



BIENNIAL REPORT

OF THE

NEW JERSEY

PUBLIC EMPLOYMENT RELATIONS COMMISSION

ON THE

POLICE AND FIRE PUBLIC INTEREST

ARBITRATION REFORM ACT, N.J.S.A. 34:13A-14, et seq.,

AS AMENDED BY P.L. 2010, c. 105 and P.L. 2014, c. 11

2024 REPORT

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INTRODUCTION & STATUTORY DEVELOPMENTS

The Police and Fire Public Interest Arbitration Reform Act (“Reform Act” or “interest arbitration law”), P.L. 1995, c. 425, N.J.S.A. 34:13A-14, et seq. took effect on January 10, 1996. P.L. 2010, c. 105, effective January 1, 2011, enacted the first major amendments to the Reform Act. Those changes included the establishment of a 2% Cap on average annual salary increases in arbitration awards, as well as fast-tracking of the interest arbitration and appeals processes. These changes are outlined in more detail in the Commission’s 2014 Biennial Report, which can be found on the Commission’s website.^{1/}

P.L. 2014, c. 11, effective April 2, 2014, continued certain provisions of P.L. 2010, c. 105 and amended others. The 2014 amendments to the Reform Act extended the 2% Cap on average annual salary increases until December 31, 2017, but allowed the 2% to be compounded annually over the contract term. The 2% Cap applied to parties whose collective negotiations agreements expired prior to or on December 31, 2017 but for whom a final settlement had not yet been reached, but expired for those parties whose agreements expired January 1, 2018 or later. P.L. 2014, c. 11 also included the following

^{1/}

<https://www.state.nj.us/perc/documents/Biennial%20Report%202%20January%202014.pdf>

changes: the first meeting with the arbitrator is a mandatory mediation session; the time to issue an award was increased from 45 to 90 days; the time to file an appeal of an award to the Commission was increased from 7 to 14 days; the time for the Commission to decide an appeal was increased from 30 to 60 days; and the maximum arbitrator fee per case was increased from \$7,500 to \$10,000. These changes are outlined in more detail in the 2016 Biennial Report.^{2/}

The Reform Act was also amended by the “Municipal Stabilization and Recovery Act,” P.L. 2016, c. 4, which added subsections N.J.S.A. 34:13A-16(i) and N.J.S.A. 34:13A-16(j) to the interest arbitration law. Those provisions allowed the state Director of the Division of Local Government Services in the Department of Community Affairs to notify the Commission that a municipality deemed “in need of stabilization and recovery” will not participate in any impasse procedures, including interest arbitration, and provide that the State Local Finance Board may subject an interest arbitration award involving such a municipality to the review and approval of the Director of Local Government Services. These changes are outlined in more detail in the 2018 Biennial Report.^{3/} This section of the interest arbitration law has not been invoked since the 2018 Biennial Report.

In 2021, the “Municipal Stabilization and Recovery Act” was amended by P.L. 2021, c. 124, which amended N.J.S.A. 34:13A-16(i) and N.J.S.A. 34:13A-16(j) to provide that they shall expire “after the first day of the sixth year next following the determination by the Commissioner of Community Affairs that the municipality shall be deemed ‘a

^{2/} <https://www.state.nj.us/perc/documents/2016%20Biennial%20Report.pdf>

^{3/} <https://www.state.nj.us/perc/documents/Biennial%20Report%202018%20with%20Appendix%20and%20Errata.pdf>

municipality in need of stabilization and recovery.” The amendments also provide that actions taken pursuant to N.J.S.A. 34:13A-16(i) and N.J.S.A. 34:13A-16(j) prior to the June 24, 2021 effective date of P.L. 2021, c. 124 “shall not be subject to reconsideration.”

Also in 2021, P.L. 2021, c. 369 amended the Reform Act’s section concerning periodic Commission review of the interest arbitration comparability guidelines. The law modified N.J.S.A. 34:13A-16.2(b) to reflect that the Commission shall review and modify the comparability guidelines “in each year in which a federal decennial census is received by the Governor.” At this time, the Commission has determined not to modify the comparability guidelines found at N.J.A.C. 19:16-5.14. Should the Commission determine that modifications are necessary, such will be promulgated via the rulemaking process which allows for public comment on any proposed changes.

This report, the fourteenth submitted under the 1995 Reform Act, reviews Commission actions in implementing and administering the statute and provides information concerning interest arbitration petitions, settlements, awards, and appeals. It is submitted pursuant to Section 7 of the Reform Act, N.J.S.A. 34:13A-16.4, which directs the Commission to:

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

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

and participants in the process may at times voice their opinions about the interest arbitration statute. The Commission considers and responds to constituent concerns as appropriate within the existing statutory framework. Substantive policy discussions about the interest arbitration statute are the province of the Legislature, labor and management representatives, and the public in general. This report describes the Commission's actions to implement and administer the Reform Act, as amended by P.L. 2010, c. 105 and P.L. 2014, c. 11, in an impartial manner and in accord with the Legislature's direction.

IMPLEMENTATION AND ADMINISTRATION OF THE REFORM ACT

Overview

This 2024 Biennial Report provides historical data and information about the implementation and impact of the interest arbitration law, with primary focus on changes and developments in the two years (2022-2023) since the previous report. For interest arbitration statistics and appeals information going back further than what is contained in this report, one may access the prior biennial reports from the Commission's website by selecting the "Biennial Reports" link under the "Reports" dropdown tab on the homepage.^{4/} Since the 2022 Biennial Report, there have been no amendments to the interest arbitration regulations promulgated by the Commission to implement the law. The regulations were amended in 2018, as discussed in the 2018 Biennial Report, and were readopted without changes in 2019. See 51 N.J.R. 1429(a). The current regulations are effective until July 29, 2026, but may be amended by the Commission as necessary or if required by subsequent statutory changes to the Reform Act. The current statute and regulations are contained in the Appendix, Tabs 1 and 2.

^{4/} <https://www.nj.gov/perc/reports/biennial/>

Special Panel of Interest Arbitrators

One of the Commission's most important responsibilities under the Act is maintaining a panel of highly qualified and experienced interest arbitrators. The Act makes it critical for the Commission to have an extremely competent panel, because it fundamentally changed the manner in which interest arbitrators are selected to hear cases. The statute requires that the Commission randomly select an arbitrator from its Special Panel of Interest Arbitrators.⁵ 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.

⁵ The Commission continues to utilize its computer program to randomly select arbitrators. The program was last certified on October 9, 2018. (Appendix, Tab 3). The Commission sought a recertification audit of the program in 2022, but no expert consultants accepted the work. Therefore, the Commission is currently exploring alternative randomized selection programs for the assignment of interest arbitrators.

Currently, the interest arbitration panel consists of seven members who meet the Commission's high standards. This is little changed from the eight members of the panel as of the 2022 Biennial Report and still marks an improvement since the 2018 and 2020 Biennial Reports, when there were only five members on the interest arbitration panel. However, recruitment and maintenance of a sufficient number of qualified interest arbitrators has continued to be a challenge since the imposition of the statutory deadlines and arbitrator fee caps of P.L. 2010, c. 105 and P.L. 2014, c. 11. This has led to availability issues as oftentimes one or more arbitrators who are randomly selected to an interest arbitration must decline the case because their regular caseloads do not allow for the addition of a potentially time-consuming and complex interest arbitration award to be issued on a limited 90-day statutory schedule. Arbitrators must choose between their regular work at their customary per diem rates or an interest arbitration case with a lower statutory \$1,000 per diem and a \$10,000 cap on the total fees. The total fee cap applies regardless of the number of days required to perform the mediation, hearing, file review, research, and writing duties necessary to complete the interest arbitration. Declining appointment to an interest arbitration case delays the process and has sometimes led to parties withdrawing their petitions and having to refile later in hopes that an arbitrator will become available. In order to maintain a sufficiently robust panel of highly qualified interest arbitrators to more efficiently serve our public employer and police and fire union constituencies, the Commission is proposing several statutory reforms to address the current issues (see Conclusion and Recommendations section).

Continuing Education Programs for Special Panel Members

As part of its responsibility to administer the Reform Act, the Commission is required by N.J.S.A. 34:13A-16.1 to conduct regular continuing education programs for the Special Panel. The Commission's most recent programs have focused on common issues and best practices in drafting interest arbitration awards, discussions of interest arbitration appeals decisions made by the Commission and courts, virtual arbitration hearing practices, and updates in municipal finance. (Appendix, Tab 4). The programs have been presented primarily by Commission staff, although outside experts are sometimes invited to give presentations on current issues in government and municipal finance. The Commission's continuing education programs also provide the annual ethics training required of interest arbitrators by N.J.S.A. 34:13A-16(e)(4). In addition to providing continuing education for current Special Panel members, the Commission has an ongoing commitment to identifying talented and experienced labor relations neutrals who have the potential to become excellent interest arbitrators. It provides supplemental education to these neutrals.

Private Sector Wage Survey

In May 1996, the Commission arranged to have the New Jersey Department of Labor and Workforce Development, Division of Labor Market and Demographic Research ("NJLWD"), prepare the annual private sector wage survey required by the Reform Act, N.J.S.A. 34:13A-16.6. The first survey, prepared in September 1996, shows calendar year changes, through December 31, 1995, in the average private sector wages of individuals covered under the State's unemployment insurance system. Statistics are broken down by county and include a statewide average. Since 1997, the surveys also

show changes in average wages by industry sector. Beginning with the 2002 survey, the NJLWD uses the North American Industry Classification System (“NAICS”) to assign and tabulate economic data by industry.^{6/} Beginning with the 2015 survey, the wage surveys include a chart depicting the changes in average annual wages for the four sectors of New Jersey workers (private, federal, state, and local) since 2003.

The two most recent annual surveys reflect wage data for calendar years 2020-2021 (2022 survey) and 2021-2022 (2023 survey) and are included in the Appendix, Tab 5.^{7/} The 2022 survey shows that from 2020-2021, private sector wages increased 3.4%, total government wages increased 1.9%, state government wages decreased 0.1%, and local government wages increased 2.4%. The 2023 survey shows that from 2021-2022, private sector wages increased 2.9%, total government wages increased 2.6%, state government wages increased 5.8%, and local government wages increased 1.5%.

AGENCY INITIATIVES

Interest Arbitration Resources and Information

As part of its statutory responsibility to administer the Reform Act, the Commission has aimed to provide the parties with a range of information enabling them to effectively participate in the interest arbitration process. In 2000, all interest arbitration awards issued after January 1996 were posted on the Commission's website, as were the Commission's interest arbitration appeal decisions. N.J.S.A. 34:13A-8.2 requires that

^{6/} NAICS is the product of a cooperative effort on the part of the statistical agencies of the United States, Canada, and Mexico. A NJLWD document attached to the 2002 through 2012 surveys describes the system and how it differs from its predecessor, the 1987 Standard Industrial Classification System.

^{7/} The 2022 survey was issued on July 11, 2022 and the 2023 survey was issued on July 6, 2023.

public employers “file with the Commission a copy of any contracts it has negotiated with public employee representatives following consummation of negotiations.” In 2006, the Commission began posting on its website all collective negotiations agreements and contract summary forms filed pursuant to a public employer’s statutory obligation to file contracts with the Commission. Contracts are searchable by employer, employee organization, employer type, and county.

The Division of Local Government Services (DLGS) has assisted the Commission in collecting collective negotiations agreements by including a question about compliance with N.J.S.A. 34:13A-8.2 in its annual “Best Practices Inventory” that each municipality must complete and achieve a minimum score on in order to secure state financial aid.^{8/} On the Calendar Year 2022 Best Practices questionnaires, 79%, or 445, of municipalities answered “Yes” to the question of whether they had filed their most recent collective negotiations agreements with the Commission. On the Calendar Year 2023 Best Practices questionnaires, 77%, or 434, of municipalities responded “Yes.”

In addition, pursuant to N.J.S.A. 34:13A-16.8(d)(2), the Commission designed a summary form which summarizes all costs and their impact associated with newly negotiated agreements. In the case of police and fire units, the summary form distinguishes between costs for base salary items, costs for other economic items, and medical insurance costs. In August 2016, the Commission revised the summary form to assist employers in accounting for all base salary items in police and fire contract

^{8/} For information about the “Best Practices” program, including the Questions, Answers, and Local Finance Notice about the program, see:
https://www.nj.gov/dca/dlgs/programs/Best_practices.shtml and
<https://www.nj.gov/dca/dlgs/lfns/2023-17.pdf>

settlements, inclusive of increments, longevity, and other salary increases. The revised Police and Fire Collective Negotiations Agreement Summary Form, Instructions, and Example are available on the Commission's website^{9/} and included in the Appendix, Tab 6. The Commission's Conciliation and Arbitration staff have increased efforts to remind public employers who submit new contracts to also submit properly completed summary forms. These efforts have been successful in increasing compliance and transparency for agreements settled without interest arbitration. In 2022, 98 public employers submitted completed police/fire summary forms to the Commission. In 2023, 54 public employers submitted completed police/fire summary forms to the Commission.

As discussed in the 2018 Biennial Report, the 2018 amendments to the interest arbitration regulations changed and codified the Commission's expedited interest arbitration scope of negotiations pilot program. These regulations provide that the Commission Chair may decide whether to issue an expedited scope of negotiations determination on issues that are actively in dispute in interest arbitration proceedings. N.J.A.C. 19:16-5.5(c)(4).^{10/} During the 2022-2023 period, the Commission did not consider any expedited scope of negotiations petitions.

^{9/}

<https://www.nj.gov/perc/documents/New%202016%20Police%20&%20Fire%20Contract%20Summary%20Form.pdf>;
<https://www.nj.gov/perc/documents/Police%20Fire%20CNA%20Summary%20Form%20Instructions%208-17-16%20B.pdf>; and
<https://www.nj.gov/perc/documents/New%202016%20Police%20&%20Fire%20Contract%20Summary%20Form%20example.pdf>

^{10/} "If the Commission Chair determines not to issue an expedited scope of negotiations ruling, then any negotiability issues pending in interest arbitration may be raised to the interest arbitrator and either party may seek a negotiability determination by the Commission as part of an appeal from an interest arbitration award." N.J.A.C. 19:16-5.5(c)(8); See N.J.A.C. 19:16-5.7(l).

Impasse Procedures for Police and Fire Contract Negotiations

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

In the most recent biennial period (2022-2023), 22 impasse petitions were filed in police or fire units. That is similar to the 26 impasse petitions filed in 2020-2021 and 25 impasse petitions filed in 2018-2019. For comparison, there were 34 impasse petitions filed in 2014-2015, but only 16 filed in 2016-2017. Of the 22 impasse petitions filed from 2022-2023, 13 contracts were settled without proceeding to interest arbitration, and 9 have not yet resolved their contracts in mediation.

INTEREST ARBITRATION PETITIONS, AWARDS, AND SETTLEMENTS

Statistical Overview

The following chart reflects the number of petitions filed, arbitrators appointed, and awards issued each year under the interest arbitration law from 2016 through 2023. Note

that in some cases, petitions filed in one year might have had their arbitrators appointed or decisions issued in a later year. Furthermore, awards that were appealed and resulted in a remand award are reported as being issued in the year the remand award issued.

Calendar Year	2016	2017	2018	2019	2020	2021	2022	2023
IA Petitions Filed	9	29	12	17	17	19	20	23
Arbitrators Appointed	14	13	22	15	17	16	19	23
IA Voluntary Settlements	7	5	16	6	4	6	7	12
IA Awards Issued	8	4	2	6	4	7	9	5

As we noted in the previous four Biennial Reports, the number of interest arbitration petitions filed decreased significantly following the January 1, 2011 effective date of the initial 2% Cap law. 2014 was an outlier in that trend attributable to 74 filings made within a few days of the April 1, 2014 expiration of P.L. 2010, c. 105. After the enactment of the amended 2% Cap law in 2014, interest arbitration filings again significantly decreased. Since 2016, annual interest arbitration filings have ranged from a low of 9 to a high of 29, with the numbers of 2022 and 2023 filings falling in between those points (20 and 23, respectively), a slight increase since 2020-2021.

The number of interest arbitration awards issued over the last two years remained low (9 in 2022; 5 in 2023) as in the prior few biennial periods. As noted in the previous four Biennial Reports, the average number of awards in the initial three years that the 2% Cap law was in effect (2011-2013) was approximately 32, which was double the average number of awards (16) in the three years prior to the 2% Cap (2008-2010). However, from 2016-2023, the average annual number of awards decreased significantly to an average of less than 6 per year.

The number of voluntary settlements made after filing for interest arbitration has remained significantly lower than prior to 2011, with 7 such settlements in 2022 and 12 in 2023. The average numbers of these “IA Voluntary Settlements” in the three years prior to the initial 2% Cap law (2008-2010) was approximately 48, which decreased by about half to 25 per year in the initial three years after the 2% Cap law, and has now decreased further to an average of less than 8 per year from 2016-2023.

For the years 2016-2023, the average annual salary increases in interest arbitration awards were:^{11/}

Year	IA Awards (non-2% Cap)	IA Awards (2% Cap)	IA Awards TOTAL*
2016	3.83%	1.94%	2.65%
2017	1.64%	2.05%	1.74%
2018	N/A	2.01%	2.01%
2019	3.62%	2.06%	3.36%
2020	1.72%	N/A	1.72%
2021	2.59%	N/A	2.59%
2022	2.29%	2.04%	2.26%
2023	3.79%	N/A	3.79%

* The “IA Awards TOTAL” average annual salary increase percentages do not simply average the first two columns (the “IA Awards non-2% Cap” and “IA Awards 2% Cap” averages), but are appropriately weighted for the numbers of non-2% Cap and 2% Cap interest arbitration awards in that year.

^{11/} Awards subject to the 2% Cap include all base salary items such as salary increments/steps and longevity pay, while the non-2% Cap awards may or may not include such increases. Note that 2% Cap awards following the 2014 amendments allowed for 2% annually compounded average salary increases.

In 2022 and 2023, the average annual salary increases in interest arbitration awards were 2.26% and 3.79%, respectively. There was one interest arbitration award subject to the 2% Cap over those years, which reflects the expiration and continued phase out of the applicability of the 2% Cap.^{12/} The numbers of IA Awards in each year from 2012-2023 along with the average annual salary increases can be seen in the Appendix, Tab 7, while the numbers for 2003-2011 are in the Appendix, Tab 8.

As for voluntary settlements made after filing for interest arbitration, the average annual salary increases from 2016-2023 were:^{13/}

Year	IA Voluntary Settlements
2016	2.69%
2017	1.86%
2018	1.75%
2019	1.64%
2020	2.05%
2021	1.61%
2022	2.51%
2023	2.53%

^{12/} “[A]fter December 31, 2017, the provisions of section 2 of P.L.2010, c.105 (C.34:13A-16.7) shall become inoperative for all parties except those whose collective negotiations agreements expired prior to or on December 31, 2017 but for whom a final settlement has not been reached.” N.J.S.A. 34:13A-16.9.

^{13/} The average annual salary increases in IA Voluntary Settlements may or may not include increases due to increments/steps and longevity.

The average annual salary increases in IA Voluntary Settlements were 2.51% in 2022 and 2.53% in 2023. The numbers of IA Voluntary Settlements in each year from 2012-2023 along with the average annual salary increases can be seen in the Appendix, Tab 7, while the numbers for 2003-2011 are in the Appendix, Tab 8.

The Commission also continues to collect data concerning average annual salary increases in police and fire contracts that settled without filing for interest arbitration. As discussed earlier, employer submission of the modified 2016 summary form outlining contract costs enables the Commission to report average salary increases for such non-IA settlements. The Commission received 98 police/fire non-IA settlement summary forms in 2022 and 54 in 2023. The average annual salary increases in non-IA settlements were 4.20% in 2022 and 5.37% in 2023. Those figures, like 2% Cap awards, include increases due to increments/steps and longevity as accounted for on the summary forms.

INTEREST ARBITRATION APPEALS

The following chart reflects the numbers of interest arbitration appeals and their dispositions from 2016-2023. Some cases may have been appealed and disposed in different calendar years. Also, some cases were initially remanded by the Commission and subsequently had their remand awards affirmed after the Commission retained jurisdiction rather than require a party to file a new appeal of the remand award. Therefore, a single appeal may result in both a remand and an ultimate affirmance being reflected in the chart below.

