBA's proposal to increase the clothing allowance.

Addressing N.J.S.A. 34:13A-16g(6), the financial impact of the award on the Borough, its residents and taxpayers, the arbitrator noted that the awards for 2007 and 2008 were the same as the Borough's proposal, except the Borough sought a 1% increase effective June 1 of each year. His award delayed the

⁴ The new salary schedule for new hires included a maximum salary of \$105,886 and a \$32,000 starting salary as of January 1, 2009, a 1% increase effective July 1, 2009, a 2.5% increase effective January 1, 2010, and a 1% increase effective July 1, 2010.

⁵ The arbitrator remanded this issue for the parties to develop procedures for implementation of the legal defense insurance program. He retained jurisdiction for thirty days in the event of a disagreement.

1% increase to July 1, thus saving the Borough \$52,324 in 2007, \$54,432 in 2008, \$56,351 in 2009, and \$58,338 in 2010. Also, the total salary increase for four years was \$1,402,788, which was \$151,451 less than the Borough's proposal and \$786,665 less than the PBA's proposal.⁶ In sum, the award reflected a 15% salary increase over four years, 1% less than the Borough proposed.

The arbitrator also noted that awarding the Borough's health and prescription plan proposal will save the Borough \$124,588 in both 2009 and 2010. He also estimated, based on the Borough's past hiring patterns, that the new salary schedule for new hires could save the Borough nearly \$1 million in cumulative earnings as each officer moved through the salary guide with the two extra steps.

The arbitrator also found folding-in holiday pay was supported by evidence that a large number of municipalities in Bergen County fold holiday pay into base salary. He relied on the Borough's calculations in assessing the financial impact of

⁶ The total cost of the awarded salary increase was \$357,124 for 2007 (\$8721 less than the Borough's proposal and \$150,876 less than the PBA's proposal); \$371,515 for 2008 (\$9073 less than the Borough's proposal and \$161,885 less than the PBA's proposal); \$331,236 for 2009 (\$64,689 less than the Borough's proposal and \$228,834 less than the PBA's proposal); and \$342,913 for 2010 (\$68,968 less than the Borough's proposal and \$245,160 less than the PBA's proposal).

folding-in holiday-pay on increased overtime costs, and determined there would be an initial 5% increase; however, he estimated the actual cost at between 3% and 15% due to the compounding of holiday pay on an officer's longevity pay. He acknowledged his inability to confirm his calculations; however, he offset the financial impact of the estimated costs by (1) awarding below average wage increases; (2) reducing annual costs of salary increases by "split" raises; (3) awarding the Borough's health and prescription plan proposal; and (4) adding two steps for new hires.

In assessing the financial impact of folding-in holiday pay on increased pension contributions, the arbitrator emphasized he made no finding it was creditable for pension purposes. Nonetheless, he was obligated to cost-out the economic impact in the event the Division on Pensions and Benefits (Division on Pensions) found folding-in holiday pay creditable for pension purposes. He set forth the awarded salary increases for 2008 and noted that the new base salary was the same under the awarded salary increases as it was under the Borough's proposal.⁷

⁷ Because neither party submitted salary data on step movement and longevity, the arbitrator did not consider the impact of the holiday fold-in on longevity and the compounding costs.

Using the Borough's figures, he calculated the approximate⁸ increased pension contribution cost for 2009 and 2010. The arbitrator also acknowledged that the 2008 base salary would increase by 5%, and noted that this increase, along with the 3.5% increase for 2009, would be the same amount of holiday pay the Borough had to pay under the previous CBA. Using the Borough's annual pension contribution rate and the rate increase that would occur on April 1, 2009, he calculated the increased pension contribution costs for holiday pay and the total cost in 2009 for increased pension contributions. The costs were consistent with the Borough's calculations. Again, the arbitrator balanced the financial impact by his aforementioned offsets.

The arbitrator also found that the award satisfied the interests and welfare of the public, N.J.S.A. 34:13A-16g(1), "to maintain labor harmony and high morale and to provide adequate compensation levels to attract and retain the most qualified employees[,]" and "maintain the Borough's ability to recruit and retain qualified and experienced police officers consistent with the requirements of this factor."

⁸ The calculation was approximate because it did not consider resignations, retirements, promotions or additional new hires.

The Borough and the PBA provided an extensive analysis of the comparison of the wages, salaries, hours, and condition of employment of the Borough's police officers to those of employees performing the same or similar services with other employees generally in public employment in the same or similar comparable jurisdictions. See N.J.S.A. 34:13A-16g(2)(c). Accordingly, the arbitrator focused extensively on this factor and did not compare private and public sector employment in general, N.J.S.A. 34:13A-16g(2)(a) and (b), or explain why such a comparison was not relevant.

