

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.

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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.<sup>1/</sup> 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.<sup>2/</sup>

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

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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.]<sup>3/</sup>

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

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<sup>3/</sup> 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 1<sup>st</sup> 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)<sup>4/</sup>

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

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<sup>4/</sup> 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).<sup>5/</sup> While the arbitrator had discretion to permit revisions to final offers until the close of hearing,<sup>6/</sup> 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

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<sup>5/</sup> 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."

<sup>6/</sup> 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.<sup>7/</sup> (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.<sup>8/</sup> We therefore

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<sup>7/</sup> 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).

<sup>8/</sup> 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,<sup>9/</sup> 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

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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.<sup>10/</sup>

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

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<sup>10/</sup> 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.