Calendar Year	2016	2017	2018	2019	2020	2021	2022	2023
Appeals to Commission	6	2	0	2	1	3	3	5
Appeals Withdrawn	2	0	0	0	0	0	2	2

Appeals Dismissed	0	0	0	0	0	0	1	0
Awards Affirmed	0	2	0	2	0	3	0	3
Awards Modified	1	0	0	0	0	0	0	0
Awards Remanded	3	0	0	0	0	4	0	0
Appeals to Appellate Division	1	0	1	1	0	0	0	0
Petition for Certif. to Supreme Court	1	0	1	0	0	0	0	0

Appeals of interest arbitration awards to the Commission have continued to remain low following the spike seen in 2012 following the passage of P.L. 2010, c. 105. There were three interest arbitration appeals to the Commission in 2022 and five in 2023. Of those eight appeals, four were withdrawn, one was dismissed for being filed prematurely,^{14/} one resulted in an unbreakable tie vote before the Commission (which effectively left the award in place unchanged), and two were affirmed. Although the Commission considers and decides interest arbitration appeals within the 60-day statutory time frame, adherence to this deadline often requires the addition of a special Commission meeting because the deadline falls between two regularly scheduled Commission meetings. Due to the complexity of the issues raised by the parties in these cases, and often voluminous records, Commission staff must set aside other regular Commission cases to prioritize comprehensive review of the interest arbitration appeal within the statutory time constraints. As the 60-day interest arbitration appeals period requires significant dedication of Commission resources and can create scheduling difficulties by requiring the Commission to convene for additional special meetings in

^{14/} See Collingswood Bor., P.E.R.C. No. 2023-30, 49 NJPER 367 (¶189 2023).

between regular meetings, the Commission recommends that it be extended. (See Conclusion and Recommendations section). The Commission's interest arbitration appeal decisions issued in 2022-2023 are summarized below and included in full in the Appendix, Tab 9.

In State of New Jersey, P.E.R.C. No. 2024-36, 50 NJPER 344 (¶81 2024), the State asserted that the arbitrator improperly awarded a provision allowing union officials to request unpaid, full-time union leave and a provision increasing union leave hours. The Commission found that the State's claim that the union leave provision is statutorily preempted and therefore not negotiable is time-barred by N.J.A.C. 19:16-5.5(c), which requires negotiability objections to be raised within certain timeframes in the interest arbitration process. The Commission further found that the arbitrator's award regarding the increase of union leave hours was based on substantial credible evidence in the record, rather than inadmissible settlement discussions. The award was affirmed.

In City of Paterson, P.E.R.C. No. 2024-41, 50 NJPER 360 (¶86 2024), the union (PFOA) asserted that the arbitrator improperly rejected its revised final offers, mistakenly awarded its health benefits proposal, and failed to properly apply the 16g statutory factors in his consideration of external comparables and the City's receipt of transitional aid. The PFOA also asserted the award was not final and definite because it did not provide language to combine the three units' prior contracts into a single new collective negotiations agreement (CNA). The Commission found that the arbitrator properly dismissed the PFOA's revised final offers for making substantive changes instead of just providing specific language for the proposals it already submitted. The Commission further found that the arbitrator did not mistakenly award the PFOA's health benefits

proposal, that he explained the weight he afforded to the statutory factors including external comparables and the financial impact of the City's receipt of transitional aid, and that he did not err by leaving to the parties the ministerial task of combining previous contract language into a single CNA. The award was affirmed.

Finally, although it arose through a scope of negotiations petition, Burlington Cty., P.E.R.C. No. 2023-13, 49 NJPER 244 (¶55 2022), concerned the County's attempt to re-open a final interest arbitration award to clarify a disputed issue that was the subject of a PBA grievance. The Commission held that, as neither party appealed the interest arbitration award pursuant to N.J.S.A. 34:13A-16f(5)(a), there was no statutory basis for restraining binding grievance arbitration and remanding the dispute to the interest arbitrator. By law, the award had become final and binding upon the parties and was to be implemented immediately, even if the parties had not yet converted its terms into a collective negotiations agreement. N.J.S.A. 34:13A-16f(5). Accordingly, once the 14-day statutory appeal period expired, those terms of employment set forth in the award became enforceable by either party according to their negotiated grievance procedure or via an enforcement action in Superior Court pursuant to N.J.S.A. 34:13A-19.

CONCLUSION AND RECOMMENDATIONS

It has been twenty-nine years since the passage of the Reform Act and ten and fourteen years, respectively, since the last major amendments to that Act. The Commission administers the Reform Act by encouraging pre-arbitration mediation and by striving to maintain a highly qualified Special Panel of Interest Arbitrators who are provided with pertinent continuing education. As discussed in the Special Panel of Interest Arbitrators section of this Report, recruitment and maintenance of a sufficient

number of qualified interest arbitrators has continued to be a challenge since the imposition of the statutory deadlines and arbitrator fee caps. Assigning arbitrators is challenging as appointments are often declined due to the scheduling difficulties of hearing a case and issuing a decision within the 90-day statutory time frame. Many arbitrators' calendars are set months in advance. Additionally, interest arbitrators who accept a case are statutorily limited to \$1,000 per diem and \$10,000 for the entire case. The interest arbitration panel's average grievance arbitration per diem is \$2,181.00. Finally, the statutory 60-day time frame for interest arbitration appeals requires significant reallocation of staff resources and often necessitates additional special Commission meetings. Based on these identified issues in administering the Interest Arbitration Reform Act, the Commission recommends the following statutory changes:

1. Increase the time for issuance of the interest arbitration award from 90 days after filing the petition to 120 days after filing. (See N.J.S.A. 34:13A-16f(5)).
2. Allow the Commission discretion to grant an interest arbitrator's requests for extensions of time to issue the award, if the Commission determines it is warranted under the circumstances. Extensions, if granted, shall be limited to 60 days cumulatively, such that the proposed new 120-day time frame cannot be extended beyond 180 days.
3. Increase the \$1,000 interest arbitrator per diem rate, as well as the \$10,000 maximum fee per case. (See N.J.S.A. 34:13A-16f(6)).
4. Increase the time for the Commission to issue a decision on an appeal of an interest arbitration award, from 60 days to 90 days. (See N.J.S.A. 34:13A-16f(5)(a)).

APPENDIX

TAB

Police and Fire Public Interest Arbitration Reform Act, <u>N.J.S.A. 34:13A-14 et seq.</u>.....	1
<u>N.J.A.C. 19:16-1.1 et seq.</u> (Interest Arbitration rules).....	2
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BIENNIAL REPORT

TAB 1

L. 1941, c. 100, p. 231, 9; Amended by L. 1945, c. 32, p. 89, 2; L. 1967, c. 110, 1, eff. June 15, 1967.

§ 34:13A-10. Disqualifications

No member or officer of the board having any financial or other interest in a trade, business, industry or occupation in which a labor dispute exists or is threatened and of which the board has taken cognizance, shall be qualified to participate in any way in the acts or efforts of the board in connection with the settlement or avoidance thereof.

L. 1941, c. 100, p. 232, 10.

§ 34:13A-10.1. Board members; participation; membership or employment in other agencies

No member of the board shall take any part, directly or indirectly, in any proceeding involving any relation between employees and employers before any board, bureau, commission, officer or court, unless such member in such proceeding takes the part of the same group whether employees, employers, or the public, as he represents on the Board of Mediation.

No member of the board shall be a member or employee of any other public board, body, commission, bureau or agency which deals with employer and employee relations, whether Federal, State or local, except that he may be a member of any such board, body, commission, bureau or agency if his membership thereon is as a representative of the same group, whether employees, employers or the public, as it is on the Board of Mediation.

L. 1945, c. 32, p. 90, 3.

§ 34:13A-11. Rules

The board shall have power to adopt, alter, amend or repeal such rules in connection with the voluntary mediation of labor disputes in private employment and the commission shall have the same powers in public employment, as may be necessary for the proper administration and enforcement of the provisions of this act.

L. 1941, c. 100, p. 232, 11; Amended by L. 1968, c. 303, 13, eff. July 1, 1968.

§ 34:13A-12. Construction

Nothing contained in this act shall be construed as interfering with, impeding or diminishing in any way any right guaranteed by law or by the Constitution of the State or of the United States.

L. 1941, c. 100, p. 232, 12.

§ 34:13A-13. Separability of provisions

If any clause, sentence, paragraph or part of this act, or the application thereof to any person or circumstances, shall for any reason be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this act, and the application of such provisions to other persons or circumstances, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof, directly involved in the controversy in which such judgment shall have been rendered and to the person or circumstances involved. It is hereby declared to be the legislative intent that this act would have been adopted had such invalid provisions not been included herein.

L. 1941, c. 100, p. 232, 13.

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

The Legislature finds and declares:

- a. Recognizing the unique and essential duties which law enforcement officers and firefighters perform for the benefit and protection of the people of this State, cognizant of the life threatening dangers these public servants regularly confront in the daily pursuit of their public mission, and fully conscious of the fact that these public employees, by legal and moral precept, do not enjoy the right to strike, it is the public policy of this State that it is requisite to the high morale of such employees, the efficient operation of such departments, and to the general well-being and benefit of the citizens of this State to afford an alternate, expeditious, effective and binding procedure for the resolution of disputes; and
- b. It also is the public policy of this State to ensure that the procedure so established fairly and adequately recognizes and gives all due consideration to the interests and welfare of the taxpaying public; and
- c. Further, it is the public policy of this State to prescribe the scope of the authority delegated for the purposes of this reform act; to provide that the authority so delegated be statutorily limited, reasonable, and infused with stringent safeguards, while at the same time affording arbitrators the decision making authority necessary to protect the public good; and to mandate that in exercising the authority delegated under this reform act, arbitrators fully recognize and consider the public interest and the impact that their decisions have on the public welfare, and fairly and reasonably perform their statutory responsibilities to the end that labor peace between the public employer and its employees will be stabilized and promoted, and that the general public interest and welfare shall be preserved; and, therefore,
- d. To that end the provisions of this reform act, providing for compulsory arbitration, shall be liberally construed.

L. 1977, c. 85, § 1; amended 1995, c. 425, § 2.

§ 34:13A-14a. Short title [Police and Fire Public Interest Arbitration Reform Act]

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

L. 1995, c. 425, § 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 police officers in the Division of Fish and Wildlife in the Department of Environmental Protection, State park police officers, 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, 2, eff. May 10, 1977; amended by 2019, c. 407, § 16, effective April 1, 2020.

§ 34:13A-16. Negotiations between public fire, police department and exclusive representative; unfair practice charge; negotiation; fact-finding; 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. Factfinding shall be limited to those issues that are within the required scope of negotiations unless the parties to the factfinding agree to factfinding on permissive subjects of negotiation.

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

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

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

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

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

e.

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

(2) Applicants for initial appointment to the commission's special panel of arbitrators shall be chosen based on their professional qualifications, knowledge, and experience, in accordance with the criteria and rules adopted by the commission. Such rules shall include relevant knowledge of local government operations and budgeting. Appointment to the commission's special panel of arbitrators shall be for a three-year term, with reappointment contingent upon a screening process similar to that used for determining initial appointments. Arbitrators currently serving on the panel shall demonstrate to the commission their professional qualification, knowledge and experience, in accordance with the criteria and rules adopted by the commission, within one year of the effective date [January 1, 2011] of this act [P.L.2010, c. 105]. 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 Disputes" of the National Academy of Arbitrators, the American Arbitration Association, and the Federal Mediation and Conciliation Service.

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

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

f.

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

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

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

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

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

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

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

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

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

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

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

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

(6) The parties shall share equally the costs of arbitration subject to a fee schedule approved by the commission. The fee schedule shall provide that the cost of services provided by the arbitrator shall not exceed \$1,000 per day. The total cost of services of an arbitrator shall not exceed \$10,000. If the parties cancel an arbitration proceeding without good cause, the arbitrator may impose a fee of not more than \$ 500. The parties shall share equally in paying that

fee if the request to cancel or adjourn is a joint request. Otherwise, the party causing such cancellation shall be responsible for payment of the entire fee.

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

- (1) The interests and welfare of the public. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by P.L.1976, c.68 (C.40A:4-45.1 et seq.).
- (2) Comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally:
 - (a) In private employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.
 - (b) In public employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.
 - (c) In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L.1995, c.425 (C.34:13A-16.2); provided, however, that each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.
- (3) The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received.
- (4) Stipulations of the parties.
- (5) The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by P.L.1976, c.68 (C.40A:4-45.1 et seq.).
- (6) The financial impact on the governing unit, its residents, the limitations imposed upon the local unit's property tax levy pursuant to section 10 of P.L.2007, c.62 (C.40A:4-45.45), and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take into account, to the extent that evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the

percentage of the municipal purposes element or, in the case of a county, the county purposes element, required to fund the employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers of the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in a proposed local budget.

- (7) The cost of living.
 - (8) The continuity and stability of employment including seniority rights and such other factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours, and conditions of employment through collective negotiations and collective bargaining between the parties in the public service and in private employment.
 - (9) Statutory restrictions imposed on the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by section 10 of P.L.2007, c.62 (C.40A:4-45.45).
- h. A mediator, factfinder, or arbitrator while functioning in a mediatory capacity shall not be required to disclose any files, records, reports, documents, or other papers classified as confidential received or prepared by him or to testify with regard to mediation, conducted by him under this act on behalf of any party to any cause pending in any type of proceeding under this act. Nothing contained herein shall exempt such an individual from disclosing information relating to the commission of a crime.
- i. The Director of the Division of Local Government Services in the Department of Community Affairs may notify the commission, through the Division of Public Employment Relations, that a municipality deemed a "municipality in need of stabilization and recovery" pursuant to section 4 of P.L.2016, c.4 (C.52:27BBBB-4) will not participate in any impasse procedures authorized by this section. Upon such notice, any pending impasse procedures authorized by this section shall immediately cease, and any pending petition for arbitration shall be vacated. Nothing in this subsection shall be construed to limit the scope of any general or specific powers of the Local Finance Board or the director set forth in P.L.2016, c.4 (C.52:27BBBB-1 et al.).
- The provisions of this subsection shall no longer be applicable on and after the first day of the sixth year next following the determination by the Commissioner of Community Affairs that the municipality shall be deemed "a municipality in need of stabilization and recovery" pursuant to section 4 of P.L.2016, c.4 (C.52:27BBBB-4); however, actions taken pursuant to this subsection prior to the effective date [June 24, 2021] of P.L.2021, c.124 shall be final and shall not be subject to reconsideration.
- j. The Local Finance Board may provide that any arbitration award, including but not limited to an interest arbitration award, involving a municipality deemed a "municipality in need of stabilization and

recovery” pursuant to section 4 of P.L.2016, c.4 (C.52:27BBBB-4) shall be subject to the review and approval of the Director of the Division of Local Government Services in the Department of Community Affairs, including those on a collective negotiations agreement where the matter has been submitted to an arbitrator pursuant to law, and no such award shall be binding without the approval of the director. Nothing in this subsection shall be construed to limit the scope of any general or specific powers of the Local Finance Board or the director set forth in P.L.2016, c.4 (C.52:27BBBB-4).

The provisions of this subsection shall no longer be applicable on and after the first day of the sixth year next following the determination by the Commissioner of Community Affairs that the municipality shall be deemed “a municipality in need of stabilization and recovery” pursuant to section 4 of P.L.2016, c.4 (C.52:27BBBB-4); however, actions taken pursuant to this subsection prior to the effective date [June 24, 2021] of P.L.2021, c.124 shall be final and shall not be subject to reconsideration.

L. 1977, c. 85, § 3; amended 1995, c. 425, § 3; 1997, c. 183, § 1; 2007, c. 62, § 14, eff. Apr. 3, 2007; 2010, c. 105, § 1, eff. Jan. 1, 2011; 2014, c. 11, § 1, eff. June 24, 2014, retroactive to April 2, 2014; 2016, c. 4, § 6, effective May 27, 2016; 2021, c. 124, § 5, effective June 24, 2021.

§ 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, § 4.

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

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

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

L. 1995, c. 425, § 5; 2021, c. 369, § 2, eff. January 12, 2022, retroactive to July 1, 2021.

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

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

L. 1995, c. 425, § 6.

§ 34:13A-16.4. Biennial reports

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

L. 1995, c. 425, § 7.

§ 34:13A-16.5. Rules, regulations

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

L. 1995, c. 425, § 8.

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

Beginning on the July 1 next following the enactment of P.L.1995, c.425 (C.34:13A-14a et al.) and each July 1 thereafter, the New Jersey Public Employment Relations Commission shall perform, or cause to be performed, a survey of private sector wage increases for use by all interested parties in public sector wage negotiations. The survey shall include information on a Statewide and countywide

basis. The survey shall be completed by September 1 next following enactment and by September 1 of each year thereafter. The survey shall be a public document and the commission shall make it available to all interested parties at a cost not exceeding the actual cost of producing the survey.

L. 1995, c. 425, § 9.

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

a. As used in this section:

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

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

b. An arbitrator shall not render any award pursuant to section 3 of P.L.1977, c.85 (C.34:13A-16) which, in the first year of the collective negotiation agreement awarded by the arbitrator, increases base salary items by more than 2.0 percent of the aggregate amount expended by the public employer on base salary items for the members of the affected employee organization in the twelve months immediately preceding the expiration of the collective negotiation agreement subject to arbitration. In each subsequent year of the agreement awarded by the arbitrator, base salary items shall not be increased by more than 2.0 percent of the aggregate amount expended by the public employer on base salary items for the members of the affected employee organization in the immediately preceding year of the agreement awarded by the arbitrator.

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

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

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

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

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

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

c. All appointments shall be made within 30 days of the effective date [Jan. 1, 2011] 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 [Jan. 1, 2011] of P.L.2010, c.105 (C.34:13A-16.7 et al.) and shall meet thereafter at the call of its chair. In furtherance of its evaluation, the task force may hold public meetings or hearings within the State on any matter or matters related to the provisions of this act, and call to its assistance and avail itself of the services of the Public Employment Relations Commission and the employees of any State department, board, task force or agency which the task force determines possesses relevant data, analytical and professional expertise or other resources which may assist the task force in discharging its duties under this act. Each department, board, commission or agency of this State is hereby directed, to the extent not inconsistent with law, to cooperate fully with the task force and to furnish such information and assistance as is necessary to accomplish the purposes of this act. In addition, in order to facilitate the work of the task force, the Public Employment Relations Commission shall post on its website all collective negotiations agreements and interest arbitration awards entered or awarded after the date of enactment, including a summary of contract or arbitration award terms in a standard format developed by the Public Employment Relations Commission to facilitate comparisons. All collective negotiations agreements shall be submitted to the Public Employment Relations Commission within 15 days of contract execution.

e.

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

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

f. The task force shall annually report its findings, along with any recommendations it may have, to the Governor and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature. The task force's final report due on or before December 31, 2017 shall include, in addition to any other findings and recommendations, a specific recommendation for any amendments to the arbitration award cap. Upon the filing of its final report on or before December 31, 2017, the task force shall expire.

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

§ 34:13A-16.9. Effective date

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

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

§ 34:13A-17. Powers of arbitrator

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

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

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

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

L. 1977, c. 85, § 5; amended 1997, c. 330, § 4.

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

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

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

§ 34:13A-20. [Repealed]

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

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

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

BIENNIAL REPORT

TAB 2

CHAPTER 16

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

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SUBCHAPTER 1. PURPOSE OF PROCEDURES

19:16-1.1 Purpose of procedures

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

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

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

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

SUBCHAPTER 2. COMMENCEMENT OF NEGOTIATIONS

19:16-2.1 Commencement of negotiations

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

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

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

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

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

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

SUBCHAPTER 3. MEDIATION

19:16-3.1 Initiation of mediation

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

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

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

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

4. The dates and duration of negotiations sessions;

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

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

7. Whether the request is a joint request; and

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

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

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

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

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

19:16-3.2 Appointment of a mediator

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

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

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

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

19:16-3.3 Mediator's function

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

19:16-3.4 Mediator's confidentiality

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

19:16-3.5 Mediator's report

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

1. A statement of the dates and duration of the meetings which have been held and their participants;
2. A brief description of the unresolved issues which existed at the beginning of the mediation effort;
3. A statement of the issues which have been resolved through mediation;
4. A statement of the issues which are still unresolved if any; and
5. A statement setting forth any other relevant information in connection with the mediator's involvement in the performance of his or her functions.

SUBCHAPTER 4. FACT-FINDING

19:16-4.1 Initiation of fact-finding

(a) If the parties fail to resolve the impasse through mediation, the public employer, the employee representative, or the parties jointly may request the Director of Conciliation and Arbitration, in writing, to invoke fact-finding and upon

receipt of such request, fact-finding with recommendations for settlement shall be invoked. An original and four copies of such request shall be filed with the Director of Conciliation and Arbitration, together with proof of service upon the other party. The request shall be signed and dated and shall contain the following information:

1. The name and address of the public employer that is a party to the collective negotiations; the name, address, telephone number, and title of its representative to be contacted; and the name, address and telephone number of any attorney/consultant representing the public employer;
2. The name and address of the exclusive representative that is a party to the collective negotiations; the name, address, telephone number, and title of its representative to be contacted; and the name, address and telephone number of any attorney/consultant representing the exclusive representative;
3. A description of the collective negotiations unit, including the approximate number of employees in the unit;
4. The name of the mediator;
5. The number and duration of mediation sessions;
6. The date of the last mediation effort;
7. Whether the request is a joint request; and
8. A detailed statement of the facts giving rise to the request, including all issues in dispute.

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

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

1. Any additional unresolved issues to be submitted to the fact-finder;
2. A statement as to whether it refuses to submit any of the issues listed on the request to fact-finding on the ground that such issue is not within the required scope of negotiations; and
3. Any other relevant information with respect to the nature of the impasse.

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

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

19:16-4.2 Appointment of a fact-finder

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

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

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

19:16-4.3 Fact-finder's function

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

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

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

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

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

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

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

SUBCHAPTER 5. COMPULSORY INTEREST ARBITRATION

19:16-5.1 Scope of compulsory interest arbitration

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

19:16-5.2 Initiation of compulsory interest arbitration

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8. Whether the request is a joint request;

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

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

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

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

19:16-5.4 Conventional arbitration to be terminal procedure

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19:16-5.7 Conduct of the arbitration proceeding

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

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

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

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

(e) The arbitrator may administer oaths, conduct hearings, and require the attendance of such witnesses and the production of such books, papers, contracts, agreements, and documents as the arbitrator may deem material to a just determination of the issues in dispute, and for such purpose may issue subpoenas and shall entertain any motions to quash such subpoenas. Any

hearings conducted shall not be public unless all parties agree to have them public.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19:16-5.8 Stenographic record

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

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

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

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

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

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

19:16-5.9 Opinion and award

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

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

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

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

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

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

ruling, the party shall pay a \$ 75.00 fee. Fees shall be paid by checks made payable to the "State of New Jersey"; purchase orders may be submitted.

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

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

19:16-5.11 Cost of arbitration

- (a) The costs of services performed by the arbitrator shall be borne equally by the parties. Each party shall pay its share of the arbitrator's fee within 60 days of receipt of the arbitrator's bill or invoice.
- (b) The fee for services provided by the arbitrator shall not exceed \$1,000 per day, or such other amount that may be prescribed by N.J.S.A. 34:13A-14 et seq. The total cost of services provided by an arbitrator shall not exceed \$10,000, or such other amount that may be prescribed by N.J.S.A. 34:13A-14 et seq.
- (c) An assessment of not more than \$500.00 may be imposed by the arbitrator if a proceeding is cancelled without good cause. If the parties jointly cancel the proceeding the fee will be shared. Otherwise the party causing the cancellation or adjournment shall be responsible for payment of the entire fee.

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

- (a) At the time a joint petition to initiate interest arbitration is filed pursuant to N.J.A.C. 19:16-5.2, each party shall pay a \$175.00 fee. If the petition is filed by one party only, then the petitioning party shall pay a \$ 175.00 fee upon filing the petition and the non-petitioning party shall pay a \$175.00 fee upon filing its response to the petition pursuant to N.J.A.C. 19:16-5.5.
- (b) The petition shall not be processed until the petitioning party pays the filing fee of \$175.00.
- (c) Fees shall be paid by checks made payable to the "State of New Jersey"; purchase orders may be submitted.

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

At the time a party files a notice of appeal of an interest arbitration award with the Commission, the appealing party shall pay a \$200.00 fee. At the time a party files a notice of cross-appeal of an interest arbitration award with the Commission, the cross-appealing party shall pay a \$200.00 fee. At the time a party files with the Commission a request for special permission to appeal an interlocutory order or

19:16-5.14 Comparability guidelines

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

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

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

1. Wages, salaries, hours and conditions of employment of law enforcement officers and firefighters;
2. Wages, salaries, hours and conditions of employment of non-uniformed employees in negotiations units;
3. Wages, salaries, hours and conditions of employment of employees not in negotiations units;
4. History of negotiations:
 - i. Relationships concerning wages, salaries, hours and conditions of employment of employees in police and fire units; and
 - ii. History of differentials between uniformed and non-uniformed employees;
5. Pattern of salary and benefit changes; and
6. Any other considerations deemed relevant by the arbitrator.

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

1. Geographic:
 - i. Neighboring or overlapping jurisdictions;
 - ii. Nearby jurisdictions;
 - iii. Size; and
 - iv. Nature of employing entity.
2. Socio-economic considerations:
 - i. Size, density, and characteristics of population;
 - ii. Per capita income;
 - iii. Average household income;
 - iv. Average property values;
 - v. Gain or loss of assessed value;
 - vi. Ratable increases/decreases from year to year;
 - vii. Tax increases/decreases over last few years;
 - viii. Cost-of-living (locally);
 - ix. Size and composition of police force or fire department;
 - x. Nature of services provided;
 - xi. Crime rate;
 - xii. Violent crime rate;
 - xiii. Fire incident rate; and
 - xiv. Fire crime rate.

3. Financial considerations:

i. Revenue:

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

- iii. Trends in revenues and expenditures;
- 4. Compensation and other conditions of employment:
 - i. Relative rank within jurisdictions asserted to be comparable;
 - ii. Wage and salary settlements of uniformed employees;
 - iii. Wage and salary settlements of non-uniformed employees in negotiations units;
 - iv. Wage and salary settlements of employees not in negotiations units;
 - v. Top step salaries;
 - vi. Overall compensation:
 - (1) Wage and salaries;
 - (2) Longevity;
 - (3) Holidays;
 - (4) Vacations;
 - (5) Uniform allowance;
 - (6) Medical and hospitalization benefits;
 - (7) Overtime;
 - (8) Leaves of absence;
 - (9) Pensions; and
 - (10) Other retiree benefits;
 - vii. Work schedules;
 - viii. Work hours;
 - ix. Workload:
 - (1) Number of calls or runs per officer; and
 - (2) Other relevant standards for measuring workload; and
 - x. Other conditions of employment; and
- 5. Any other comparability considerations deemed relevant by the arbitrator.

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

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

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

1. Ability to write a well-reasoned decision consistent with applicable legal standards and within statutory deadlines;
2. Knowledge of labor relations, governmental and fiscal principles relevant to dispute settlement and interest arbitration proceedings;
3. Substantial experience both as a mediator and arbitrator; and
4. Competent performance on the Commission's mediation, fact-finding and grievance arbitration panels.

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

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

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

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

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

3. Demonstrated experience as a public or private sector grievance arbitrator involving the ability to decide complex and difficult labor relations issues in a fair and objective manner. Experience shall be evaluated by a review of the

cases where an applicant served as a grievance arbitrator and the quality of the applicant's work product in those cases.

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

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

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

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

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

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

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

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

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

1. The issuance of well-reasoned, legally sound, and timely awards;
2. Compliance with statutory standards and deadlines; case law requirements; agency regulations, rules, policies, administrative memoranda, and reporting procedures; and
3. Any other applicable requirements.

(f) An applicant for reappointment shall also have abided by the Code of Professional Responsibility for Interest Arbitrators adopted by the New Jersey Public Employment Relations Commission; the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes adopted by the National Academy of Arbitrators, American Arbitration

Association, and Federal Mediation and Conciliation Service; and the Code of Professional Conduct for Labor Mediators adopted by the Association of Labor Relations Agencies and the Federal Mediation and Conciliation Service. An applicant for reappointment shall also have attended the Commission's continuing education programs, as directed, per N.J.S.A. 34:13A-16.1.

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

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

1. Served as an advocate for labor or management in the public or private sector;
2. Been elected or appointed to a political office or a governing body; or
3. Has served in a partisan political capacity.

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

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

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

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

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

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

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

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

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

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

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

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

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

SUBCHAPTER 6. DETERMINATION OF DISPUTES OVER ISSUE DEFINITION

19:16-6.1 Purpose of procedure

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

19:16-6.2 (Reserved)

SUBCHAPTER 7. FAILURE TO SUBMIT A NOTICE OR OTHER DOCUMENT

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

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

SUBCHAPTER 8. APPEALS

19:16-8.1 Appeals and cross-appeals

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

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

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

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

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

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

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

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

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

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

19:16-8.2 Oral argument

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

19:16-8.3 Action by the Commission

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

¹ Title 19, Chapter 16 -- Chapter Notes

CHAPTER AUTHORITY:

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

SOURCE AND EFFECTIVE DATE:

Effective: July 29, 2019

See: 51 N.J.R. 1429(a).

EXPIRATION DATE:

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 16, Negotiations, Impasse Procedures, and Compulsory Interest Arbitration of Labor Disputes in Public Fire and Police Departments, expires on July 29, 2026.

BIENNIAL REPORT

TAB 3

New Jersey Public Employment Relations Commission

Interest Arbitrator By-Lot Selection
Program:

Random Number Generation
Testing for Re-Certification

By

Francis A. Steffero, PhD

October 9, 2018

I. INTRODUCTION

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

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

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

The PERC computer assisted system to assign interest arbitrators was re-tested in 2011 (Steffero, 2011) to confirm that the computer assisted system continues to confirm compliance with the interest arbitrator appointment procedures amended by L. 2010 c. 105 effective January 1, 2011 to assign interest arbitrators in a random manner. Re-testing continued in 2014 (Steffero, 2014) to confirm that the PERC computer assisted system assigns interest arbitrators in a random manner. The results of prior studies (Steffero, 2005, 2009, 2011, 2014) confirmed that the random number generator provided by IBM in Lotus Script generated numbers in a random manner and that the Lotus Script programming provided by Specialty Systems Inc. (SSI) selected interest arbitrators in a random manner.

The methodology of testing applied a statistical test described by Donald E. Knuth (1981, 1998), professor emeritus from Stanford University. The present study followed the methodology from the past studies (Steffero, 2005, 2009, 2011, 2014). Two tests were conducted. A "Pseudo Random Number Generator (PRNG) Test" was performed on August 27, 2018. A "Completed Application Test" was performed three times on September 7, September 13, and September 19, 2018, respectively. All test results confirmed that the information selection process behaved in a random manner.

The following sections present the background, methodology, results and conclusions of the study.

II. BACKGROUND INFORMATION

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

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

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

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

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

The PRNG in Lotus Script is called the "RND" function. A critical component of a PRNG is the method it uses to obtain a "seed" value. The "seed" directly determines the randomness of the 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. Therefore,

the seed value must vary in a random manner each time the PRNG is executed. Therefore, the computer-assisted system in the present study 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, is accomplished 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 (Steffero, 2014). There have been no changes to the computer algorithms for random assignment of interest arbitrators between the prior study (Steffero, 2014) and the present study.

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 and Desktop Environments

All certification testing was performed on the production environment at PERC. The major components of the PERC production server and desktop environments were as follows at the time of this study. The production server hardware was a Dell PowerEdge R520 with dual Intel Xeon processors, 384 gigabytes (GB) of random-access memory (RAM) and a high-performance disk subsystem. The production server software environment was a “virtual machine” using VMWare vCenter Server, Version 6.0.0, Build 2656760 with vSphere Client Version 6.0.0 Build 68555219. The operating system within the virtual machine was Microsoft Windows 2012 R2 Standard Server. The application software for the PERC production system was IBM Lotus Notes 8.5, Release 8.5.2, Revision 20100811.1131.

The desktop client PCs used for testing in this study were Dell OptiPlex 9020 PCs with Intel Core i7 Processors with 4 GB RAM running Windows 7 Professional, Service Pack 1, operating system. The PERC server and desktop environment was consistent with good practices for production environments at the time of this study.

The changes to the Production Server Environment between 2014 and 2018 included performance and reliability improvements to the server and desktop environments. Changes to those environments were consistent with good practices and should have a positive, rather than negative, impact on the random selection process for interest arbitrators. The following tests were designed to ensure that performance improvements between 2014 and 2018 did not have a negative impact on the random behavior of interest arbitrator selection.

PRNG Test

To perform the PRNG test, the Lotus Script “RND” function was executed 1,000 times in the production environment using a script requested by the author and written by SSI for this study. The script used the “RND” function to generate 1,000 pseudo-random numbers between 0 and 1. Raw data generated by the test script were rounded to produce

integer values between 1 and 10 using Microsoft Excel 2016, Version 1809, Build 10827.20138.

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

Completed Application Test

The Completed Application Test examined the actual arbitrator selection functionality of the system. To determine if the procedure of selecting one arbitrator from a pool of five arbitrators behaved in a random manner, the Interest Arbitrator selection procedure was performed manually 300 times in the production environment on each of three days, September 7, 13 and 19, 2018, respectively. On each of the three test days the results were recorded manually on a data collection form. When all data were collected, the findings were analyzed and the results presented in Table 2 below. Three separate tests were performed to comply with Knuth's (1998, p. 47) recommendation to perform the test 3 times.

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

Results appear in the next section.

IV. RESULTS

The results are divided into two sections: PRNG Test and Completed Application Test for Interest Arbitrator Selection.

PRNG Test

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

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

CHOICE	TEST
1	91
2	105
3	105
4	98
5	79
6	106
7	101
8	110
9	110
10	95
k=10	1,000
Chi-square	8.38

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 five interest arbitrators is behaving in a random manner.

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

Actual Arbitrator	Day 1	Day 2	Day 3
1	55	57	73
2	62	64	58
3	63	61	57
4	53	58	53
5	67	60	59
k=5	300	300	300
Chi-Square	2.27	0.50	3.87

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

V. CONCLUSION

The study confirmed that the random behavior of the computer-assisted method is consistent with the requirements set forth in N.J.S.A. 34:13A-16e and N.J.A.C. 19:16-5.6. The test of the pseudo-random number generator provided by IBM/Lotus was re-tested in this study and behaved in a random manner. The test of the computer-assisted system developed by Specialty Systems, Inc. for selecting interest arbitrators by-lot was re-tested in this study and also behaved in an random manner.

BIBLIOGRAHY

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

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

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

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

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

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

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

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

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

Steffero, Francis A. A Study Submitted to the New Jersey Public Employment Relations Commission. "Interest Arbitrator By-Lot Selection Program: Random Number Generation Testing for Re-Certification." April 18, 2014.

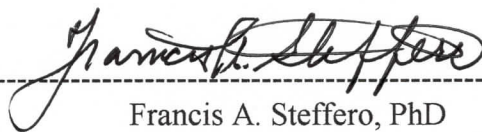
Signature Page

I hereby certify to the authenticity of the report entitled:

New Jersey Public Employment Relations Commission

Interest Arbitrator By-Lot Selection
Program:

Random Number Generation
Testing for Re-Certification



Francis A. Steffero, PhD

10/8/18

Date

BIENNIAL REPORT

TAB 4

PUBLIC EMPLOYMENT RELATIONS COMMISSION
Annual Continuing Education for Interest Arbitrators
December 1, 2022

Agenda

Welcome	Joel Weisblatt, PERC Chair
Annual Ethics Training	Ramiro Perez, Deputy General Counsel
Commission Case & IA Appeals Update	Christine Lucarelli-Carneiro, General Counsel John Boppert, Deputy General Counsel Frank Kanther, Deputy General Counsel Ramiro Perez, Deputy General Counsel
Municipal Finance Update	Marc Pfeiffer, Assistant Director Bloustein Local Government Research Center Rutgers University
Questions & Open Forum	Mary Beth Hennessy-Shotter, Director of Conciliation & Arbitration

PUBLIC EMPLOYMENT RELATIONS COMMISSION
Annual Continuing Education for Interest Arbitrators
December 11, 2023

Agenda

Annual Ethics Training	Ramiro Perez, Deputy General Counsel
Commission Case & IA Appeals Update	Christine Lucarelli-Carneiro, General Counsel John Boppert, Deputy General Counsel Frank Kanther, Deputy General Counsel Ramiro Perez, Deputy General Counsel
Municipal Finance Update	Mary Beth Hennessy-Shotter Director of Conciliation & Arbitration
Best Practices	Joel Weisblatt, PERC Chair
Questions & Open Forum	Mary Beth Hennessy-Shotter, Director of Conciliation & Arbitration

BIENNIAL REPORT

TAB 5



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

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EMAIL: mail@perc.state.nj.us

July 11, 2022

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

The first table shows changes in average wages in employment for major industry groups in New Jersey between 2020 and 2021. The calculations were made by dividing total wages paid by covered private sector employers in particular industry groups by the number of jobs reported by those employers at their work sites. The first table also shows changes in the average wages of state and local government jobs covered under the state's unemployment insurance system, as well as changes in the average wages of federal government jobs in New Jersey covered by the federal unemployment insurance system. The North American Industry Classification System ("NAICS") was used to assign and tabulate economic data by industry.

The second table shows changes in the average wages of private sector jobs covered under the state's unemployment insurance system between 2020 and 2021. Statistics are broken down by county and include a statewide average. These calculations were made by dividing total wages paid by covered private sector employers by the number of jobs reported by those employers at their work sites.

The charts depict the average annual wage and percentage change in average annual wage for private, federal, state and local employees in New Jersey.

**PRIVATE SECTOR
AVERAGE ANNUAL WAGES
FOR JOBS COVERED BY UNEMPLOYMENT INSURANCE
BY COUNTY
2020 and 2021**

County	2020	2021	% Change
Atlantic	\$ 49,306	\$ 51,055	3.5%
Bergen	\$ 73,426	\$ 75,903	3.4%
Burlington	\$ 64,983	\$ 66,584	2.5%
Camden	\$ 59,994	\$ 62,506	4.2%
Cape May	\$ 39,104	\$ 41,103	5.1%
Cumberland	\$ 47,563	\$ 49,617	4.3%
Essex	\$ 77,955	\$ 79,140	1.5%
Gloucester	\$ 49,010	\$ 51,156	4.4%
Hudson	\$ 87,551	\$ 90,443	3.3%
Hunterdon	\$ 70,503	\$ 72,033	2.2%
Mercer	\$ 83,115	\$ 86,459	4.0%
Middlesex	\$ 71,389	\$ 74,055	3.7%
Monmouth	\$ 62,553	\$ 63,997	2.3%
Morris	\$ 98,801	\$ 98,184	-0.6%
Ocean	\$ 46,821	\$ 49,045	4.8%
Passaic	\$ 56,463	\$ 58,502	3.6%
Salem	\$ 63,611	\$ 63,278	-0.5%
Somerset	\$ 100,212	\$ 101,309	1.1%
Sussex	\$ 49,761	\$ 50,854	2.2%
Union	\$ 78,881	\$ 79,872	1.3%
Warren	\$ 52,648	\$ 54,476	3.5%
Total			
Private Sector*	\$ 74,085	\$ 76,623	3.4%

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

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

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

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

**NEW JERSEY
AVERAGE ANNUAL WAGES
FOR JOBS COVERED BY UNEMPLOYMENT INSURANCE
BY NAICS INDUSTRY SECTOR
2020 and 2021**

NAICS Industry Sector	2020	2021	Net Change	% Change
Total Private Sector *	\$74,085	\$76,623	\$2,538	3.4%
Utilities	\$130,323	\$128,011	-\$2,312	-1.8%
Construction	\$77,903	\$80,117	\$2,214	2.8%
Manufacturing	\$86,269	\$88,995	\$2,726	3.2%
Wholesale Trade	\$94,675	\$100,448	\$5,773	6.1%
Retail Trade	\$39,829	\$42,919	\$3,090	7.8%
Transportation/Warehousing	\$55,777	\$58,988	\$3,211	5.8%
Information	\$130,561	\$145,522	\$14,961	11.5%
Finance/Insurance	\$144,517	\$152,183	\$7,666	5.3%
Real Estate/Rental/Leasing	\$74,033	\$76,199	\$2,166	2.9%
Professional/Technical Services	\$125,130	\$128,190	\$3,060	2.4%
Management of Companies/Enterprises	\$183,308	\$184,023	\$715	0.4%
Administrative/Waste Services	\$51,245	\$53,706	\$2,461	4.8%
Educational Services	\$57,183	\$58,251	\$1,068	1.9%
Health Care/Social Assistance	\$60,419	\$62,929	\$2,510	4.2%
Arts/Entertainment/Recreation	\$48,606	\$47,321	-\$1,285	-2.6%
Accommodation/Food Service	\$24,852	\$28,112	\$3,260	13.1%
Other Services **	\$41,153	\$43,709	\$2,556	6.2%
Total Government	\$73,202	\$74,610	\$1,408	1.9%
Federal Government	\$84,327	\$88,679	\$4,352	5.2%
State Government	\$79,344	\$79,252	-\$92	-0.1%
Local Government	\$69,546	\$71,191	\$1,645	2.4%
TOTAL	\$73,957	\$76,345	\$2,388	3.2%

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

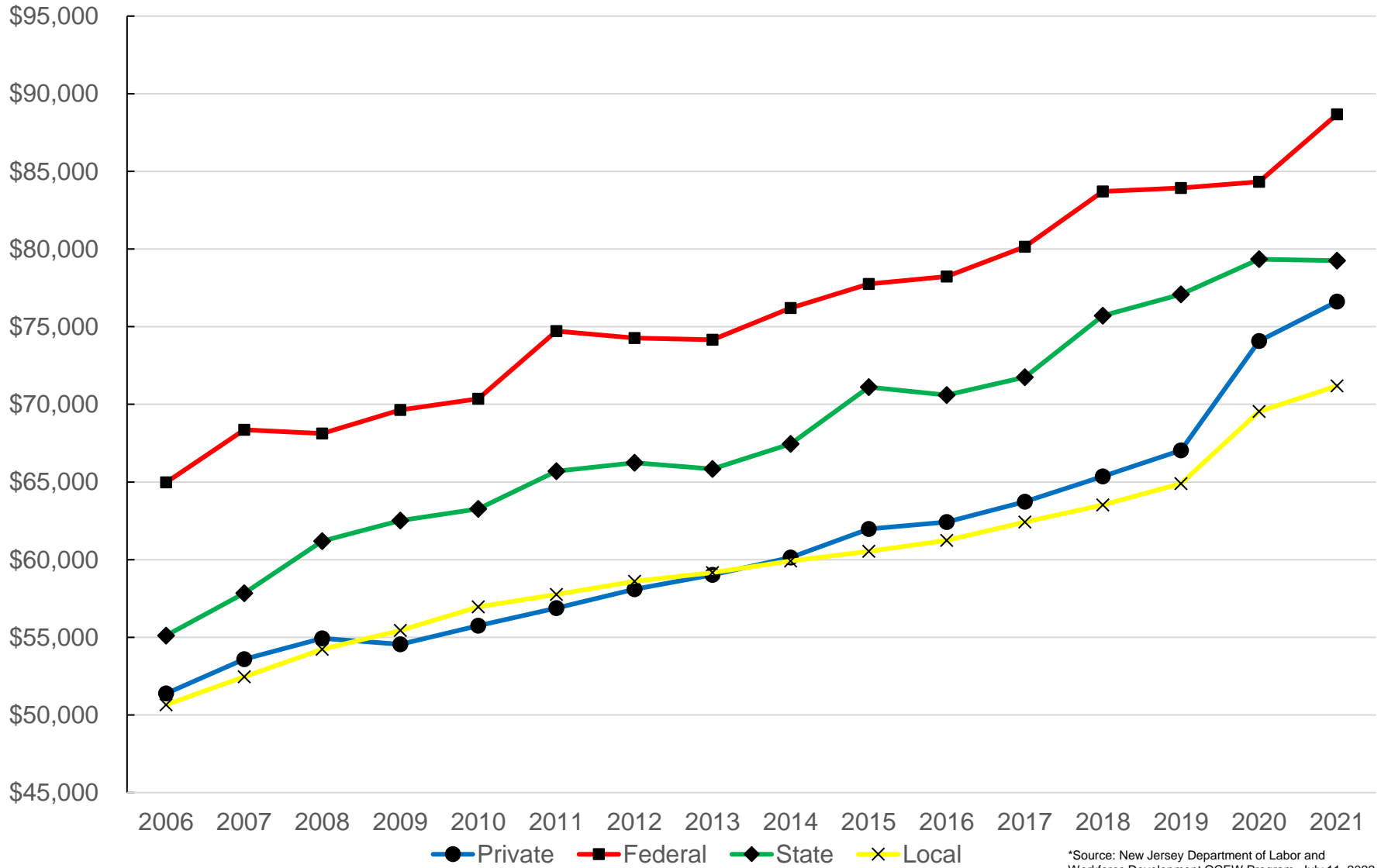
** Includes repair, maintenance, personal and laundry services and membership associations/organizations and private households.

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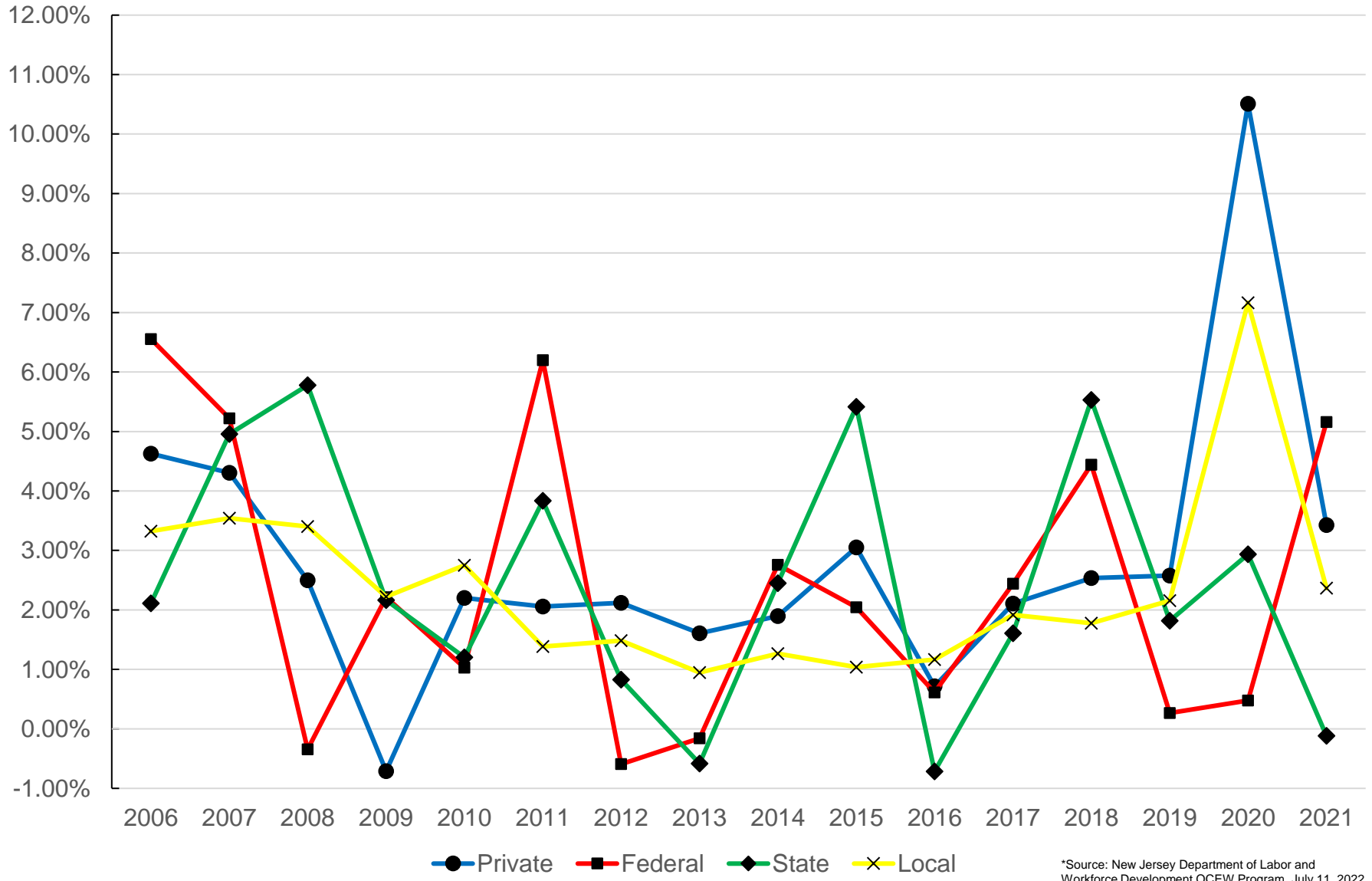
Source: QCEW Program, New Jersey Department of Labor and Workforce Development

New Jersey Average Annual Wage 2006 - 2021*



*Source: New Jersey Department of Labor and Workforce Development QCEW Program, July 11, 2022

New Jersey Percentage Change in Average Annual Wage 2006 - 2021*



*Source: New Jersey Department of Labor and Workforce Development QCEW Program, July 11, 2022



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July 6, 2023

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The second table shows changes in the average wages of private sector jobs covered under the state's unemployment insurance system between 2021 and 2022. Statistics are broken down by county and include a statewide average. These calculations were made by dividing total wages paid by covered private sector employers by the number of jobs reported by those employers at their work sites.

The charts depict the average annual wage and percentage change in average annual wage for private, federal, state and local employees in New Jersey.

**NEW JERSEY
AVERAGE ANNUAL WAGES
FOR JOBS COVERED BY UNEMPLOYMENT INSURANCE
BY NAICS INDUSTRY SECTOR
2021 and 2022**

NAICS Industry Sector	2021	2022	Net Change	% Change
Total Private Sector *	\$76,623	\$78,870	\$2,247	2.9%
Utilities	\$128,011	\$130,545	\$2,534	2.0%
Construction	\$80,117	\$82,336	\$2,219	2.8%
Manufacturing	\$88,995	\$92,594	\$3,599	4.0%
Wholesale Trade	\$100,448	\$105,592	\$5,144	5.1%
Retail Trade	\$42,919	\$43,858	\$939	2.2%
Transportation/Warehousing	\$58,988	\$60,174	\$1,186	2.0%
Information	\$145,522	\$145,886	\$364	0.3%
Finance/Insurance	\$152,183	\$156,664	\$4,481	2.9%
Real Estate/Rental/Leasing	\$76,199	\$79,320	\$3,121	4.1%
Professional/Technical Services	\$128,190	\$132,467	\$4,277	3.3%
Management of Companies/Enterprises	\$184,023	\$188,347	\$4,324	2.3%
Administrative/Waste Services	\$53,706	\$57,620	\$3,914	7.3%
Educational Services	\$58,251	\$59,209	\$958	1.6%
Health Care/Social Assistance	\$62,929	\$65,191	\$2,262	3.6%
Arts/Entertainment/Recreation	\$47,321	\$50,165	\$2,844	6.0%
Accommodation/Food Service	\$28,112	\$30,009	\$1,897	6.7%
Other Services **	\$43,709	\$46,349	\$2,640	6.0%
Total Government	\$74,610	\$76,570	\$1,960	2.6%
Federal Government	\$88,679	\$91,871	\$3,192	3.6%
State Government	\$79,252	\$83,862	\$4,610	5.8%
Local Government	\$71,191	\$72,264	\$1,073	1.5%
TOTAL	\$76,345	\$78,563	\$2,218	2.9%

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

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

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Source: QCEW Program, New Jersey Department of Labor

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AVERAGE ANNUAL WAGES
FOR JOBS COVERED BY UNEMPLOYMENT INSURANCE
BY COUNTY
2021 and 2022**

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Bergen	\$ 75,903	\$ 77,278	1.8%
Burlington	\$ 66,584	\$ 67,974	2.1%
Camden	\$ 62,506	\$ 63,260	1.2%
Cape May	\$ 41,103	\$ 42,920	4.4%
Cumberland	\$ 49,617	\$ 51,997	4.8%
Essex	\$ 79,140	\$ 80,567	1.8%
Gloucester	\$ 51,156	\$ 52,568	2.8%
Hudson	\$ 90,443	\$ 93,112	3.0%
Hunterdon	\$ 72,033	\$ 72,274	0.3%
Mercer	\$ 86,459	\$ 89,404	3.4%
Middlesex	\$ 74,055	\$ 76,326	3.1%
Monmouth	\$ 63,997	\$ 65,893	3.0%
Morris	\$ 98,184	\$ 100,039	1.9%
Ocean	\$ 49,045	\$ 51,345	4.7%
Passaic	\$ 58,502	\$ 58,640	0.2%
Salem	\$ 63,278	\$ 65,388	3.3%
Somerset	\$ 101,309	\$ 102,393	1.1%
Sussex	\$ 50,854	\$ 54,034	6.3%
Union	\$ 79,872	\$ 81,491	2.0%
Warren	\$ 54,476	\$ 58,069	6.6%
Total Private Sector*	\$ 76,623	\$ 78,870	2.9%

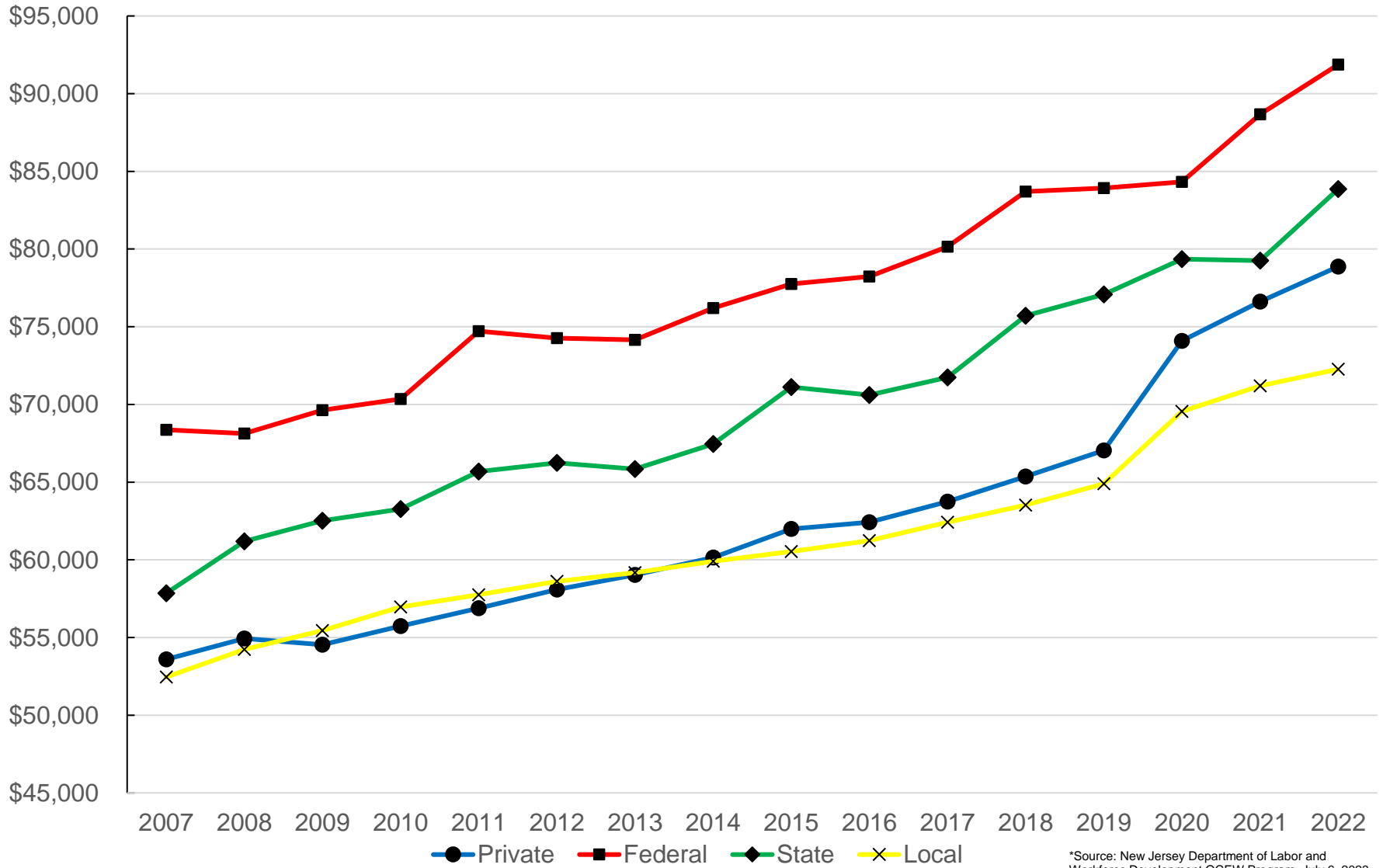
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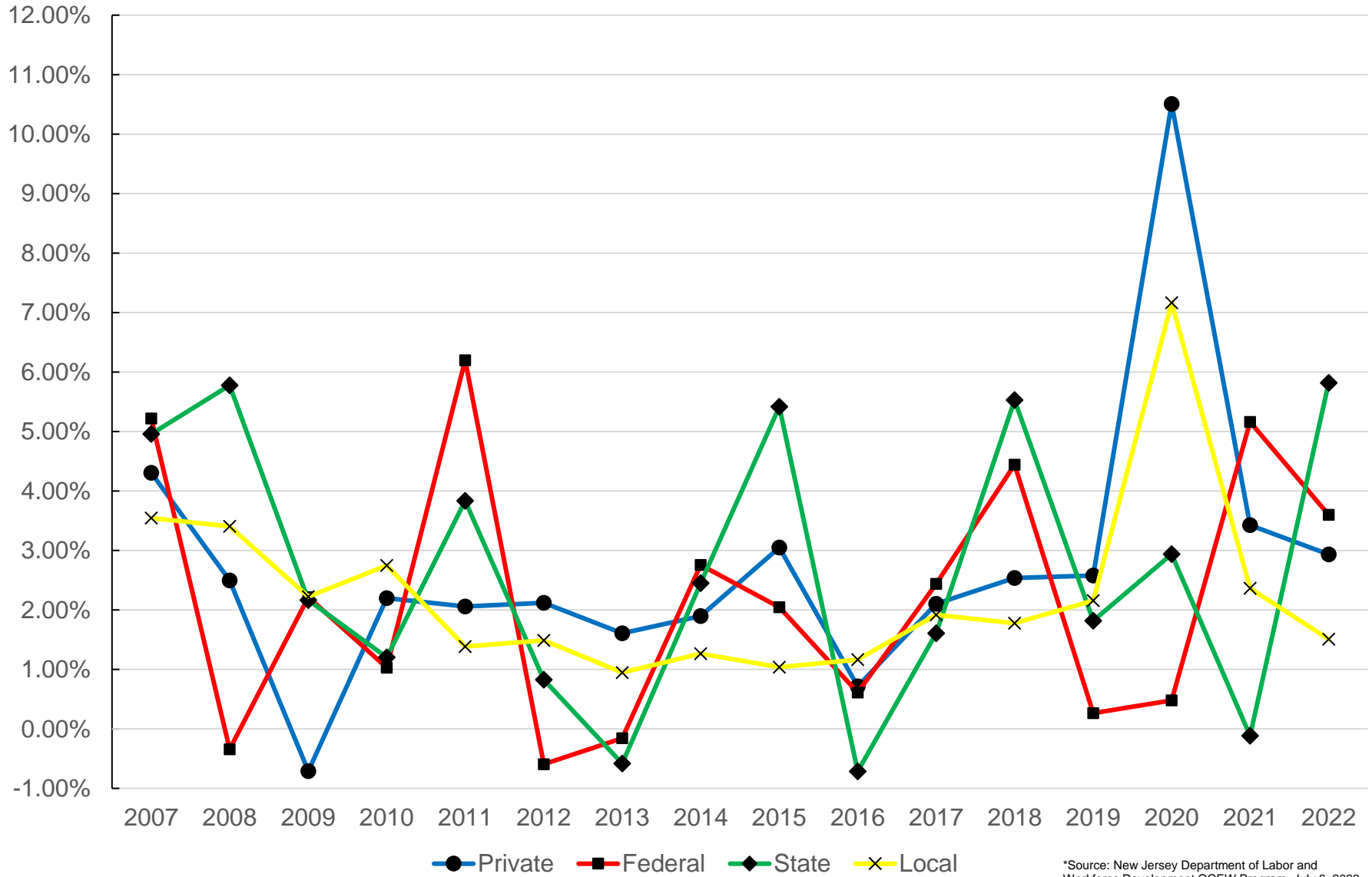
Source: QCEW Program, New Jersey Department of Labor

New Jersey Average Annual Wage 2007 - 2022*



*Source: New Jersey Department of Labor and Workforce Development QCEW Program, July 6, 2023

New Jersey Percentage Change in Average Annual Wage 2007 - 2022*



*Source: New Jersey Department of Labor and Workforce Development QCEW Program, July 6, 2023

BIENNIAL REPORT

TAB 6

New Jersey Public Employment Relations Commission
POLICE AND FIRE
COLLECTIVE NEGOTIATIONS AGREEMENT SUMMARY FORM

Line #

SECTION I: Parties and Term of Contracts

1	Public Employer: <input style="width: 95%;" type="text"/>	County: <input style="width: 95%;" type="text"/>
2	Employee Organization: <input style="width: 95%;" type="text"/>	Number of Employees in Unit: <input style="width: 95%;" type="text"/>
3	Base Year Contract Term: <input style="width: 95%;" type="text"/>	
4	New Contract Term: <input style="width: 95%;" type="text"/>	

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

5	<input type="checkbox"/>	Contract settled without neutral assistance	
6	<input type="checkbox"/>	Contract settled with assistance of mediator	
7	<input type="checkbox"/>	Contract settled with assistance of fact-finder	
8	<input type="checkbox"/>	Contract settled in Interest Arbitration	
9	If contract was settled in Interest Arbitration, did the Arbitrator issue an Award?		Yes <input type="checkbox"/> No <input type="checkbox"/>

SECTION III: Base Salary Calculation

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

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

10	Salary Costs in base year	\$ <input style="width: 95%;" type="text"/>
11	Longevity Costs in base year	\$ <input style="width: 95%;" type="text"/>
12	Other base year salary costs	
	<input style="width: 95%;" type="text"/>	\$ <input style="width: 95%;" type="text"/>
	<input style="width: 95%;" type="text"/>	\$ <input style="width: 95%;" type="text"/>
	<input style="width: 95%;" type="text"/>	\$ <input style="width: 95%;" type="text"/>
	<input style="width: 95%;" type="text"/>	\$ <input style="width: 95%;" type="text"/>
	Sum of "Other" Costs Listed in Line 12.	\$ <input style="width: 95%;" type="text"/>
13	Total Base Salary Cost: (sum of lines 10, 11, 12):	\$ <input style="width: 95%;" type="text"/>

Employer:

Employee Organization:

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

14 Total Base Salary Cost from Line 13: \$

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

SECTION V: Average Increase Over Term of New CNA

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

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

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

Employer:

Employee Organization:

SECTION VI: Other Economic Items Outside Base Salary and Increases

←Increases→

24	Item Description	Base Year Cost (\$)	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
25	Totals (\$):	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

SECTION VII: Medical Costs

Insurance Costs

		Base Year	Year 1
26	Health Plan Cost	\$ <input type="text"/>	\$ <input type="text"/>
27	Prescription Plan Cost	\$ <input type="text"/>	\$ <input type="text"/>
28	Dental Plan Cost	\$ <input type="text"/>	\$ <input type="text"/>
29	Vision Plan Cost	\$ <input type="text"/>	\$ <input type="text"/>
30	Total Cost of Insurance	\$ <input type="text"/>	\$ <input type="text"/>

Employer:

Employee Organization:

SECTION VII: Medical Costs (continued)

- 31 Employee Insurance Contributions \$ \$
32 Contributions as % of Total Insurance Cost % %

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

SECTION VIII: Certification and Signature

- 34 The undersigned certifies that the foregoing figures are true:

Print Name:
Position/Title:
Signature:
Date:

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

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

Revised 8/2016

New Jersey Public Employment Relations Commission

POLICE AND FIRE

COLLECTIVE NEGOTIATIONS AGREEMENT SUMMARY FORM

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

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

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

Instructions for Completing the Summary Form

SECTION I: Parties and Term of Contracts

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

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

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

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

SECTION II: Type of Contract Settlement

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

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

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

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

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

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

SECTION III: Base Salary Calculation

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION V: Average Increase Over Term of the New Agreement

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

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

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

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

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

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

SECTION VII: Medical Costs

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

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

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

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

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

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

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

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

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

SECTION VIII: Certification and Signature

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

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

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

BIENNIAL REPORT

TAB 7

**NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION
INTEREST ARBITRATION SALARY INCREASE ANALYSIS**

Calendar Year	Total Number of Awards Issued	Average Annual Salary Increase All Awards	Number of Non-2% Cap Awards	Average Annual Salary Increase Non-2% Cap Awards	Number of 2% Cap Awards	Average Annual Salary Increase 2% Cap Awards	Total Number of IA Voluntary Settlements	Average Annual Salary Increase of IA Voluntary Settlements
2023	5	3.79%	5	3.79%	0	N/A	12	2.53%
2022	9	2.26%	8	2.29%	1	2.04%	7	2.51%
2021	7	2.59%	7	2.59%	0	N/A	6	1.61%
2020	4	1.72%	4	1.72%	0	N/A	4	2.05%
2019	6	3.36%	5	3.62%	1	2.06%	6	1.64%
2018	2	2.01%	0	N/A	2	2.01%	16	1.75%
2017	4	1.74%	3	1.64%	1	2.05%	5	1.86%
2016	8	2.65%	3	3.83%	5	1.94%	7	2.69%
2015	6	1.71%	0	N/A	6	1.71%	9	1.73%
2014	12	1.71%	6	1.73%	6	1.69%	16	1.61%
2013	27	1.85%	16	1.83%	11	1.89%	8	1.96%
2012	37	1.82%	29	1.77%	8	1.99%	29	1.82%

BIENNIAL REPORT

TAB 8

PUBLIC EMPLOYMENT RELATIONS COMMISSION
SALARY INCREASE ANALYSIS
INTEREST ARBITRATION¹

1/1/1993 -12/31/2011

Time Period	Total # of Awards Issued	Substantive Appeals Filed w/PERC	Average of Salary Increase All Awards	Number of Reported Voluntary Settlements	Average Salary Increase of Reported Vol. Settlements
1/1/11 - 12/31/11	34	13	2.05%	38	1.87%
1/1/10 - 12/31/10	16	9	2.88%	45	2.65%
1/1/09 - 12/31/09	16	5	3.75%	45	3.60%
1/1/08 - 12/31/08	15	2	3.73%	60	3.92%
1/1/07 - 12/31/07	16	1	3.77%	46	3.97%
1/1/06 - 12/31/06	13	3	3.95%	55	4.09%
1/1/05 - 12/31/05	11	0	3.96%	54	3.94%
1/1/04 - 12/31/04	27	2	4.05%	55	3.91%
1/1/03 - 12/31/03	23	2	3.82%	40	4.01%
1/1/02 - 12/31/02	16	0	3.83%	45	4.05%
1/1/01 - 12/31/01	17	0	3.75%	35	3.91%
1/1/00 - 12/31/00	24	0	3.64%	60	3.87%
1/1/99 - 12/31/99	25	0	3.69%	45	3.71%
1/1/98 - 12/31/98	41	2	3.87%	42	3.77%
1/1/97 - 12/31/97	37	4	3.63%	62	3.95%
1/1/96 - 12/31/96	21	2	4.24%	35	4.19%
1/1/95 - 11/31/95	37	0	4.52%	44	4.59%
1/1/94 - 12/31/94	35	0	5.01%	56	4.98%
1/1/93 - 12/31/93	46	0	5.65%	66	5.56%

¹ Salary Increase Percentages do not include increases due to increments/steps or longevity

BIENNIAL REPORT

TAB 9

P.E.R.C. NO. 2023-30

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

INTERNATIONAL ASSOCIATION OF
FIRE FIGHTERS LOCAL 3249,

Petitioner,

-and-

Docket No. IA-2023-011

BOROUGH OF COLLINGSWOOD,

Respondent.

SYNOPSIS

The Public Employment Relations Commission dismisses Local 3249's petition to initiate compulsory interest arbitration with the Borough over the issue of base salaries for new captain positions. The Commission finds that because the parties' contract is not expired, Local 3249 has no statutory right under N.J.S.A. 34:13A-16b(2) to invoke interest arbitration at this time. However, the Commission finds that because the parties do not have a current contract clause pertaining to captain salaries, typical contract dispute resolution procedures may be inadequate to resolve the dispute and the impasse resolution procedures provided for in the interest arbitration act may be appropriate. Therefore, Local 3249 may file for mediation pursuant to N.J.A.C. 19:16-3.1.

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. 2023-30

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

INTERNATIONAL ASSOCIATION OF
FIRE FIGHTERS LOCAL 3249,

Petitioner,

-and-

Docket No. IA-2023-011

BOROUGH OF COLLINGSWOOD,

Respondent.

Appearances:

For the Petitioner, Mets Schiro McGovern, LLP,
attorneys (James M. Mets, of counsel)

For the Respondent, Brown & Connery, LLP, attorneys
(Michael J. DiPiero, of counsel)

DECISION

On October 27, 2022, the International Association of Fire Fighters Local 3249 (Local 3249) filed a petition with the Commission's Director of Conciliation and Arbitration (Director) to initiate compulsory interest arbitration. Local 3249's petition identified the only issue in dispute as: "Base salaries for newly created Fire Captain positions." On November 4, The Director notified the Borough of the interest arbitration petition and, pursuant to N.J.S.A. 34:13A-16(d), gave it five days to respond and notify her of all issues in dispute. On November 8, the Borough responded by disputing whether interest arbitration was appropriate because the parties are still under

contract. Following Local 3249's November 23 response, the Director on November 28 advised the parties that a request to dismiss the interest arbitration petition could be made on motion. On December 2, the Borough filed a motion to dismiss the interest arbitration petition. The Borough filed a letter brief, exhibits, and the certification of Borough Administrator Cassandra Duffey. On December 29, Local 3249 filed a letter brief opposing the Borough's motion to dismiss.

Based on the parties' submissions, these facts appear.

Facts

Local 3249 is a negotiations unit representing all regularly employed fire officers employed by the Borough. The Borough and Local 3249 are parties to a collective negotiations agreement (CNA) effective from January 1, 2020 through December 31, 2024. The Borough's fire department ordinance includes the ranks of chief, deputy chief, captain, and lieutenant. The only positions excluded from Local 3249 unit are the chief and deputy chief. Local 3249 is the only unit representing employees of the Borough's fire department. There is no superior officers unit.

On approximately March 1, 2022, the Borough and Local 3249 commenced negotiations over the salary for the position of captain, which the parties agree has been "long vacant." Borough Administrator Duffey's March 1 letter to the fire department's officers explained:

The Borough is considering utilizing the Captain position during 2022. However, as you know, the position has not been used recently and even when it was the salaries did not correspond to the contractual differential that exists in the wage provision. We would like to schedule a meeting to discuss updating the language in anticipation of future appointments to the rank. Please let me know when would be a convenient time to schedule a meeting.

The parties exchanged proposals and counter-proposals until July 29, 2022. During that time, the parties exchanged e-mails and met twice, on March 7 and July 26, 2022. During the July 26 meeting, the Borough provided Local 3249 with several options to settle the issue, but the parties did not resolve it. On July 27, Administrator Duffey followed up the meeting with the following e-mail:

Julian and Ed - see attached which lays out both increase options (percentage and flat increases) within the budget discussed. Thank you for meeting and the productive discussion yesterday. Let me know if you have any questions.

On July 29, 2022, Lieutenant Julian D'Alonzo on behalf of Local 3249 e-mailed the Borough that "we will be reviewing this and will get back to you shortly." Duffey certifies that D'Alonzo's July 29 email was the last communication the Borough received from the IAFF concerning the captain salary issue. Duffey certifies that at no point did she declare an impasse, break off negotiations, or fail to respond to the IAFF.

The Borough asserts that the interest arbitration petition must be dismissed because it is not a dispute over an expired agreement, but is a midterm negotiation of new salary rates for the existing position of captain. The Borough contends that it negotiated with Local 3249 about the salaries for five months and that Local 3249 broke off negotiations. It argues that there is no provision in the interest arbitration act for interest arbitration for any unresolved midterm negotiations issue.

Local 3249 asserts that because the current CNA does not provide a salary for the position of captain that the Borough seeks to reactivate, there is no ability to resolve the parties' negotiations dispute via grievance arbitration or an unfair practice charge. Local 3249 argues that interest arbitration is appropriate to resolve this collective negotiations dispute because the interest arbitration act does not prohibit interest arbitration while a CNA is in effect. It contends that the legislative intent of the act supports compulsory interest arbitration as an expeditious procedure for resolving disputes between public safety employees and public employers.

Analysis

The Police and Fire Public Interest Arbitration Reform Act (Reform Act), P.L. 1995, c. 425, as amended, is codified at N.J.S.A. 34:13A-14 through N.J.S.A. 34:13A-21. The Reform Act provides that a public fire or police department and an exclusive

representative shall begin collective negotiations at least 120 days prior to the expiration of their current CNA and if those negotiations reach an impasse, either party may request, or the Commission may assign, a mediator. N.J.S.A. 34:13A-16a. If the impasse persists after mediation, either party may request that the Commission "invoke factfinding with recommendation for settlement of all issues in dispute." N.J.S.A. 34:13A-16b(1).

The statute then provides that, regardless of the mediation and factfinding impasse resolution processes set forth above:

"[E]ither party may petition the commission for arbitration on or after the date on which their collective negotiations agreement expires." N.J.S.A. 34:13A-16b(2). The regulations similarly provide for interest arbitration where the impasse persists after the mediation and factfinding processes, or after the expiration of the parties' most recent CNA. N.J.A.C. 19:16-5.2(a)(1)-(2).

Here, the parties' current CNA is effective through December 31, 2024, so Local 3249 has no statutory right to invoke interest arbitration. N.J.S.A. 34:13A-16b(2); N.J.A.C. 19:16-5.2(a)(2); Franklin Lakes Bor., P.E.R.C. No. 2020-16, 46 NJPER 165 (¶40 2019) ("an expired agreement" is "a prerequisite for filing [an interest arbitration] petition"). Nor have the parties proceeded through the mediation and fact-finding impasse resolution procedures. N.J.A.C. 19:16-5.2(a)(1). Based on the applicable

interest arbitration statutes and regulations, we find that Local 3249's interest arbitration petition is premature.

However, the impasse resolution procedures provided for in the Reform Act for public safety employees such as the Local 3249 fire officers may be appropriate in order to provide an "expeditious, effective and binding procedure for the resolution of disputes." N.J.S.A. 34:13A-14a. Given the unique circumstances that prompted the parties' mid-contract collective negotiations (the base salaries for long vacant captain positions that the Borough plans to utilize again), typical contract resolution and unfair practice procedures may be inadequate because the parties have not identified any current contractual provision, past practice, or status quo that has been violated or that they could be returned to pending further negotiations.

N.J.A.C. 19:16-3.1 allows either party, or the parties jointly, to notify the Director "of the existence of an impasse and request the appointment of a mediator." Local 3249 asserts the parties are at impasse over the issue of salary for fire captains. The Borough disagrees that the parties are at an impasse. N.J.A.C. 19:16-3.1 provides that the Director is empowered to evaluate whether an impasse exists and determine whether to appoint a mediator upon request or in the absence of a party's request:

(c) Upon receipt of the Notice of Impasse,
the Director of Conciliation and Arbitration

shall appoint a mediator if he or she determines after investigation that mediation is not being resorted to prematurely, that the parties have been unable to reach an agreement through direct negotiations, and that an impasse exists in negotiations.

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

[N.J.A.C. 19:16-3.1(c) and (d).]

Therefore, Local 3249 may file for mediation pursuant to N.J.A.C. 19:16-3.1, however, its petition for interest arbitration is premature and is dismissed.

ORDER

Local 3249's petition to initiate compulsory interest arbitration is dismissed. Local 3249 may file for mediation pursuant to N.J.A.C. 19:16-3.1.

BY ORDER OF THE COMMISSION

Chair Weisblatt, Commissioners Ford, Papero and Voos voted in favor of this decision. None opposed. Commissioner Bonanni was not present.

ISSUED: January 26, 2023

Trenton, New Jersey

P.E.R.C. NO. 2024-36

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY STATE PBA
STATE LAW ENFORCEMENT UNIT,

Respondent,

-and-

Docket No. IA-2023-026

STATE OF NEW JERSEY,

Appellant.

SYNOPSIS

The Public Employment Relations Commission denies the State of New Jersey's appeal of an interest arbitration award. The State asserts that the arbitrator improperly awarded a provision allowing union officials to request unpaid, full-time union leave because that provision is statutorily preempted. The State further asserts that the arbitrator improperly awarded a provision increasing union leave hours because it was not supported by substantial credible evidence and the arbitrator relied on inadmissible settlement discussions. The Commission finds that the State's statutory preemption claim regarding the Award's provision on unpaid full-time union leave is time-barred by N.J.A.C. 19:16-5.5(c), which requires negotiability objections to be raised within certain timeframes in the interest arbitration process. The State did not raise its statutory preemption claims at any time during the interest arbitration process, but instead, raises them for the first time in its appeal. The Commission further finds that the arbitrator's award regarding the increase of union leave hours was based on substantial credible evidence in the record, rather than inadmissible settlement discussions. The State may file a scope of negotiations petition in the ordinary course.

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

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY STATE PBA
STATE LAW ENFORCEMENT UNIT,

Respondent,

-and-

Docket No. IA-2023-026

STATE OF NEW JERSEY,

Appellant.

Appearances:

For the Respondent, Beckett and Paris, LLC., attorneys
(David B. Beckett, Esq., of counsel and on the brief)

For the Appellant, Genova Burns, LLC., attorneys
(Joseph M. Hannon, of counsel and on the brief;
Christopher Manley, on the brief)

DECISION

On December 21, 2023, the State of New Jersey (State) appealed the November 27, 2023 interest arbitration award (Award) covering the New Jersey State PBA State Law Enforcement Unit (SLEU).^{1/} SLEU is the exclusive representative representing approximately three hundred (300) police officers employed in various titles by multiple departments and divisions of the State of New Jersey, including several State Universities and Colleges, Department of Human Services, Division of Fish, Game, and

^{1/} The State's appeal included a request for oral argument. The request is denied given that the parties have fully briefed the issues raised.

Wildlife, Department of Treasury, and Division of Parks and Forestry. (Award at 1). The State and SLEU are parties to a collective negotiations agreement (CNA) with an expired term of July 1, 2015 through June 30, 2019. On March 3, 2023, SLEU filed a Petition to Initiate Compulsory Interest Arbitration pursuant to N.J.S.A. 34:13A-16(b)(2) to resolve an impasse over the terms of a successor CNA.

On August 25, 2023, the interest arbitrator was appointed pursuant to N.J.S.A. 34:13A-16(e)(1). After the parties did not resolve their impasse at a pre-interest arbitration mediation session on August 28, the parties proceeded with interest arbitration hearings held on October 3, 4, and 13. At the hearings, the parties provided testimony, stipulated to the admission of exhibits, certifications, and financial reports. The parties filed post-hearing briefs on November 2.

On November 27, 2023, the arbitrator issued a 136-page conventional Award setting the terms of a successor CNA for a term of four years, from January 1, 2019 through June 30, 2023. A conventional award is crafted by an arbitrator after considering the parties' final offers in light of statutory factors. N.J.S.A. 34:13A-16(f)(1) and (g). The instant appeal ensued. Although the Award resolved numerous issues submitted by the parties, the State's appeal raises the following two issues only:

1. The interest arbitrator awarded a provision regarding union leave that is unlawful. The Award permits an employee that is an official of SLEU who is elected or appointed to a full-time position with the NJ State PBA to take a long-term leave of absence while the employee's salary is paid by the State PBA. In addition, the Award permits these union officials to continue to contribute to the Police and Firemen's Retirement System (PFRS). However, this provision is preempted by statute.

2. The interest arbitrator improperly relied on evidence submitted by the Union regarding settlement positions in awarding an increase in union leave hours. The award of an increase of union leave hours is not supported by the credible evidence in the record.

[State's brief at 1.]

SLEU's March 3, 2023 Petition to Initiate Compulsory Interest Arbitration raised union leave as a disputed issue under "Non-Economic Issues," as follows:

Article 25 - Leave for NJ State PBA- SLEU Activity: Increase in the amount of chargeable union leave is proposed as is a revision that adds to certain categories of nonchargeable union leave time, and that streamlines process for notification to GOER on union leave requests/use.

SLEU's September 26, 2023 Final Offer was as follows:

Article XXV

Leave for NJ State PBA-SLEU Activity

Counter on Union Leave:

Will accept 1386 hours offer only if the State agrees to create separate Union Leave categories along the lines done for Local 105, which are in addition to the 1386 hours that there are 11 release days for each of

the seven locals (subunits of SLEU) allowing them to send 1 representative (Delegate, President, or designee) to attend the following required PBA meetings:

- State meetings;
- Local meetings;
- County meetings;

NOTE: Meetings occur every month except August.

Add Union Leave - Full Time position with NJ State PBA:

In the event, an official of SLEU is appointed by the NJ State PBA President or designee or elected to fill a full time position with the State PBA the employee shall be permitted full release as unpaid leave with the State PBA responsible for paying the salary of the unit employee who shall retain all rights to return to service and shall be permitted to continue to contribute to retirement pension and such years of service for the State PBA shall also count toward health benefits in retirement and seniority for purposes of leave and other benefits under this contract. In the event that the State permits the unit employee to purchase health benefits from the SHBP, such purchase shall be at the employee's expense at cost.

A request for such leave shall be filed annually and shall not be unreasonably denied, or a contract for a longer term may be entered into between the State and the NJ State PBA.

SLEU's proposed new language regarding unpaid full-time union leave was included in its proposals as early as December 2022 during negotiations that preceded the filing of the interest arbitration petition in March 2023. SLEU also raised the issue

throughout the interest arbitration process. (See SLEU's sur-reply brief at 2, Exhibit A at 4).

The State's Final Offer did not respond to SLEU's union leave proposals. However, the State's post-hearing brief addressed SLEU's union leave proposals. In response to SLEU's proposal to increase union leave hours to 1386, the State wrote:

It is not entirely clear what the Union's final offer is proposing. In any event, an increase in union leave for the union is not warranted. The State has submitted the following chart, showing that SLEU does not use all the union leave to which they are currently entitled: [Chart omitted]. The Union explained this by saying that it has been "very frugal with it." T250:22-24. Clearly, the fact that the Union has not used all the time it is currently allotted is strong evidence that an increase is not warranted.

In response to SLEU's full-time union leave, the State wrote:

The Arbitrator should not award this proposal because it is a hypothetical. If a SLEU official is appointed to a full-time PBA position, it would be appropriate at that time for the State and SLEU to address this arrangement.

The Union has not justified its proposals for union leave and therefore they should not be awarded.

The arbitrator awarded SLEU's proposal regarding unpaid full-time union leave. The arbitrator explained his reasoning as follows:

I also award the SLEU proposal, if and when it should occur, to provide unpaid leave to an official of SLEU who has been appointed by

the NJ State PBA President or elected to fill a full time position with the State PBA. This award shall be limited to one (1) such official of SLEU at a time and shall be in accordance with the guidelines contained in the SLEU proposal concerning, among other things, the State PBA' obligations to pay the salary of the unit employee and the purchase of SHBP health benefits if permitted to do so. The State's position to address this issue only if such appointments or election occur is not reasonable as such situation could occur mid-contract and cause uncertainty and delay over the conditions for release.

The arbitrator awarded the following modification to the SLEU's proposal to increase union leave hours to 1386:

Commencing at the end of June 30, 2023, the number of annual hours of chargeable leave shall be increased to 1,386. There shall be an additional three (3) release days made available annually for each of the seven locals (sub-units) of SLEU to send 1 representative (Delegate, President, or designee) to attend the following required PBA meetings:

- State meetings;
- Local meetings;
- County meetings

(Award at 125).

The arbitrator partially awarded SLEU's proposal on increased union leave hours as follows:

The 1,386 hours, as discussed in negotiations, is a reasonable increase given the evidence that certain officers may have been allowed union leave without having been charged union leave. I award this without SLEU' condition that it be awarded eleven (11) release days for each of its seven (7) sub-units. The proposal to create separate

Union Leave categories for each of the seven locals, or sub-units, by adding eleven (11) release days for each sub-unit, has not been justified. Given the unique structure to the SLEU unit, the parallel asserted by SLEU with Local 105 is not persuasive. However, I find it reasonable to award some such release time in each individual sub-unit due to the diversity of work in the sub-units and the desirability of having broader representation for all members at union meetings. Accordingly, effective June 30, 2023, I award three (3) release days for each sub-unit consistent with the purpose stated in the SLEU proposal.

In its appeal, the State argues that the Award is not a mutual, final, and definite award, pursuant to N.J.S.A. 2A:24-8^{2/}, as to the issue of unpaid full-time union leave because it is preempted by statute. The State argues that the police officers represented by SLEU are governed by Title 40A. N.J.S.A. 40A:9-7.3^{3/} permits leaves of absences for certain employees,

2/ N.J.S.A. 2A:24-8 ("Vacation of award; rehearing") provides: The court shall vacate the award in any of the following cases:

d. Where the arbitrators exceeded or so imperfectly executed their powers that a mutual, final and definite award upon the subject matter submitted was not made.

3/ N.J.S.A. 40A:9-7.3 ("Unpaid leaves of absence for union officers, representatives of certain public employees") provides:

Any employee, except a policeman or firefighter, elected or appointed as an officer or representative of a local, county or State labor organization which represents, or is affiliated with a local, county or State labor organization which represents, public employees may be granted, by a county, municipality or agency thereof, an unpaid leave of
(continued...)

such as the union leave provision in the Award; however, it expressly excludes policemen and firefighters. Moreover, the State argues that even if the awarded union leave provision is not statutorily preempted, the PFRS statute, N.J.S.A. 43:16A-4^{4/}, preempts the possibility of receiving retirement service credit for the time the employee is serving as a union official. The State also maintains that the Award's increase of union leave hours to 1,386 must be vacated because the arbitrator improperly relied on inadmissible settlement negotiations proffered by SLEU. The State claims it provided credible evidence that SLEU had not used its current allotment of 1,260 hours in recent years, and thus, SLEU could not provide any rationale for why an increase in union leave hours was necessary.

SLEU responds that the State's appeal should be denied because the arbitrator properly applied the N.J.S.A. 34:13A-16g factors in awarding, based on substantial evidence in the record, the two proposed union leave provisions. SLEU argues that the

3/ (...continued)
absence.

4/ N.J.S.A. 43:16A-4 ("Creditable service within act")
provides:

a. Only service as a policeman or fireman paid for by an employer, which was rendered by a member since that member's enrollment, or since that member's last enrollment in case of a break in service, plus service, if any, covered by a prior service liability, shall be considered as creditable service for the purposes of this act.

State did not raise its statutory preemption claims in an expedited scope of negotiations petition, as required by N.J.A.C. 19:16-5.5(c), and thus it is barred from raising those claims for the first time in its appeal of the Award. SLEU asserts that the State was aware of the SLEU's union leave proposals when they were sent in December 2022 and February 2023, yet the State never raised its negotiability objections throughout the interest arbitration process. Further, SLEU asserts that the State retains the discretion to deny the union leave pursuant to the awarded provision, which has not occurred yet, rendering the issue not ripe. Moreover, SLEU argues that the State's statutory preemption claims lack merit because the subject of union leave is mandatorily negotiable and not preempted by the statutes cited by the State. Lastly, SLEU claims that the Award's increase of union leave hours to 1386 was supported by substantial credible evidence in the record, and thus, should not be disturbed.

In its reply brief, the State argues that notwithstanding the requirements of N.J.A.C. 19:16-5.5(c) it cannot waive a negotiability objection if the awarded provision is illegal. The State further argues that it could not have complied with the requirement to file an expedited scope petition because it was not aware of the disputed issue of union leave until SLEU submitted its final offer on September 26, 2023. The State further asserts that the Commission should decide the merits of

the statutory preemption issue now, as it is authorized to so pursuant to N.J.A.C. 19:16-5.5(c)(8) and 19:16-5.7(i). In the alternative, the State claims that if the Commission were to not decide the statutory preemption issue and vacate the illegal provisions in the Award, then the Commission should allow the State to file a scope of negotiations petition pursuant to N.J.A.C. 19:13-2.2(a)(4)(iv), which permits a party to file a scope petition under "special circumstances".

The standard for reviewing interest arbitration awards is well-established. We will not vacate an award unless the appellant demonstrates that: (1) the arbitrator failed to give "due weight" to the subsection 16(g) factors judged relevant to the resolution of the specific dispute; (2) the arbitrator violated the standards in N.J.S.A. 2A:24-8 and -9; or (3) the Award is not supported by substantial credible evidence in the record as a whole. Teaneck Tp. v. Teaneck FMBA, Local No. 42, 353 N.J. Super. 289, 306 (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 309; Cherry Hill.

First, we review the Commission rules applicable to this dispute. N.J.A.C. 19:16-5.5(c) ("Response to the petition requesting the initiation of compulsory interest arbitration") provides:

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

* * *

2. The issues for which a negotiability determination is sought must be among those identified as being in dispute in either the interest arbitration petition or the response to the interest arbitration petition. . . .

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

4. Within 10 days after receipt of an expedited scope of negotiations petition, the Commission Chair will advise the parties whether the petition will be resolved using the expedited procedure. . . .

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

* * *

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

[Emphasis added.]

N.J.A.C. 19:16-5.7(i) (Conduct of the arbitration proceeding") provides:

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

[Emphasis added.]

N.J.A.C. 19:16-5.5(c) requires parties to raise negotiability concerns at the outset of the interest arbitration proceeding and bars parties from raising such objections outside

of its time parameters. Borough of Roseland, P.E.R.C. No. 2000-46, 26 NJPER 56 (¶31019 1999. The import of N.J.A.C. 19:16-5.5(c)'s time parameters are to provide for an expeditious, effective and binding interest arbitration process that ensures the parties and the arbitrator know the nature and extent of the controversy at the outset. City of Newark, P.E.R.C. No. 92-20, 17 NJPER 416 (¶22200 1991) (dismissing scope petition filed one month after arbitration record closed where employer knew of negotiability issue for over two years); see also Borough of Ft. Lee, P.E.R.C. No. 2008-70, 34 NJPER 261 (¶92 2008); Lower Tp., P.E.R.C. No. 2005-30, 30 NJPER 449 (¶150 2004); Wyckoff Tp., P.E.R.C. No. 2004-63, 30 NJPER 107 (¶43 2004).

N.J.A.C. 19:16-5.5(c)'s time parameters have become even more critical since the 2010 amendments to the interest arbitration law. State of New Jersey, P.E.R.C. No. 2014-60, 40 NJPER (P160 2014), aff'd on different grounds, In re State, 443 N.J. Super. 380 (App. Div. 2016) (rejecting union's statutory preemption claims in interest arbitration appeal where expedited scope petition was not filed, and after union offered no evidence it was unaware of State's proposal or was otherwise prevented from making such a filing). Those amendments set out hastened statutory time limits for an arbitrator to conduct interest arbitration proceedings, for the parties to file an appeal of an interest arbitration award, and for the Commission

to issue a decision on an interest arbitration appeal. N.J.S.A. 13A:16f(5) and (5)a.

Based on the above precedent, we find that the State's negotiability claim regarding the Award's provision on unpaid full-time union leave is time-barred by N.J.A.C. 19:16-5.5(c). SLEU's March 3, 2023 interest arbitration petition identifies union leave as a disputed issue for interest arbitration, and specifically references streamlining the process for notification on union leave requests/use. Moreover, the record shows that the State was aware of SLEU's proposal for unpaid full-time union leave as early as December 2022 during negotiations that preceded the filing of the interest arbitration petition in March 2023.

Despite being put on notice of SLEU's proposal for unpaid full-time union leave, the State did not raise its negotiability claim at any point during the interest arbitration process. It did not file an expedited scope petition when interest arbitration was initiated. Nor did it raise its negotiability claims to the arbitrator during mediation, the interest arbitration hearings, or in its post-hearing brief.

The State relies on N.J.A.C. 19:16-5.5(c) (8) and N.J.A.C. 19:16-5.7(i) to assert that we could consider its negotiability claims for the first time on appeal. However, those regulations presume that the party raising the negotiability concern on appeal previously filed an expedited scope petition that was

denied by the Chair. As discussed above, that did not occur here. To consider the State's negotiability argument for the first time at this appeal stage would undermine the statutory goal of an expeditious and effective interest arbitration process.^{5/}

We note that the State is not without an avenue to contest the Award's provision regarding unpaid full-time union leave. That provision expressly leaves the discretion to the State to grant or deny such leave. Thus, if the State denies such a request, and SLEU challenges that denial through the filing of a grievance, the State can then properly file a scope of negotiations petition. N.J.A.C. 19:13-2.2(a)4ii. A scope petition filed in an appropriate course will allow for the disputed issue to be adequately briefed by the State and SLEU.

Lastly, we find that the arbitrator's award regarding the increase of union leave hours to 1386 was based on substantial credible evidence in the record, rather than inadmissible settlement discussions proffered by SLEU. On this issue, the arbitrator found that the proposed increase was reasonable "given the evidence that certain officers may have been allowed union leave without having been charged union leave." Further,

^{5/} We also find that the State's reliance on our decisions in Town of Kearny, P.E.R.C. No. 81-23, 6 NJPER 431 (¶11218 1980) and P.E.R.C. No. 81-38, 6 NJPER 455 (¶11233 1980) is misplaced since those decisions were issued prior to the 2010 amendments to the interest arbitration law.

the arbitrator did not award SLEU's requested 11 release days, but instead awarded three release days. The arbitrator stated, "I find it reasonable to award some release time in each individual sub-unit due to the diversity of work in the sub-units and the desirability of having broader representation for all members at union meetings." Despite the Award's references to prior negotiations discussions, we find the arbitrator articulated an independent rationale for increased union leave hours based on the substantial credible evidence in the record as a whole. We will not disturb the arbitrator's exercise of discretion regarding his weighting of the evidence. Teaneck, 353 N.J. Super. at 309; Cherry Hill.

For the foregoing reasons, we deny the State's appeal and affirm the interest arbitration award. The State may file a scope of negotiations petition in the ordinary course in accordance with our rules in the event a unit member seeks union leave. The Commission will examine the relevant statutes and regulations at that time.

ORDER

The State's appeal is denied and the interest arbitration award is affirmed.

BY ORDER OF THE COMMISSION

Chair Hennessy-Shotter, Commissioners Bolandi, Eaton, Ford, Higgins, Kushnir and Papero voted in favor of this decision. None opposed.

ISSUED: February 20, 2024

Trenton, New Jersey

P.E.R.C. NO. 2024-41

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF PATERSON,

Respondent,

-and-

Docket No. IA-2024-002

PATERSON FIRE OFFICERS'
ASSOCIATION, FMBA LOCAL 202,

Appellant.

SYNOPSIS

The Public Employment Relations Commission affirms an interest arbitration award issued to settle successor contract negotiations between the City and the PFOA. The PFOA appealed arguing that the arbitrator improperly rejected its revised final offers, mistakenly awarded its health benefits proposal, and failed to properly apply the 16g statutory factors in his consideration of external comparables and the City's receipt of transitional aid. The PFOA also asserted the award was not final and definite because it did not provide language to combine the three units' prior contracts into a single new collective negotiations agreement (CNA). The Commission finds that the arbitrator properly dismissed the PFOA's revised final offers for making substantive changes instead of just providing specific language for the proposals it already submitted. The Commission further finds that the arbitrator did not mistakenly award the PFOA's health benefits proposal, that he explained the weight he afforded to the statutory factors including external comparables and the financial impact of the City's receipt of transitional aid, and that he did not err by leaving to the parties the ministerial task of combining previous contract language into a single CNA.

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. 2024-41

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

City of Paterson,

Respondent,

-and-

Docket No. IA-2024-002

Paterson Fire Officers'
Association, FMBA Local 202,

Appellant.

Appearances:

For the Respondent, PRB, attorneys (Susie B. Burns, of
counsel)

For the Appellant, Trenk Isabel Siddiqi & Shahdanian,
attorneys (John L. Shahdanian II, of counsel)

DECISION

The Paterson Fire Officers' Association, FMBA Local 202 (PFOA) appeals from an interest arbitration award involving three separate negotiations units (captains, battalion chiefs, and deputy chiefs) of supervisory firefighters employed by the City of Paterson (City). The City and PFOA are parties to three collective negotiations agreements (CNAs) for the three units, all of which are effective from August 1, 2010 through July 31, 2019. On September 11, 2023, the PFOA filed a Petition to Initiate Compulsory Interest Arbitration pursuant to N.J.S.A. 34:13A-16b(2) in order to resolve disputes during collective

negotiations for a successor agreement.^{1/} On September 18, the interest arbitrator was appointed by random selection. The parties stipulated to including all three supervisory units in one CNA going forward. The City submitted its final offer on September 11, 2023 and the PFOA submitted its final offer on September 12, 2023. Interest arbitration hearings were held on September 21, October 26, and November 3, 2023.^{2/}

On October 12, 2023, the arbitrator requested that the parties revise their final offers, stating:

I am writing to request that you each revise your final offer to include, where applicable, the existing contract language, followed by your proposal to change the existing language and the rationale for the change. If the proposal is for a new contract provision, please indicate same. Please submit your revised final offer by Friday, October 20, 2023 copying each other.

After granting the parties an extension of time to submit revised final offers, the arbitrator e-mailed the parties on October 18 requesting the following:

Please remember to submit by 10/25/23 revised final offers to include a verbatim insert of the existing contract language (or designate

1/ The PFOA had initially filed for interest arbitration on May 19, 2023. (Docket No. IA-2023-029). However, due to scheduling conflicts, that proceeding could not be resolved within the 90-day time frame set by N.J.S.A. 34:13A-16f(5). The PFOA therefore withdrew that petition.

2/ A court reporter hired by the PFOA transcribed the first two days of hearing, but the parties chose not to use a court reporter for the third day of hearing.

the proposal as a new provision of the contract), the proposal itself and the rationale underlying the proposal. As a helpful option, if you know how many contracts the benefit has been in existence and the changes to it over that period, if any, that will help. This work product will be accepted in lieu of testimony unless there is a factual dispute over any recitation.

On October 25, the arbitrator reminded the parties to "submit a Revised Final Offer to include the information requested" for the following day, October 26, the date of the second hearing.

Both parties submitted revised final offers on October 26. On October 30, the arbitrator e-mailed the parties about the PFOA's revised final offer, stating, in relevant part:

[T]he PFSOA Revised Final Offer does not include the verbatim contract language relevant to each proposal as I requested. You may copy and paste from [City Counsel]'s Revised Final Offer to the extent it is the same language. Otherwise, please include the contract language and resubmit.

On November 2, 2023, counsel for the PFOA submitted a second revised final offer and stated:

Thank you for the opportunity to revise our final offer to include the proposed verbatim contract language for each of our proposals to the City. The proposed verbatim language assumes that the three existing PFOA contracts for Captains, Battalions and Deputies will be merged into one, inclusive, comprehensive Fire Officers CNA, as we understand the City has agreed should be done.

In response, on November 2, counsel for the City e-mailed the arbitrator and counsel for the PFOA, stating:

There are numerous language changes proposed that were not part of the Union's final offer, and thus, we object to same as the revised offer was only to include specific language proposals as well as rational[e] for the changes proposed in the final offer. For example, the Union's final offer did not propose changes to the grievance procedure, fire officer's rights, work week, longevity, night differential, overtime assignment requirements, recall, leave increments, vacation precedents, transfers, mutual swaps, wash up time or health benefits. A copy of the Union's original final offer is attached.

Also on November 2, the arbitrator responded, stating:

I have not had time to review the document. We can discuss tomorrow with the caveat that the substance of both parties['] final offers should not have changed since the original submission.

The arbitrator then e-mailed the parties on the morning of November 3, prior to the third and final day of hearing, requesting that they initiate a telephone conference with him "to discuss [the PFOA]'s revised final offer."

On November 6, the arbitrator e-mailed the parties a letter concerning open items and due dates. Regarding the dispute over the PFOA's revised final offer, the arbitrator stated:

The parties' first revised documents (Ex. J1a and J2a) will be considered the offers of record. [PFOA]'s second revised offer (J2b) will only be considered for language helpful to the merger of all three units.

Post-hearing, the parties submitted revised cost-outs and copies of exhibits as requested by the arbitrator. The parties submitted their post-hearing briefs by November 27, 2023. On

December 1, the arbitrator requested revised cost-outs from the City to reflect the parties' stipulated December 31, 2023 contract end date, which the City submitted on December 9.

On December 18, 2023, the arbitrator issued a conventional award as required pursuant to N.J.S.A. 34:13A-16d. A conventional award is crafted by an arbitrator after considering the parties' final offers in light of the nine statutory factors. N.J.S.A. 34:13A-16g(1)-(9). In his award, the arbitrator found that while the City's October 26, 2023 revised final offer complied with his directive, "the PFOA did not comply with this directive." (Award at 5). The arbitrator stated:

Instead, the PFOA's twice revised Final Offer (October 26 and November [2], 2023) added numerous substantive provisions not included in its September 12, 2023 Final Offer. I advised the parties that I would accept the PFOA's revised Final Offer(s) only to the extent language was included which could aid in the merger of the three units into one. Other than that, the PFOA's original Final Offer of September 12, 2023 would be considered.

[Award at 5.]^{3/}

The arbitrator further explained that his November 6, 2023 letter erroneously stated that he would reject only the PFOA's second revised final offer (November 2) but accept the PFOA's first revised final offer (October 26). He clarified that he made that

^{3/} The Award contained a typo for the date of the PFOA's second revised final offer, stating November 23, 2023 instead of November 2, 2023.

statement "prior to discovering that the PFOA's November 2, 2023 second revised Final Offer was identical to the October 26, 2023 Final Offer and well beyond the scope of the original submission." (Award at 26). Finding that the PFOA's first revised final offer contained "substantive add-ons" after arbitration hearings had begun and that "there is a monumental contrast between the PFOA's September 12, 2023 original submission and the revised Final Offers of October 26, 2023 and November 2, 2023," the arbitrator rejected the PFOA's revised final offers and considered only the substantive proposals from the PFOA's September 12, 2023 Final Offer. (Award at 26-29).

The City proposed a successor agreement effective from August 1, 2019 through December 31, 2023 with the following changes:

- 0% wage increase for 8/1/2019-7/31/2020, 8/1/2020-7/31/2021, and 8/1/2021-7/31/2022. 2% salary increase for the years starting on 8/1/2022 and 8/1/2023.
- Eliminate longevity for all officers promoted after December 1, 2023.
- Language stating that Civil Service rules are to be observed in administration of the agreement.
- Language stating that Division of Pensions and Benefits rules about employees' rights and requirements under the Police and Firemen's Retirement System (PFRS) are to be observed in administration of the agreement.
- Language stating that the City shall provide for the defense of employees in accordance with the applicable statute providing for legal defense for firefighters (N.J.S.A. 40A:14-28) and that the City is only required to provide for

the defense when it arises out of or is incidental to the performance of duty.

- Amend "Prior Practices" provision to state that a "right, benefit or privilege enjoyed by employees" must be a common practice in the fire department, such as an established protocol, and that employees are only entitled to the rights and benefits of their own labor contract.
- Amend "Dues Checkoff" provision to state that employees are eligible to withdraw their union memberships by July 1st of every year.
- Enhanced educational benefit (not added to base salary): \$1250 for Associate degree; \$2500 for Baccalaureate degree; and \$3500 for Master's degree. Limited to accredited institutions, graduation with at least "C" average, and certain areas of study (fire science, fire service administration, foreign languages, public safety leadership, public administration, homeland security, and nursing).
- Allow employees to carry over up to 20 leave days to the following year with no additional pay out.
- Assign leave days based on seniority when there are multiple requests for leave on the same day.

The PFOA proposed a successor agreement effective from August 1, 2019 through December 31, 2023 with the following changes:

- Salary increases as indicated in attached grids, reflecting waiver of retroactive pay, except for 2023. In the alternative, annual 3% salary increases for duration of agreement, with full retroactive pay.
- Amend educational benefits proposal to provide (added to base salary): \$1250 for Associate degree; \$2500 for Baccalaureate degree; and \$3500 for Master's degree. Limited to certain areas of study (fire science, fire service administration, social sciences, foreign languages, public safety leadership, law, computer science, finance/accounting, political science, public administration, homeland security, education, nursing, and any other subject the City determines is reasonably related to the job function of a firefighter).

- Increase Comp Time Banks to 100 hours with no payout.
- Assign leave days by seniority.
- Holiday pay increased to 48 hours.
- Ability to relinquish EMS certification.
- Release time any time during shift.
- All overtime paid at time and one-half rate.
- Change healthcare provisions to copy that of the Paterson Firefighters' Association (PFA) MOA entered into with the City on May 31, 2022.

The arbitrator awarded an agreement with a duration of almost four and one-half years with a term of August 1, 2019 through December 31, 2023 as stipulated by the parties. The agreement merged the three supervisory firefighter units (captains, battalion chiefs, and deputy chiefs) into one consolidated agreement as stipulated by the parties. The arbitrator's salary award initially noted that because the award was almost all retroactive (i.e., the term began in 2019 and was set to expire in just a few weeks at the end of 2023), the parties' past payments for these unit employees already used up much of the reserves once designated for them. He stated: "The appropriate salary award is one which, by necessity, provides limited retroactive pay while fairly situating the parties as they head into 2024 and the negotiation of a successor agreement." (Award at 80). The arbitrator accepted neither party's salary proposal. He awarded: a 0% salary increase for

8/1/2019 - 7/31/2020; a 1% salary increase for 8/1/2020 - 7/31/2021; a 2% salary increase for 8/1/2021 - 7/31/2022; a 1.5% salary increase for 8/1/2022 - 7/31/2023; and a 1.5% salary increase for 8/1/2023 - 12/31/2023 (carrying over to July 31, 2024). (Award at 80, 84). The arbitrator awarded retro pay to be distributed among the unit employees totaling \$450,000: \$300,000 for the period of 8/1/2022 - 7/31/2023 and \$150,000 for the period of 8/1/2023 - 12/31/2023. Id. The only realized cost of the award for the contract term would be the \$450,000 retro pay from 8/1/2022 through the end of the contract. (Award at 81). The arbitrator found that the award, in full, yields a 5.22% salary increase for the four year five month period of August 1, 2019 through December 31, 2023. Id.

The arbitrator awarded the following additional changes in his "Non-Economic Award" section (Award at 84-95):

- Education Benefits amended to pay the sums for degrees as indicated in both parties' proposals, limited to the subject areas proposed by the City, except to add "any other course of study reasonably related to the job functions of a superior fire officer" as determined by the City.
- Leave provisions amended to increase the number of leave days that can be carried over to the following year from 11 to 20 and to have leave requests granted by seniority.
- Health Benefits section amended as proposed by the PFOA to match the PFA's 2022 MOA including SHBP enrollment, medical, dental, and prescription drug benefits, employee contribution levels at Chapter 78 Tier 4 levels, provision requiring renegotiation of health benefits if SHBP removes Direct 10 plan, and health insurance waiver incentive.

- Legal defense provision amended to incorporate the correct statute applicable to the defense of firefighters.
- Dues checkoff provision amended to reflect change in law allowing unit employees to provide notice of withdrawal from union dues deduction authorization by July 1 of each year.

All other proposals by the parties were denied.

On January 2, 2024, the PFOA appealed the interest arbitration award. On January 22, the City, after being granted a brief request for extension, filed its response in opposition to the PFOA's appeal.

N.J.S.A. 34:13A-16g requires that an interest arbitrator shall indicate in the award "which of the [16g] factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor." The 16g 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 involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally:
 - (a) In private employment in general . . .
 - (b) In public employment in general . . .
 - (c) In public employment in the same or similar comparable jurisdictions . . .

- (3) The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received.
- (4) Stipulations of the parties.
- (5) The lawful authority of the employer.
. . .
- (6) The financial impact on the governing unit, its residents, the limitations imposed upon the local unit's property tax levy pursuant to section 10 of P.L.2007, c.62 (C.40A:4-45.45), and taxpayers. . . .
- (7) The cost of living.
- (8) The continuity and stability of employment including seniority rights and such other factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours, and conditions of employment through collective negotiations and collective bargaining between the parties in the public service and in private employment.
- (9) Statutory restrictions imposed on the employer. . . .

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

"In general, the relevance of a factor depends on the disputed issues and the evidence presented." Hillsdale PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71, 82 (1994). An arbitrator should 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. Id.; Bedminster Tp., P.E.R.C. No. 2020-11, 46 NJPER 119 (¶27 2019), aff'd, 2020 N.J. Super. Unpub. LEXIS 1503 (App. Div. 2020); Lodi Bor., P.E.R.C. No. 99-28, 24 NJPER 466 (¶29214 1998); and N.J.A.C. 19:16-5.9(b)^{4/}

The standard for reviewing an interest arbitration award is well established. We will not vacate an award unless the appellant demonstrates that: (1) the arbitrator failed to give "due weight" to the 16g statutory factors judged relevant to the resolution of the specific dispute; (2) the arbitrator violated the standards in N.J.S.A. 2A:24-8 and -9; or (3) the award is not supported by substantial credible evidence in the record as a whole. In re State, 443 N.J. Super. 380, 385 (App. Div. 2016), citing Hillsdale, 137 N.J. at 82; and Teaneck Tp. v. Teaneck FMBA, Local No. 42, 353 N.J. Super. 289, 306 (App. Div. 2002), aff'd o.b., 177 N.J. 560 (2003). 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

^{4/} N.J.A.C. 19:16-5.9(b) provides: "Each arbitrator's decision shall be accompanied by a written report explaining how each of the statutory criteria played into the arbitrator's determination of the final award. The opinion and award shall be signed and based on a reasonable determination of the issues, giving due weight to those factors listed in N.J.S.A. 34:13A-16g."

Hill Tp., P.E.R.C. No. 97-119, 23 NJPER 287 (¶28131 1997). "In brief, the arbitrator's opinion should be a reasoned explanation for the decision." Hillsdale, 137 N.J. at 82.

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 Bedminster; Lodi. As some of the evidence may be conflicting, an arbitrator's award is not necessarily flawed because some pieces of evidence, standing alone, might point to a different result. Bedminster; Lodi. Therefore, within the parameters of our review standard, we will defer to the arbitrator's judgment, discretion, and labor relations expertise. Bedminster; City of Newark, P.E.R.C. No. 99-97, 25 NJPER 242 (¶30103 1999).

We initially address the PFOA's assertion that the arbitrator improperly rejected its revised final offers for being non-compliant with his request. The PFOA argues that the arbitrator's request for revised final offers did not clearly state it was only intended to provide more specific contract language and not additional substantive proposals. The PFOA asserts it was prejudicial for the arbitrator to accept the City's revised final offer but not the PFOA's. The City responds that the purpose of the arbitrator's request for revised final

offers was to provide him with specific contractual language for the proposals already submitted. The City asserts that the arbitrator properly disregarded the PFOA's revised final offers because they prejudicially expanded the issues in dispute.

The City and PFOA submitted their final offers to the arbitrator on September 11 and 12, 2023, respectively. The first interest arbitration hearing was held on September 21. On October 12, 2023, the arbitrator requested that the parties "each revise your final offer to include, where applicable, the existing contract language, followed by your proposal to change the existing language and the rationale for the change" or "[i]f the proposal is for a new contract provision, please indicate same." On October 18, the arbitrator reiterated that the revised final offers should "include a verbatim insert of the existing contract language (or designate the proposal as a new provision of the contract), the proposal itself and the rationale underlying the proposal." The parties submitted revised final offers on October 26.

The arbitrator initially only noticed that the PFOA's revised final offer "does not include the verbatim contract language relevant to each proposal as I requested" and on October 30 he requested that the PFOA submit the proposed contract language. However, following the PFOA's November 2 submission of a second revised final offer, counsel for the City informed the

arbitrator of "numerous changes proposed that were not part of the Union's final offer" and objected to the PFOA's submission because "the revised offer was only to include specific language proposals as well as rational[e] for the changes proposed in the final offer." On November 2, the arbitrator acknowledged that he had not had time to review the substance of the PFOA's revised final offer, but reiterated that "the substance of both parties['] final offers should not have changed since the original submission." (Emphasis added).

Following the third and final day of hearing on November 3, the arbitrator on November 6 sent a letter to the parties regarding various open items in the interest arbitration hearing and indicated that he would be considering both parties' first revised offers but not the PFOA's second revised offer (except for language helpful to the merger of all three units). However, upon further review, the arbitrator determined that both of the PFOA's revised final offers (October 26 and November 2 submissions) "added numerous substantive provisions not included in its September 12, 2023 Final Offer." (Award at 5; emphasis added). The arbitrator explained that his November 6 letter accepting the PFOA's first revised final offer was therefore sent in error because it was prior to him discovering that both of the PFOA's revised final offers went "well beyond the scope of the original submission." (Award at 26). The arbitrator cited

numerous examples of substantive additions the PFOA made to its final offer rather than just providing specific contract language for its previously submitted proposals as requested, including (Award at 27-28):

- Change to Grievance Procedure language to that of PFA's MOA
- Change Longevity section tied to negotiation with another union
- Change Comp Time to allow unit employees to accumulate a bank of up to 480 hours of CTO to only be used as time off during the employee's career
- Change payment for earning Certifications to \$2,500
- Change Leave flexibility to be in increments of 4 hours
- Change Transfer requests to be assigned by seniority
- Change Mutual Swaps to allow periods of as little as 4 hours

Our review of the record, including comparison of the PFOA's September 12 Final Offer to its subsequent revised final offers, confirms the arbitrator's determination that the PFOA's revised final offers included new substantive proposals that were not included in its final offer. The City's revised final offer, by contrast, complied with the arbitrator's request by supplying specific contract language without introducing new proposals beyond the scope of its September 11 Final Offer. The arbitrator's October 12 and 18 requests sought for the parties to indicate whether their proposals required new contract provisions or changes to current contract provisions, and to provide the proposed verbatim contract language to either change existing

language or add new language. There was no solicitation of, or mutual consent to, substantive additions to the final offers that the parties had already submitted prior to the start of the arbitration hearings. See N.J.A.C. 19:16-5.7(g) (2).^{5/} While the arbitrator had discretion to permit revisions to final offers until the close of hearing,^{6/} here he sought only submission of specific contract language concerning the parties' previously submitted offers. If the PFOA had believed there was any ambiguity in the arbitrator's request, the arbitrator's November 2 response to the City's objection further clarified that "the substance of both parties['] final offers should not have changed since the original submission." Furthermore, the arbitrator's ultimate rejection of the PFOA's revised final offers did not prejudice the PFOA, as the City was subject to the same

^{5/} N.J.A.C. 19:16-5.7(g) (2) provides, in pertinent part: "At least 10 days before the hearing, the parties shall submit to the arbitrator and to each other their final offers on each economic and noneconomic issue in dispute. . . . The arbitrator may accept a revision of such offer at any time before the arbitrator takes testimony or evidence or, if the parties agree to permit revisions and the arbitrator approves such an agreement, before the close of the hearing. Upon taking testimony or evidence, the arbitrator shall notify the parties that their offers shall be deemed final, binding and irreversible unless the arbitrator approves an agreement between the parties to permit revisions before the close of the hearing."

^{6/} See Hillsdale, 137 N.J. at 81, citing N.J.A.C. 19:16-5.7, finding that "the arbitrator may at his or her discretion accept a revision of position by either party on any issue until a hearing has been deemed closed" Ibid. (internal quotation marks and citations omitted).

parameters for its revised final offer and did not submit any additional substantive proposals beyond its original final offer. Given this record, we find that the arbitrator did not err by rejecting the PFOA's revised final offers and considering only the PFOA's original final offer. See Madison Bor., P.E.R.C. No. 2013-5, 39 NJPER 93 (¶33 2012) (arbitrator did not err by rejecting Borough's request to submit amended final offer with substantive changes to salary proposal after hearing concluded).

We next address the PFOA's objection to the arbitrator's awarding of its health benefits proposal. The PFOA asserts that the arbitrator's awarding of its proposal to adopt the health benefits language from the PFA's May 2022 MOA was in error because its revised final offer only sought to add the health benefits waiver incentive language from the PFA's MOA. The City responds that the arbitrator's healthcare award provided the PFOA with the exact contract language it sought in its final offer.

The PFOA's September 12 final offer included the following health benefits proposal:

Change health care provisions to mimic Article VII of PFA Local 2's MOA entered into with the City on May 31, 2022 (A copy of which is attached).

The arbitrator's award recited the full "Article VII - Health Benefits" provision from the PFA's May 2022 MOA with the City and awarded the same health benefits language, including the waiver incentive language, as requested by the PFOA in its final offer.

(Award at 89-91). Contrary to the health benefits proposal in the PFOA's revised final offer which, as discussed above, was properly rejected, the PFOA's final offer did not limit its health benefits proposal to only the addition of a health benefits waiver incentive. Therefore, the arbitrator did not make a mistake by replacing the PFOA's health benefits provision with the same language found in the PFA's MOA.

We next address the PFOA's assertion that the arbitrator misapplied the 16g statutory factors. The PFOA argues that the arbitrator improperly grouped factors 16g(1), (5), (6), and (9) together. The PFOA contends that the arbitrator did not give due weight to internal comparability because the City's settlements with other uniformed and non-uniformed units provided for 2% or more in salary increases. The City responds that the arbitrator properly considered all nine 16g statutory factors and explained why he found factors 16g(1), (5), (6), and (9), pertaining to the interest and the welfare of the public, financial impacts, and lawful authority and statutory restrictions, to all be relevant and related. The City asserts that the arbitrator thoroughly explained his reasoning for not awarding 2% salary increases based on the City's financial condition. The City notes that the arbitrator properly found that the City presented the expert financial testimony of its CFO, whereas the PFOA did not present

an expert witness to challenge the City's evidence concerning the City's financial condition. (Award at 51).

The arbitrator's award included a section entitled "Application of the Statutory Criteria/Salary Award" in which he indicated he was considering the interest and welfare of public (16g(1)), lawful authority of employer (g(5)), financial impact on governing unit and residents (g(6)), and statutory restrictions imposed on employer (g(9)) together. (Award at 48-49). He determined that the interest and welfare of the public is entitled to the most weight because it embraces many factors and recognizes their interrelationship, including the financial impact of the award. (Award at 48-49). In applying these criteria, he appropriately considered the City's financial condition as testified to by the City's CFO, which includes the City's receipt of Transitional Aid. (Award at 49-55). Following his review of the evidence concerning the City's financial condition, the arbitrator concluded:

In sum, the confluence of lost municipal court revenues due to COVID-19, the delay in negotiations until 2022, the structural budgetary shortfall experienced in 2022-2023 by the City, the need for it to request an additional 10 million dollars from the DCA, its moratorium on filling vacant positions (to raise 3.6 million dollars), and the City's diversion of reserves to fund an originally proposed 2% across-the-board offer to the PFOA units contributed to the significant limitations on fashioning an economic award for this group.

[Award at 55.]

The arbitrator then discussed Comparability (16g(2)), recognizing the importance of considering evidence of a pattern of settlement among a public employer's units. (Award at 58-62). See Somerset Cty. Sheriff's Office and Somerset Cty. Sheriff FOP, Lodge No. 39, P.E.R.C. No. 2007-33, 32 NJPER 372 (¶156 2006), aff'd, 34 NJPER 21 (¶8 App. Div. 2008) ("[m]aintaining an established pattern of settlement promotes harmonious labor relations, provides uniformity of benefits, maintains high morale, and fosters consistency in negotiations.") As to internal comparability, the arbitrator considered the 2% salary increases received by the City's non-uniformed units and the greater than 2.9% salary increases received in the PFA unit's 2022 MOA. (Award at 61-62). However, the arbitrator noted that the PFA unit also provided economic concessions including ending terminal leave and longevity for new hires, and folding longevity into salary for existing members. (Award at 61).

Ultimately, when considering internal comparability in the context of the public interest and financial impact criteria, the arbitrator determined that he was constrained to awarding less than 2% salary increases for some years of the award based on the City's financial condition. Specifically, the arbitrator found that, in order to fund even a 2% across-the-board salary increase the City would need to divert all of its surplus and cap banking

for CY 2024 and still end up approximately \$400,000 short, possibly requiring layoffs or service shutdowns to make up the shortage. (Award at 55-56). Accordingly, he concluded:

In addressing the public interest/financial criteria, even though I would otherwise find that the unit in question deserved, at a minimum, to be treated like the City treated its non-uniformed union and non-represented employees, i.e., 2% across-the-board with retroactive pay, in the current fiscal setting, I cannot award that amount.

[Award at 55.]

The PFOA next asserts that the arbitrator unreasonably found that its external comparables did not establish enough geographic or financial condition comparability with the City. The PFOA argues that the arbitrator mistakenly found that the PFOA did not provide any comparables that also receive Transition Aid because the North Hudson Regional Fire and Rescue (NHRR) comparable it submitted includes Union City, which receives Transitional Aid. The City responds that the arbitrator afforded the appropriate weight to the PFOA's external comparables because they did not satisfy geographic comparability and because Union City is the only municipality in the NHRR receiving Transitional Aid. The City argues that the PFOA's criticism is irrelevant because the arbitrator's salary award was more heavily influenced by application of the public interest, financial impact, and internal comparability criteria.

Regarding external comparability, the arbitrator summarized the five general categories of considerations set forth in the Commission's comparability guidelines.^{7/} (Award at 62-63). The arbitrator comprehensively reviewed both the PFOA's and City's external comparables. (Award at 63-77). The arbitrator found that while the PFOA's submissions met some of the external comparability criteria, some did not meet the geographic criterion and none met the financial condition criterion. (Award at 77). More significantly, the arbitrator clarified that external comparables do not reflect the City's financial abilities and are not as relevant to his salary award as the factors of the public interest, financial impact, or internal comparability. (Award at 76-77). As for whether the arbitrator properly considered Union City's status in his analysis of the NHRR comparable, we note that his external comparability analysis included submissions by both the PFOA and the City indicating that Union City receives Transitional Aid. (Award at 69, 76). However, we take administrative notice that Union City is only one of five municipalities that are part of the NHRR and that none of the other four receive Transitional Aid.^{8/} We therefore

^{7/} Those five categories are: geographic, socioeconomic, financial, compensation and other terms and conditions of employment, and any other comparability considerations deemed relevant by the arbitrator. N.J.A.C. 19:16-5.14(d).

^{8/} The North Hudson Regional Fire and Rescue includes Union
(continued...)

find that the arbitrator did not make a mistake of fact when he concluded that "the City is the only one of the groups receiving transitional aid" because the NHRR as an entity does not receive Transitional Aid. (Award at 77).

We next address the PFOA's objection to the arbitrator's consideration of the City's receipt of Transitional Aid and oversight by the state's Department of Community Affairs (DCA) in his analysis of the financial impact of his salary award. The PFOA asserts that because the State is not a party to the interest arbitration and cannot be ordered to pay for the award,^{9/} the arbitrator cannot use the City's receipt of Transitional Aid to justify awarding lower salaries than the City's established pattern of settlement. The PFOA asserts that because the City's Memorandum of Understanding (MOU) with the DCA generally anticipates 2% annual salary increases for all employees, the arbitrator erred by awarding lower salary increases. The City responds that the arbitrator properly considered its receipt of Transitional Aid and DCA oversight in

8/ (...continued)
City, Guttenberg, North Bergen, Weehawken, and West New York. See, e.g., northhudsonfire.com; and No. Hudson Regional Fire and Rescue and No. Hudson Firefighters Ass'n, P.E.R.C. No. 2013-83, 40 NJPER 32 (¶13 2013), aff'd, 2015 N.J. Super. Unpub. LEXIS 438 (App. Div. 2015).

9/ The PFOA cites City of Camden and IAFF Local No. 788, 429 N.J. Super. 309, 329-331 (App. Div. 2013), certif. den. 215 N.J. 485 (2013) for this proposition.

applying the 16g factors of financial impact and the public interest. The City argues that the arbitrator, in accordance with Camden, appropriately found that the DCA is a nonparty to this matter and cannot be directed to fund an award. The City contends that the arbitrator properly considered the interplay of the City's Transitional Aid/DCA oversight with the Interest Arbitration Reform Act, while recognizing that the DCA does not have the authority to reject an interest arbitration award.

The arbitrator extensively analyzed the impact of the "Special Municipal Aid Act" (SMAA), N.J.S.A. 52:27D-118.24 et seq., through which the City receives Transitional Aid and is subject to DCA oversight of its finances through its MOU with the City. (Award at 33-43). The arbitrator correctly recognized that, although the DCA does not have the authority under the SMAA to nullify an interest arbitration award as it would under the "Municipal Stabilization and Recovery Act" (MSRA), N.J.S.A. 52:27BBBB-1, et seq., it may withhold Transitional Aid funds if the City allows compensation increases that are not sustainable. (Award at 36-38). The arbitrator also, consistent with Camden, 429 N.J. Super. 309, supra, properly found that the DCA is not a party to the interest arbitration and cannot be directed to fund an award. (Award at 40-43). He explained:

Obviously, an interest arbitrator must be sensitive to the statutory oversight delegated to the DCA under the Special Municipal Aid Law to help a fiscally

distressed municipality such as the City of Paterson. . . . [The DCA] resides in the public interest/financial criteria of the interest arbitration statute. The DCA's efforts shaped the overall financial picture which the City presents to the undersigned arbitrator in this proceeding. Since the arbitrator cannot direct the DCA to fund an award, the arbitrator's focus must be to apply the financial/public interest criteria to the parties' competing salary proposals just as he would in any other interest arbitration proceeding where dedicated state aid is provided.

[Award at 41.]

Given the significant financial impact of the DCA's oversight, which requires the City to remain in substantial compliance with its guidelines to continue receiving Transitional Aid, we find that it was appropriate for the arbitrator to consider the DCA's oversight in his application of the 16g factors.

Finally, we consider the PFOA's assertion that the arbitrator failed to make a final and definite award on the subject matter because he did not provide all the language necessary to fully unify its three units' previous contracts into a single unified contract. The PFOA argues that it was improper for the arbitrator to state he did not have enough time to merge the contracts and to leave the issue to the parties.

The arbitrator awarded the consolidation of the three PFOA units into a single contract (Award at 84). While the arbitrator's award provided the language for the awarded provisions to be included in the new unified CNA, he acknowledged

that he was unable to otherwise blend the units' preexisting CNA terms into a single, unified contract within the statutory time constraints. The arbitrator stated:

For all other changes needed to create a unified contract, the parties shall endeavor to use the most clear and concise language available among the three separate contracts. If a dispute arises over the drafting of a unified contract, then either party should consider requesting the appointment of a mediator from the PER Director of Conciliation. There was simply too little time in this proceeding to fully work out a blending of all three contracts into one. The parties are left to finish that task.

[Award at 95, footnote 17.]

Given the 90-day statutory time frame for conducting a hearing and rendering an interest arbitration award (N.J.S.A. 34:13A-16f(5)), as well as the numerous substantive proposals and extensive financial records considered in this case, the arbitrator understandably was unable to specifically set forth how the unmodified language of the previous contracts could be efficiently blended and reformatted into a single CNA. The substantive aspect of this proposal was accomplished by the arbitrator's consideration of the three units together and his determination that for this award and going forward, the units would be consolidated into a single contract. We find that the arbitrator did not err by leaving to the parties the ministerial task of blending all of the unmodified language of the POA's three previous contracts into a single document. The parties

have all of the information they need to unify the contracts into a single CNA that incorporates all of the changes made by this award without altering any previous terms that remain applicable to one or more of the units.^{10/}

ORDER

The interest arbitration award is affirmed.

BY ORDER OF THE COMMISSION

Chair Hennessy-Shotter, Commissioners Bolandi, Eaton, and Kushnir voted in favor of this decision. Commissioner Papero voted against this decision. Commissioner Ford abstained from consideration. Commissioner Higgins was not present.

ISSUED: February 29, 2024

Trenton, New Jersey

^{10/} While the PFOA argued that if the parties cannot agree on unifying language then they will have to hire a mediator, we note that the Commission's mediators are available to assist the parties at no cost to them in the event of an impasse.

P.E.R.C. NO. 2023-13

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF BURLINGTON,

Petitioner,

-and-

Docket No. SN-2022-040

PBA LOCAL 249,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the County's request for restraint of binding arbitration of the PBA's grievance contesting the Township's alleged incorrect payment of salary and back pay to PBA officers based on the Township's implementation of the salary terms of a recent interest arbitration award. The Commission finds that the compensation dispute is mandatorily negotiable and that there is no statutory or regulatory support for the County's assertion that it should be decided by the interest arbitrator rather than through the parties' negotiated grievance procedure. As the award was not appealed, the Commission finds that, per N.J.S.A. 34:13A-16f(5), it is final and binding on the parties and to be implemented immediately. The Commission finds that the parties' grievance procedure was not modified by the award and that there is no requirement that the award be converted into a collective negotiations agreement in order for a grievance arbitrator to resolve a dispute arising under the terms 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. 2023-13

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF BURLINGTON,

Petitioner,

-and-

Docket No. SN-2022-040

PBA LOCAL 249,

Respondent.

Appearances:

For the Petitioner, Malamut & Associates, LLC,
attorneys (Evan Crook, of counsel and on the brief)

For the Respondent, Crivelli, Barbati & DeRose, LLC,
attorneys (Frank M. Crivelli, of counsel and on the
brief)

DECISION

On April 20, 2022, the County of Burlington (County) filed a scope of negotiations petition seeking a restraint of binding arbitration of a grievance filed by PBA Local 249 (PBA). The grievance asserts that the County paid PBA officers incorrect salaries and incorrect amounts of back pay owed when it failed to correctly implement the salary portion of the parties' January 19, 2022 interest arbitration award issued (Docket No. IA-2021-023) for the term January 1, 2021 through December 31, 2024.

The County filed briefs, exhibits, and the certifications of its counsel, Evan Crook. The PBA filed a brief.^{1/2/} These facts appear.

The PBA represents certain County police officers including the titles of corrections officer and I.D. Officer. The County and PBA were parties to a CNA in effect from January 1, 2012 through December 31, 2020. The PBA filed for interest arbitration to settle the parties' collective negotiations impasse and establish the terms of their successor contract. On January 19, 2022, the arbitrator issued his interest arbitration award setting the parties' contract terms for the period of January 1, 2021 through December 31, 2024. Among other things, the interest arbitration award provided for a new salary guide, certain salary step movement, and pay increases. The award provided that: "All provisions of the existing agreement shall be carried forward except for those which have been modified by the terms of this Award." Crook certifies that both parties accepted the interest arbitration award and neither party appealed it. The parties' grievance procedure ends in binding arbitration as

1/ On May 9, 2022, PBA Local 249 requested oral argument. We deny the request for oral argument.

2/ The PBA did not file a certification. N.J.A.C. 19:13-3.6(f) requires that all briefs filed with the Commission recite all pertinent facts supported by a certification based upon personal knowledge.

set forth in their 2012-2020 CNA. The grievance procedure was not modified by the interest arbitration award.

Crook certifies that on March 18, 2022, the County took steps to implement the salary portion of the interest arbitration award. He certifies that the parties dispute whether the step movement on the award's new salary guide is supposed to be implemented for the 2021 contract year. Crook certifies that the County utilized the examples provided in the interest arbitration award for implementing and calculating back pay. He certifies that the PBA alleges that the award provides for automatic step movement for officers on the guide in 2021.

In March 2022, the parties exchanged letters concerning their disagreement over the correct step movement, salaries, and back pay to be paid to PBA officers for the year 2021. The PBA filed a grievance and submitted a request for binding grievance arbitration to the Commission on April 11, 2022. The request for arbitration alleges that the County incorrectly implemented the salary portion of the interest arbitration award, resulting in incorrect step movement, incorrect back pay, and incorrect salary adjustments for PBA officers. On April 20, 2022, the County filed this scope of negotiations petition seeking to restrain arbitration of the PBA's grievance.

Prior to filing this scope petition, the County, on April 12, 2022, filed a modified interest arbitration petition seeking

for the Commission to re-open the interest arbitration award to allow the interest arbitrator to issue a clarification of his salary award. The PBA objected to the County's request. On May 2, 2022, the Commission's Director of Conciliation and Arbitration issued its decision denying the County's request to re-open the interest arbitration award in order to seek a clarification from the interest arbitrator. The Director stated, in pertinent part:

I am unable to process the County's petition. The Commission rules do not provide for the re-opening of interest arbitration matters absent appeal. I note that I have communicated with the parties and was unable to obtain consent from the PBA to send the matter for clarification. The relief sought by the County is not supported by the ethical code, Commission regulations, or Commission case law. Therefore, it is outside the authority of the Division of Conciliation & Arbitration to process it.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978) states:

The Commission is addressing the abstract issue: is the subject matter in dispute within the scope of collective negotiations. Whether that subject is within the arbitration clause of the agreement, whether the facts are as alleged by the grievant, whether the contract provides a defense for the employer's alleged action, or even whether there is a valid arbitration clause in the agreement or any other question which might be raised is not to be determined by the Commission in a scope proceeding. Those are questions appropriate for determination by an arbitrator and/or the courts.

Thus, we do not consider the contractual merits of the grievance or any contractual defenses the employer may have.

The scope of negotiations for police officers and firefighters is broader than for other public employees because N.J.S.A. 34:13A-16 provides for a permissive as well as a mandatory category of negotiations. Paterson Police PBA No. 1 v. City of Paterson, 87 N.J. 78, 92-93 (1981), outlines the steps of a scope of negotiations analysis for firefighters and police:

First, it must be determined whether the particular item in dispute is controlled by a specific statute or regulation. If it is, the parties may not include any inconsistent term in their agreement. State v. State Supervisory Employees Ass'n, 78 N.J. 54, 81 (1978). If an item is not mandated by statute or regulation but is within the general discretionary powers of a public employer, the next step is to determine whether it is a term or condition of employment as we have defined that phrase. An item that intimately and directly affects the work and welfare of police and firefighters, like any other public employees, and on which negotiated agreement would not significantly interfere with the exercise of inherent or express management prerogatives is mandatorily negotiable. In a case involving police and firefighters, if an item is not mandatorily negotiable, one last determination must be made. If it places substantial limitations on government's policymaking powers, the item must always remain within managerial prerogatives and cannot be bargained away. However, if these governmental powers remain essentially unfettered by agreement on that item, then it is permissively negotiable.

Arbitration is permitted if the subject of the grievance is mandatorily or permissively negotiable. See Middletown Tp., P.E.R.C. No. 82-90, 8 NJPER 227 (¶13095 1982), aff'd, NJPER Supp.2d 130 (¶111 App. Div. 1983). Thus, if a grievance is either mandatorily or permissively negotiable, then an arbitrator can determine whether the grievance should be sustained or dismissed. Paterson bars arbitration only if the agreement alleged is preempted or would substantially limit government's policy-making powers.

The County asserts that arbitration should be restrained because the salary dispute has arisen from language in the parties' interest arbitration award and therefore should be interpreted by the interest arbitrator instead of a grievance arbitrator. It argues that the Appellate Division's unpublished decision in In re Borough of Bergenfield, 2021 N.J. Super. Unpub. LEXIS 2398 (App. Div. Dkt No. A-3495-19), which allowed a limited remand to the Commission and interest arbitrator to resolve an unfair practice dispute over reducing the salary terms of an interest arbitration award to writing in a CNA, directs a similar remand for clarification of the interest arbitration award in this case. The County contends that because the issue in this case concerns conflicting interpretations of an interest arbitration award, it is not the type of dispute that falls within the terms of the parties' grievance procedure.

The PBA asserts that arbitration should not be restrained because its grievance is a contractual dispute over appropriate salary step placement, which is a mandatorily negotiable compensation issue. It argues that because neither party appealed the interest arbitration award that sets forth the parties' salary increments for the current contract term, the award is settled and serves as the parties' contract until the parties draft and execute an updated CNA.

There is no question that the dispute here concerning whether certain employees have been placed on the correct salary guide step and have received the correct amount of salary and back pay according to the appropriate step placement is a mandatorily negotiable compensation issue. "The 'prime examples' of mandatorily negotiable terms and conditions of employment under New Jersey case law 'are rates of pay and working hours.'" Robbinsville Twp. Bd. of Educ. v. Washington Twp. Educ. Ass'n, 227 N.J. 192, 199 (2016) (quoting Local 195, IFPTE v. State, 88 N.J. 393, 403 (1982)); Atlantic Cty., 230 N.J. 237, 253 (2017) ("We find that salary step increments is a mandatorily negotiable term and condition of employment because it is part and parcel to an employee's compensation for any particular year.") The PBA's grievance is therefore legally arbitrable.

We turn to the County's claim that the PBA's grievance arbitration should be restrained and that the salary dispute

should instead be considered by the interest arbitrator who issued the parties' interest arbitration award. There is no statutory or regulatory basis for the County's requested procedural maneuver to avoid grievance arbitration over the mandatorily negotiable compensation issue disputed by the parties. Any remand to the interest arbitrator by the Commission or courts is only contemplated within the confines of the statutory appeal process. N.J.S.A. 34:13A-16f(5) (a). The interest arbitration award was issued and neither party appealed it to the Commission within the statutory 14-day period. The award therefore became ". . . final and binding upon the parties and shall be irreversible . . ." and set the terms of the parties' contract going forward. N.J.S.A. 34:13A-16f(5); see also N.J.S.A. 34:13A-16f(5) (b): "An arbitrator's award shall be implemented immediately." As the interest arbitration award is binding and to be implemented immediately, there is no requirement that the parties formally convert the award's modifications into an updated CNA in order to resolve a dispute concerning terms of employment set forth therein. Accordingly, once the 14-day statutory appeal period expired, those terms of employment set forth in the award became enforceable by either party according to their negotiated grievance procedure or via an enforcement action in Superior Court pursuant to N.J.S.A.

34:13A-19.^{3/} See City v. City of Orange Twp., 2019 N.J. Super. Unpub. LEXIS 959 (App. Div. 2019) (after 14-day statutory appeal period expired, the interest arbitration award became final, binding, and enforceable; the City had no right to substantively challenge the award when the union sought to enforce it).

For those terms and conditions of employment that the interest arbitration award did not modify, the parties' most recent CNA continues to govern. The award explicitly states that any terms not modified therein continue in effect unchanged.^{4/} The award did not modify the parties' negotiated grievance procedure that has continued from their most recent CNA. See Article XXI "Grievance Procedure and Arbitration Procedures." As this procedure ends in binding grievance arbitration and continues to be applicable for the contract term covered by the interest arbitration award, the PBA may arbitrate its compensation dispute according to the parties' negotiated grievance procedure. It is not unusual for parties to utilize

^{3/} We note that the option to seek enforcement of an interest arbitration award in court is not an exclusive enforcement mechanism. "The decision of the arbitrator may be enforced at the instance of either party in the Superior Court with venue laid in the county in which the dispute arose." N.J.S.A. 34:13A-19. The statute does not preclude parties from utilizing their negotiated grievance procedures to resolve disputes over terms and conditions of employment.

^{4/} "All provisions of the existing agreement shall be carried forward except for those which have been modified by the terms of this Award."

the grievance procedure to resolve disputes over the terms of an interest arbitration award. See, e.g., Union Cty. Sheriff, P.E.R.C. No. 2016-36, 42 NJPER 269 (¶77 2015) (work hours provision modified by interest arbitration award was arbitrable); West Windsor Tp., P.E.R.C. No. 2013-39, 39 NJPER 225 (¶76 2012) (tuition reimbursement provision modified by interest arbitration award was arbitrable); and Burlington Cty., P.E.R.C. No. 2018-41, 44 NJPER 391 (¶110 2018) (County committed unfair practice when it repudiated a grievance decision implementing shift schedules set by interest arbitration award).

Furthermore, the County's assertion that the grievance procedure does not cover this salary dispute is a contractual defense that is outside of the Commission's scope of negotiations jurisdiction and appropriate for the arbitrator to determine. Ridgefield Park, supra, 78 N.J. at 154; University Hospital (UMDNJ), P.E.R.C. No. 2017-34, 43 NJPER 236 (¶73 2016) (issues of substantive, contractual, and procedural arbitrability are outside the purview of a negotiability determination). We note as well that the Employer-Employee Relations Act (Act) favors the broadest interpretation of the scope of an arbitration clause.^{5/}

5/ N.J.S.A. 34:13A-5.3 provides: "In interpreting the meaning and extent of a provision of a collective negotiation agreement providing for grievance arbitration, a court or agency shall be bound by a presumption in favor of arbitration. Doubts as to the scope of an arbitration clause shall be resolved in favor of requiring arbitration."

The County's reliance on the Appellate Division's decision in Bergenfield, 2021 N.J. Super. Unpub. LEXIS 2398, supra, is misplaced. The instant case has arisen in a scope of negotiations context wherein the County seeks to restrain the PBA from arbitrating over the correct implementation of salary provisions set forth in the interest arbitration award. Bergenfield, by contrast, was an unfair practice case concerning the employer's alleged violation of N.J.S.A. 34:13A-5.4a(6) for refusing to sign a draft collective negotiations agreement. The Bergenfield court determined that the unfair practice dispute "over whether the PBA's proposed draft of the salary term is an accurate reflection of the salary term the interest arbitrator wrote for the parties" should be remanded to the interest arbitrator. Bergenfield at *18. The Bergenfield holding was narrowly applicable to the unique situation therein concerning whether the Borough "could only be compelled to sign a contract that accurately reflected the interest arbitration award." Ibid. As Bergenfield was an unpublished decision that did not contain a judicial pronouncement interpreting the Police and Fire Public Interest Arbitration Reform Act (Reform Act), it provides no precedential support for the County's broad assertion that it may

re-open a final, binding interest arbitration award to resolve a grievance arbitration dispute over contract language.^{6/}

Moreover, Bergenfield is distinguishable because the interest arbitration award that the parties disputed there was subject to the now expired 2% cap on average annual increases to base salary items. The Bergenfield court repeatedly emphasized the significance of the interest arbitrator's calculations of the 2% "hard cap" and how the union's interpretation of the award's salary agreement might violate that statutory cap. Bergenfield at *13-*17. The court was particularly concerned that allowing a grievance arbitrator to resolve the disputed salary language could "potentially result[] in salary increases exceeding the two percent hard cap." Id. at *19. As no such 2% cap concerns are present in this case, the grievance arbitrator's determination of the present salary step and back pay dispute would not have the potential to violate a statutory salary cap. There is thus no comparable, compelling reason to re-open a final interest arbitration award for clarification by the interest arbitrator.

Finally, we concur with the Director of Conciliation and Arbitration that the County's request to re-open the interest

^{6/} While unpublished opinions are not binding on courts, R. 1:36-3, the Commission is obliged to follow judicial pronouncements interpreting the statutes it implements. Twp. of Franklin v. Franklin Twp. PBA Local 154, 424 N.J. Super. 369, 378 (App. Div. 2012), citing, In re Byram Bd. of Educ., 152 N.J. Super. 12, 22 (App. Div. 1977).

arbitration award for clarification without the PBA's consent would violate the "Code of Professional Responsibility for Arbitrators of Labor-Management Disputes" to which the Commission's interest arbitrators must adhere.^{7/} Section 6(D)(1) of the Code provides: "No clarification or interpretation of an award is permissible without the consent of both parties." As the PBA has not consented to re-opening the award before the interest arbitrator for his interpretation of the disputed salary step provisions, the interest arbitrator may not provide such requested interpretation. We also note that Section 6(F)(1) of the Code provides that: "The arbitrator's responsibility does not extend to the enforcement of an award." The PBA's grievance seeking to enforce certain salary provisions set forth in the award is therefore properly before the grievance arbitrator and is not within the interest arbitrator's jurisdiction.

Based on all of the above, we find no support for the County's position that the PBA's compensation grievance is outside of the scope of negotiations and should be directed to the parties' former interest arbitrator rather than a grievance

^{7/} N.J.S.A. 34:13A-16(e)(3) provides: "Arbitrators serving on the commission's special [interest arbitration] 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 Disputes' of the National Academy of Arbitrators, the American Arbitration Association, and the Federal Mediation and Conciliation Service." See also N.J.A.C. 19:16-5.10.

arbitrator according to their grievance procedure. The interest arbitrator no longer has jurisdiction and there is no statutory or regulatory support for the Commission invoking its interest arbitration jurisdiction in order to re-open a closed, final, and binding interest arbitration award. See N.J.S.A. 34:13A-16f(5).

ORDER

The request of the County of Burlington for a restraint of binding grievance arbitration is denied.

BY ORDER OF THE COMMISSION

Chair Weisblatt, Commissioners Bonanni, Ford and Voos voted in favor of this decision. None opposed. Commissioner Papero recused himself.

ISSUED: October 27, 2022

Trenton, New Jersey