The arbitrator gave considerable weight to the overall compensation factor, N.J.S.A. 34:13A-16g(3), in analyzing the Borough's healthcare proposal and the holiday pay fold-in. He found that the award's terms were consistent with other settlements in Bergen County and throughout the State, and maintained consistent levels of benefits.

The arbitrator also considered the parties' stipulation. See N.J.S.A. 34:13A-16g(4). He also noted that his findings with regard to lawful authority, N.J.S.A. 34:13A-16g(5), apply to his analysis of the financial impact on the governing unit, its residents and taxpayers. He found no evidence in the record that the award will cause the Borough to approach the limits of its financial authority or violate the constraints of N.J.S.A.

34:13A:16g(1), (5) and (9). He further considered the CAP laws⁹ in conjunction with N.J.S.A. 34:13A-16g(6), financial impact, and concluded there would be no adverse financial impact on the Borough, its residents and taxpayers.

As for the cost of living, N.J.S.A. 34:13A-16g(7), the arbitrator acknowledged that the base salary increases are moderately higher than the 2007 and 2008 cost of living increases; however, he found they "provide for an acceptable increase in real earnings that must be measured against the continued delivery of quality services by the Borough's police officers." He also emphasized that the Borough's final proposal was above the Consumer Price Index in 2008, and found the award provides for base salary increases that over four years "will allow for a modest increase in real earnings consistent with historical trends."

The arbitrator gave considerable weight to the continuity and stability of employment. N.J.S.A. 34:13A-16g(8). He found the new salary schedule for new hires also benefits the bargaining unit as a whole. He also found the police officer

⁹ In his decision, the arbitrator referred to L. 1976, c. 68, which was originally codified in N.J.S.A. 40A:4-45.1 to -45.6 and subjected to subsequent modifications over the years through 2009 legislation, repealing sections 40A:4-45.5 and -45.6 by L. 1987, c. 74, and L. 1977, c. 10, respectively. The current detailed cap scheme is set forth in N.J.S.A. 40A:4-45.1 to -45.47.

salaries in Bergen County to be very competitive and that Bergen County police officers are the highest paid in the State. That being so, he found that the current salary schedule that allows movement to the maximum step in four to five years will eventually undermine the parties' ability to negotiate salaries for maximum step police officers because "a significant expenditure of available funds will be needed to pay less experienced officers high salaries." Accordingly, he crafted the salary schedule in order to avert problems in future negotiations and "to ensure that experienced officers continue to receive competitive salary increases."

The arbitrator also found that the new salary schedule for new hires will produce considerable savings that will offset the cost of paying senior officer salaries, "thus, maintaining a competitive salary and the continuity and stability of employment that is essential to a productive and effective police department." He concluded these changes will not impact the Borough's ability to recruit and retain police officers because the maximum salaries on both salary schedules will remain the same.

After the arbitration hearing, the Borough sought to introduce four rebuttal exhibits and other evidence. The

arbitrator denied the request. The Borough did not seek special permission to appeal that determination.

The Borough appealed to PERC, challenging folding-in holiday pay, the two salary steps for new hires, and the \$150-per-officer annual payment for legal defense insurance. PERC concluded the arbitrator properly addressed the financial impact of folding-in holiday pay and its effect on overtime. PERC found that the arbitrator identified the initial increase to overtime costs at 5% and balanced the impact of folding-in holiday pay by his offsets.

PERC noted the arbitrator made no finding folding-in holiday-pay was creditable for pension purposes but felt obligated to cost-out the financial impact. PERC concluded the arbitrator properly addressed the financial impact and the effect on pension costs, his calculations were sound, and the evidence supported folding-in holiday pay.

PERC emphasized that the Borough presented no evidence of an economic downturn and its impact on State and local governments to the arbitrator, and the evidence the Borough presented to PERC of an economic downturn post-dated the award. Further, the Borough failed to seek special permission to appeal the arbitrator's decision to exclude the four rebuttal exhibits and other evidence, or explain this evidence, its relevance, or

what bearing it had on the state of the economy. Nonetheless, PERC stayed implementation of the award and remanded for the arbitrator to address two issues: (1) comparability to private and public sector employees in general, N.J.S.A. 34:13A-16g(2)(a) and (b); and (2) the impact of the \$1 million in projected savings from the new salary schedule for new hires based on evidence of a hiring freeze the Borough submitted to PERC.

In a supplemental decision, the arbitrator found no basis to modify the award. He analyzed and calculated the projected savings of the new salary steps for new hires in light of the hiring freeze and concluded the Borough will experience immediate savings, and there would be an even greater offset against the holiday pay fold-in than the projected savings for new hires on the new salary schedule.

The arbitrator also addressed comparability to private and public sector employees in general. He gave no weight to N.J.S.A. 34:13A-16g(2), a comparison to other employees performing the same or similar services in private employment. He found "[n]either party submitted salary data on this sub-factor since none exists[;]" "there are no easily identif[iable] private sector police officers who perform services similar to those performed by Borough police officers[;]" and "[a] police

officer's position is a uniquely public sector position that does not lend itself to private sector comparisons."

The arbitrator gave no significant weight to N.J.S.A. 34:13A-16g(2)(a), a comparison to private employment in general. He found "that the awarded salary increases, while somewhat higher than private employment salary increases in general, is acceptable when measured against the totality of the terms of the award."

In comparing public employment in general, N.J.S.A. 34:13A-16g(2)(b), the arbitrator found that the public sector salary data "shows that the average annual salary increases in public employment in general are consistent with the salary increases proposed by the Borough at 4% annually and the awarded salary increases average 3.75% annually." He concluded that this sub-factor supported the award.

PERC affirmed the award. This appeal followed. On appeal, the Borough contends PERC failed to apply the standard of review applicable to interest arbitration awards. The Borough argues, in part, that the arbitrator did not sufficiently analyze all of the statutory factors but merely provided a perfunctory analysis and conclusory assertions; improperly focused on Bergen County comparative salaries and the Borough's ability to pay; and

improperly grouped the CAP law factors together, effectively nullifying three mandatory factors.¹⁰

N.J.S.A. 34:13A-16g requires an arbitrator to "decide the dispute based on a reasonable determination of the issues, give due weight to [nine] factors . . . that are judged relevant for the resolution of the specific dispute." The arbitrator need not rely on all nine factors—only those he deems relevant.

N.J.S.A. 34:13A-16g; Hillsdale PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71, 83 (1994). The arbitrator must "indicate which of the factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor."

N.J.S.A. 34:13A-16g; see also Hillsdale, supra, 137 N.J. at 83.

Absent violation of standards of conduct, PERC's appellate role is to determine whether the arbitrator considered the criteria in N.J.S.A. [34:13A-16g] governing the issuance of an interest arbitration award and rendered a reasonable determination of the issue or issues at impasse that was supported by substantial evidence in the record.

¹⁰ We decline to address the Borough's contention, raised for the first time in its reply brief, that the adoption of P.L. 2010, Chapter 2 renders the award and successor agreement null and void because of their effect on healthcare benefits. Borough of Berlin v. Remington & Vernick Eng'rs, 337 N.J. Super. 590, 596 (App. Div.), certif. denied, 168 N.J. 294 (2001). Moreover, the Court has decided against retroactive application of legislation. See Nobrega v. Edison Glen Assocs., 167 N.J. 520, 536-38 (2001).

[Twp. of Teaneck v. Teaneck Firemen's Mut. Benev. Ass'n Local No. 42, 353 N.J. Super. 289, 306 (App. Div. 2002), (citing Hillsdale, supra, 137 N.J. at 82), aff'd o.b., 177 N.J. 560 (2003).]

Because the Legislature entrusted arbitrators with weighing the evidence, PERC will not disturb an arbitrator's exercise of discretion unless the arbitrator failed to adhere to these standards. Id. at 308-09.

PERC's interpretations of the interest arbitration laws are particularly accorded deference, Newark Firemen's Mut. Benev. Ass'n Local No. 4 v. City of Newark, 90 N.J. 44, 55 (1982), and its decision reviewing awards are likewise entitled to the full scope of deference, see Teaneck, supra, 353 N.J. Super. at 298, 300. Accordingly, "[o]ur scope of review of PERC decisions reviewing arbitration is sensitive, circumspect and circumscribed. PERC's decision will stand unless clearly arbitrary or capricious." Id. at 300 (citing In re Hunterdon Cnty. Bd. of Chosen Freeholders, 116 N.J. 322, 328 (1989); In re Twp. of Bridgewater, 95 N.J. 235, 244-45 (1984)).

Applying these standards, we discern no reason to disturb PERC's decisions. First, the Borough's contention that the award is void because the arbitrator erroneously concluded the holiday pay fold-in was creditable for pension purposes lacks merit. The arbitrator did not assume or conclude that the

holiday pay fold-in was creditable for pension purposes. He recognized, and we agree, that only the Division on Pensions can make that determination. Until such a determination is made, the holiday pay fold-in will only be creditable for all purposes as presently allowed by law.

Second, we are satisfied the arbitrator sufficiently considered and gave due weight to the N.J.S.A. 34:13A-16g factors he judged relevant, satisfactorily explained why certain factors were not relevant, and provided an adequate analysis of the evidence on each relevant factor. His reasoned analysis, as supplemented by his decision on remand, was supported by substantial credible evidence.

Finally, we are satisfied PERC applied the correct standard of review, and properly determined that the arbitrator considered the N.J.S.A. 34:13A-16g factors. PERC also rendered a reasonable determination of the issues that was supported by substantial evidence in the record, and its decision is not arbitrary or capricious.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION