P.E.R.C. NO. 99-11

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RUTGERS, THE STATE UNIVERSITY
OF NEW JERSEY,

Appellant,

-and-

Docket No. IA-97-41

FRATERNAL ORDER OF POLICE
LODGE 62A, SUPERIOR OFFICERS,

Respondent.

RUTGERS, THE STATE UNIVERSITY
OF NEW JERSEY,

Appellant,

Docket No. IA-97-72

-and-

FRATERNAL ORDER OF POLICE
LODGE 62, PRIMARY UNIT,

Respondent.

SYNOPSIS

The Public Employment Relations Commission affirms interest arbitration awards involving Rutgers, the State University and rank-and-file police officers represented by the Fraternal Order of Police Lodge 62, Primary Unit, and superior police officers represented by the Fraternal Order of Police Lodge 62A, Superior Officers. The Commission concludes that the arbitrator adequately analyzed the evidence presented on the relevant statutory factors and reached conclusions supported by substantial credible evidence in the record. The Commission further finds that he gave "due weight" to each of those factors; decided the dispute based on a reasonable determination of the issues; properly exercised his authority under N.J.S.A. 34:13A-16d(2) and 16g; and fully considered the requirements of the law.

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

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Appearances:

For the Appellant, Carpenter, Bennett & Morrissey, attorneys (Irving L. Hurwitz, of counsel)

For the Respondents, Abramson & Liebeskind Associates (Arlyne K. Liebeskind, consultant)

DECISION

The Police and Fire Public Interest Arbitration Reform Act, P.L. 1995, c. 425, N.J.S.A. 34:13A-14 to -21, authorizes the Commission to decide appeals from interest arbitration awards. N.J.S.A. 34:13A-16f(5)(a). We exercise that authority in this case where Rutgers, the State University of New Jersey, appeals from interest arbitration awards involving its rank-and-file

police officers (primary unit) and superior police officers. Those officers work at its New Brunswick/Piscataway, Newark and Camden campuses.1/

The arbitrator resolved the unsettled issues by conventional arbitration, as he was required to do absent the parties' agreement to use another terminal procedure. N.J.S.A. 34:13A-16d(2). He fashioned a conventional award after analyzing the parties' final offers. Those offers were as follows.

For both the superior and primary unit officers, Rutgers proposed a four-year contract from July 1, 1995 through June 30, 1999. Rutgers proposed that eligible officers would receive normal increments on their anniversary dates. It also offered a $250 bonus, not included in base pay, for officers who were on the payroll on July 1, 1996 and when the contract was ratified. For the third year Rutgers also proposed an $840 across-the-board increase on July 1, 1997 and a $420 across-the-board increase on January 1, 1998. For the fourth year, Rutgers also proposed an $840 across-the-board increase on July 1, 1998 and a $525 across-the-board increase on January 1, 1999. In addition, it proposed that on July 1, 1997, a $525 uniform allowance be

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1/ Separate petitions to initiate interest arbitration were filed for each unit. The parties selected the arbitrator to decide both cases and, while he issued separate awards, he conducted one hearing and issued one opinion covering both units. Rutgers has filed a single notice of appeal challenging both awards and we issue a single decision and order.

included in the officers' 1995 base salary and that no uniform allowance be paid in fiscal year 1997-1998 or following years.

Rutgers also proposed that both primary unit and superior officers pay health insurance premium or periodic charges on the same basis as State employees for whom there is no majority representative.2/ In addition, it sought to add contract language: (1) specifying that absences charged to sick leave were not compensable for the purpose of calculating overtime and (2) requiring that an officer reimburse Rutgers for one-half the vehicle damage caused by an officer's carelessness, as determined by the Auto Accident Review Board, up to a maximum of $500.

Finally, Rutgers sought to eliminate the contractual right of primary unit officers to bump junior officers at different campuses and proposed language that would allow a displaced officer to transfer to a different campus only if there were a vacancy at that campus and the officer was qualified for the position. For superior officers, Rutgers proposed contract language that would enable it to: (1) eliminate specific positions instead of laying off the junior officer; (2) limit the displaced

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2/ Effective July 1, 1997, unrepresented employees with a base salary over $40,000 pay the difference between the cost of the Traditional Plan and the average cost to the State for NJ PLUS and participating HMOs. N.J.A.C. 17:9-5.12. Employees with a base salary under $40,000 pay, on a monthly basis, one percent of base salary but not less than $20.00 per month. Ibid.

officer's bumping option to the least senior officer in his or her title in the seniority unit and (3) provide downward bumping procedures for laid off superior officers.

The FOP proposed three-year agreements from July 1, 1995 through June 30, 1998 for both superior and primary unit officers. It sought 4.25% across-the-board increases for both units for 1995-1996, 1996-1997, and 1997-1998. It also proposed that eligible officers receive automatic increments on their anniversary dates notwithstanding contract expiration.3/ With respect to both units, the FOP sought "clarifying language" that all provisions in the negotiated agreement be carried over into the successor agreement unless modifications were required by the arbitrator's award, the parties' stipulations or, for the superior officers, the accretion of sergeants and detectives to that unit. Also for both units, the FOP sought a representation fee for non-union members; a "past practices" clause; and shift bidding by seniority for permanent shifts, except where special skills, qualifications or emergencies dictated a deviation from seniority. Finally, the FOP sought to codify, for both units, the current work schedule, subject to future negotiations or a substantial department policy goal.

3/ In the past, officers were not granted increments after a contract expired. When a new contract was ratified, officers were granted retroactive increments.

The FOP also made several proposals specific to each negotiations unit. With respect to the primary unit, the FOP proposed a thirty-minute lunch, subject to interruption in emergencies. It also proposed that officers earn two hours of compensatory time for any day when they are ordered into stand-by status. In addition, it sought language to "preserve the substantive status quo" concerning seniority bumping rights.

With respect to the superior officers, the FOP proposed a night shift differential of $250 per quarter, a longevity program providing for a 1% increase in base pay after 15 years of service, an annual $250 clothing allowance for detectives and, for sergeants and detectives, reduced years-of-service requirements for 15 and 20 days of vacation. In addition, the FOP sought to increase from 40 to 80 the compensatory time hours that a superior officer could accumulate. Finally, the FOP sought a clause providing that sergeants and detectives be laid off by seniority in title.

For the primary unit, the arbitrator awarded a four-year contract from July 1, 1995 through June 30, 1999 with 3.5% across-the-board increases in each year (Arbitrator's opinion, p. 96). As agreed to by the parties, he also awarded a $25 increase in the clothing maintenance allowance for 1995-1996, 1996-1997 and 1997-1998 (Arbitrator's opinion, pp. 65-66, 98). He granted Rutgers' proposal concerning payment of health benefits premiums and periodic charges, effective "no sooner than" the close of the

first announced special enrollment period following execution of the agreement (Arbitrator's opinion, p. 97). He also awarded the FOP's proposals concerning seniority rights and automatic increments and, with some modification, its proposal for compensatory time for stand-by status (Arbitrator's opinion, pp. 90-91, 97-98). As proposed by the FOP, he awarded contract language stating that the provisions of the 1992-1995 agreement are carried over into the 1995-1999 contract unless modified by the award or any stipulations (Arbitrator's opinion, p. 97). He denied the parties' other proposals (Arbitrator's opinion, p. 94).

For the superior officers unit, the arbitrator also awarded a four-year contract from July 1, 1995 through June 30, 1999, with 3.5% across-the-board increases in each year (Arbitrator's opinion, p. 99). As agreed to by the parties, he awarded a $25 increase in the clothing maintenance allowance for 1995-1996, 1996-1997, and 1997-1998 (Arbitrator's opinion, pp. 67-68, 198). He granted Rutgers' proposal concerning payment of health benefit premiums or periodic charges and the FOP's proposals concerning night shift differential, detectives' clothing allowance, and seniority rights (Arbitrator's opinion, pp. 100-101). As proposed by the FOP, he directed that the award include a clause stating that the provisions of the 1992-1995 contract were carried over into the 1995-1999 agreement unless modified by the award or any stipulations (Arbitrator's opinion,

p. 91). He denied the parties' other proposals (Arbitrator's opinion, pp. 94-95).

Rutgers appeals. It contends that the awards are null and void because they were issued after the arbitrator's authority expired. In addition, it asserts that the arbitrator incorrectly calculated the total net annual economic changes for each year of the agreements; did not properly apply the comparability criterion; and issued awards that are not supported by substantial credible evidence in the record.4/

We turn first to Rutgers' threshold argument that the awards are null and void because the arbitrator issued them three months after the last extension. This is the procedural background.

N.J.S.A. 34:13A-16f(5) requires that an arbitrator's decision be issued within 120 days after his or her appointment, but specifies that the parties may agree to an extension. The arbitrator was appointed in the superior officers matter on January 22, 1997 and was appointed in the primary unit proceeding on February 5. Without an extension, the awards for the superior and primary officer units would have been due on May 22 and June 5, 1997, respectively. The arbitrator conducted one mediation session in March and two in April. Hearings were held on August 21, 22, and 25. Sometime between August 21 and August 25, the

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4/ Rutgers also requests oral argument. We deny that request.

parties signed an agreement extending until December 15, 1997 the deadline for the arbitrator to issue his award. Post-hearing briefs were filed on October 20, 1997.

On February 13 and April 17, 1998, the arbitrator requested additional extensions of time. Neither party agreed to the proposed extensions and "[e]ach preferred to review the Awards before deciding whether to exercise its potential timeliness objection" (Arbitrator's opinion, p. 84). On April 20, 1998, the arbitrator issued the awards.

In Cherry Hill Tp., P.E.R.C. No. 97-119, 23 NJPER 287 (¶28131 1997), we held that the statutory goal of providing for an expeditious, effective and binding procedure for the resolution of disputes, see N.J.S.A. 34:13A-14a, would not be served by vacating a late award and starting proceedings all over again. We concluded that lateness in filing an award is more appropriately addressed under N.J.A.C. 19:16-5.9 (providing that any arbitrator violating the timelines for filing awards may be subject to suspension, removal from the special panel of interest arbitrators, or other discipline under N.J.A.C. 19:16-5.6). We reiterate this holding and reject Rutgers' argument that vacation of the awards is required by the Reform Act and case law outside the interest arbitration context.

N.J.S.A. 34:13A-16f(5) establishes the 120-day timeline, states that the parties may agree to an extension, and then provides that "[a]ny arbitrator or panel of arbitrators violating

the provisions of this paragraph may be subject to the commission's powers under [N.J.S.A. 34:13A-16e(2)]."[5/] N.J.S.A. 34:13A-16e(2) in turn authorizes the Commission to suspend, remove or otherwise discipline an arbitrator for good cause or for a violation of the interest arbitration statute.

N.J.S.A. 34:13A-16f(5) plainly reflects the legislative objective that interest arbitration proceedings be completed promptly, subject to the parties' agreement to extend the statutory time period. But the statute does not provide that the arbitrator loses jurisdiction to issue an award after the statutory deadline or such extension of that period as the parties might agree to. If the Legislature had intended that result, we think it would have so stated. See, e.g., International Brotherhood of Teamsters v. Shapiro, 82 A.2d 345, 350 (Conn. 1951) (statutory time limit for issuing an award, while designed to encourage prompt dispatch of the arbitration, was directory rather than mandatory because it related to procedure and did not specify that arbitrator's jurisdiction terminated after statutory deadline); see also A. E. Korpela, Annotation, Construction and Effect of Contractual or Statutory Provisions Fixing Time Within Which Arbitration Award Must Be Made, 56 A.L.R.3d 815, 828-29 (1974) (collecting cases holding that where a time limit for

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5/ N.J.S.A. 34:13A-16f(5) also allows an arbitrator to request, for good cause shown, a 60-day extension from the Commission.

issuing an award is set by statute or court rule rather than by the parties' agreement, the time limit is directory rather than mandatory and, unless otherwise specified, the arbitrator's authority does not automatically terminate upon the expiration of the time limit); compare City of Hartford v. Local 1716, 688 A.2d 882, 886 (Conn. Super. 1996), aff'd 685 A.2d 700 (Conn. App. 1996) (statutory requirement to render award 15 days after record closes is directory, but award issued seventeen months late was vacated, in part, because not issued within a reasonable time). By setting forth the period for issuing an award and then immediately specifying that the Commission may discipline an arbitrator for violating the time requirements of N.J.S.A. 34:13A-15f(5), we think the Legislature intended that the remedy for a violation would normally take that form.

We recognize that the common law rule is that an arbitration award is generally null and void if made after the time set by agreement. See Goerke Kirch Co. v. Goerke Kirch Holding Co., 118 N.J. Eq. 1, 4 (E. & A. 1935). But we find, based on the text of the Reform Act and the nature of interest arbitration, that the Legislature did not intend that rule to pertain to late interest arbitration awards in statutorily-mandated proceedings.

The traditional rule is based on the premise that an arbitrator's authority derives from the parties' agreement and, therefore, when the agreed-upon time for issuing the award

elapses, the arbitrator's authority expires. Ibid. Since N.J.S.A. 2A:24-8d allows a court to vacate an award where an arbitrator exceeds his or her authority, late awards have been vacated under this section. Public Utility Workers v. Public Service Co., 35 N.J. Super. 414, 417-418 (App. Div.), certif. denied, 19 N.J. 333 (1955) (approving trial court's vacation of late grievance arbitration award); contrast International Brotherhood of Teamsters v. Anchor Motor Freight, Inc., 415 F.2d 220, 223-226 (3d Cir. 1969) (if parties want late labor arbitration award to be automatically vacated they must say so unequivocally; common law view of commercial arbitration should not be imported into labor arbitration). N.J.S.A. 2A:24-8 codified the common law rule by specifying that a court may order a rehearing when an award is vacated if "the time within which the agreement required the award to be made has not expired." Goerke Kirch Co., 118 N.J. Eq. at 5; see also Tretina Printing, Inc. v. Fitzpatrick, 262 N.J. Super. 45, 53 (App. Div. 1993), rev'd on other grounds, 135 N.J. 349 (1994) (no authority to order rehearing after time for issuing award expired); cf. Public Utility Workers, 35 N.J. Super. at 421 (rehearing ordered after time expired; court construed agreement as intending that case be resubmitted).

The theory that an arbitrator's authority expires after the deadline in the parties' agreement does not pertain to compulsory interest arbitration where the arbitrator's authority

is derived from statute and any agreement to extend the deadline is made within a statutory framework mandating interest arbitration as the method for resolving the parties' impasse. See PBA Local 207 v. Bor. of Hillsdale, 137 N.J. 71, 80 (1994) (interest arbitration is a statutorily-mandated procedure which does not depend on a contract or the parties' agreement). And, unlike N.J.S.A. 2A:24-8, the Reform Act does not incorporate the common law rule. N.J.S.A. 34:13A-16f(5)(a) authorizes a remand -- to the same or a different arbitrator -- without the qualifying language in N.J.S.A. 2A:24-8. It delinks the arbitrator's authority from the time limit in the statute -- or the parties' agreement to extend that time period. The Legislature thus intended, in contrast to N.J.S.A. 2A:24-8, that interest arbitration be available to resolve a dispute even where an award is vacated after the time for the arbitrator issuing an award. Given that, we think that affirmance of a late award that otherwise comports with the Reform Act and the Arbitration Act is consonant with the purpose of the Reform Act and is preferable to vacating an award solely because of lateness. The former course of action provides the parties with a binding resolution of their dispute much more promptly than would a remand for new proceedings. See N.J.S.A. 34:13A-14a. We stress, however, that a failure to issue a timely award or observe proper extension procedures will be viewed seriously under N.J.S.A. 34:13A-16e(2) in view of the Legislature's goal of expediting the interest arbitration process.

For these reasons, we find that the awards are not per se void because they were issued after December 15, 1997.6/

We turn to Rutgers' contentions that the arbitrator did not properly calculate the total annual net economic changes resulting from his award, did not properly apply the comparability criterion and issued an award unsupported by substantial credible evidence in the record.

In requiring that disputes be resolved by conventional arbitration unless the parties agree to another terminal procedure, the Reform Act entrusts the arbitrator with weighing the evidence and fashioning an award. An arbitrator must assess the evidence on individual statutory factors and then weigh and balance the relevant, sometimes competing, factors. In reviewing a challenge to an award, we will determine whether the arbitrator considered the criteria in N.J.S.A. 34:13A-16g and rendered a reasonable determination on the issues. Cherry Hill Tp.; N.J.A.C. 19:16-5.9. Consistent with pre-Reform Act case law, we will

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6/ Courts have held that late arbitration awards may be confirmed if a party has waived its right to object. See Zervos v. Freedman Properties, Ltd., 223 N.J. Super. 599, 605 (Ch. Div. 1987) (commercial arbitration award confirmed where party did not object until two and one-half months after deadline and after he had received award); see also Korpela, supra at 836-846 (courts typically reject timeliness challenges made after party has received award). Even if we were to hold that interest arbitration awards could be vacated on timeliness grounds, Rutgers did not object until after it received the award, three months after the parties' extension agreement had expired.

vacate an award if the appellant demonstrates that: (1) the arbitrator failed to give "due weight" to the subsection 16g factors judged relevant to the resolution of the specific dispute; (2) the arbitrator violated the standards in N.J.S.A. 2A:24-8 and -9; or (3) the award is not supported by substantial credible evidence in the record as a whole. Cherry Hill Tp.; cf. PBA Local 207 v. Bor. of Hillsdale, 137 N.J. at 82; Div. 540, Amalgamated Transit Union, AFL-CIO v. Mercer Cty. Improvement Auth., 76 N.J. 245, 253 (1978).

This proceeding required the arbitrator to assess numerous proposals by each party concerning compensation, benefits and contract language. But the primary issue was the amount, if any, of across-the-board increases to be awarded and that was the focus of the arbitrator's analysis of the statutory criteria (Arbitrator's opinion, pp. 70-96). In awarding 3.5% across-the-board salary increases for 1995-1996, 1996-1997, 1997-1998, and 1998-1999, the arbitrator declined to award either the 4.25% increases sought by the PBA or Rutgers' proposal for no across-the-board increases in the first two years of the agreement, followed by flat dollar amounts increases in the third and fourth years of the agreement.7/ The arbitrator summarized

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7/ The FOP estimated that the percentage equivalent of Rutgers' proposed dollar amount increase for 1997-1998 was 2.9% (Arbitrator's opinion, p. 19). Rutgers apparently did not dispute this estimate and the $1260 rate increase proposed for 1997-1998 ($840 in July 1997 and $420 in January 1998)

Footnote Continued on Next Page

his reasons for awarding the across-the-board increases that he did:

> Taking that [the comparability criterion, N.J.S.A. 34:13A-16g(2)] and the other seven statutory criteria into account, I find those 3.5% increases reasonable and appropriate. Statewide, they are modest compared to negotiated increases and on a par with raises awarded in interest arbitrations. They will maintain Rutgers police within the range of comparable units -- albeit at the lowest end -- while Rutgers' proposals would have dropped them far below that range. As discussed elsewhere, they are consistent with the public interest and welfare and well within Rutgers' ability to pay. [Arbitrator's opinion. pp. 80-81]

The arbitrator also granted Rutgers' health benefits proposal, reasoning that it would mitigate the high cost of medical services, would encourage employees' responsible use of medical benefits, and would decrease the total costs of his awards (Arbitrator's opinion, p. 93). On the other hand, the arbitrator concluded that Rutgers had not presented enough evidence to justify award of its seniority, overtime calculation and vehicle damage proposals (Arbitrator's opinion, pp. 90-91, 94-95).

7/ Footnote Continued From Previous Page

is approximately 2.98% of a top-step patrol officer's 1995 salary. The percentage equivalents would be less for higher-paid senior patrol officers and superior officers.

The arbitrator similarly awarded some and denied some of the FOP's proposals. With respect to both units, he awarded the FOP's proposals for automatic payment of increments, noting that Rutgers' practice of delaying payments until new contracts were effective contributed to dissatisfaction and high turnover and affected the continuity and stability of employment, N.J.S.A. 34:13A-16g(8) (Arbitrator's opinion, p. 92). Also with respect to both units, the arbitrator directed that the agreements include language, proposed by the FOP, stating that the provisions of the parties' 1992-1995 contract would be carried over into the 1995-1999 agreement (Arbitrator's opinion, p. 62). For primary unit officers, he granted compensatory time for officers who were ordered onto "standby status" more than once in a contract year, concluding that it was warranted by the intrusion on officers' off-duty time and the minimal cost (Arbitrator's opinion, pp. 92-93). For superior officers, the arbitrator augmented the salary increases awarded by granting the FOP's proposals for a detectives' clothing allowance and a night shift differential -- benefits which he found appropriate based, respectively, on the minimal cost and comparisons with benefits provided by municipal police departments (Arbitrator's opinion, pp. 93-94). He denied the FOP proposal for a longevity payment for superior officers, concluding that it would increase the costs of the award by too much (Arbitrator's opinion, p. 95). He also denied the remaining FOP proposals concerning vacation, shift-bidding, representation

fees, past practices clauses, work schedules, and uninterrupted lunch periods, concluding that the FOP had not demonstrated the need for them (Arbitrator's opinion, pp. 94-95).

In assessing the costs of the awards, the arbitrator calculated the total net annual economic changes for each year of the agreements, as required by N.J.S.A. 34:13A-16d(2) (Arbitrator's opinion, pp. 65-68). He did so by computing, for each year of each agreement, the combined cost of the across-the-board increases, increments for eligible officers, the increases in the uniform maintenance allowance and, for the superior officers unit, the clothing allowance awarded to detectives (Arbitrator's opinion, pp. 65-68).[8/] Using this method, he determined that his primary unit award resulted in increased costs to Rutgers of $118,154 in 1995-1996; $125,383 in 1996-1997; $127,327 in 1997-1998 and $128,139 in 1998-1999 (Arbitrator's opinion, pp. 65-66). The costs for the superior officers unit were $65,893 in 1995-1996; $59,543 in 1996-1997; $68,008 in 1997-1998; and $65,825 in 1998-1999 (Arbitrator's opinion, pp. 67-68). The arbitrator found that Rutgers had substantial expendable fund balances which would enable it to pay for these increases and he rejected its position that State appropriations and student tuition payments were Rutgers' only

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8/ Both parties had included increments in their cost estimates. The across-the-board increase was computed by multiplying the total base salary for each unit by 3.5% (Arbitrator's opinion, pp. 65-68).

sources of funding (Arbitrator's opinion, p. 87-88). The arbitrator also noted that Rutgers would realize significant savings from the health benefits premium-sharing proposal that he awarded, which would reduce the net annual economic costs of his award (Arbitrator's opinion, p. 69). He did not estimate those savings because Rutgers did not provide any figures on the proposal (Arbitrator's opinion, p. 69).

Rutgers contends that the arbitrator improperly calculated the total net annual economic changes for each year of the awards -- and underestimated their costs -- because he considered only the "new money" costs for each year of the agreements rather than the cumulative costs of the awards. It maintains that in the second through fourth year of the agreements, N.J.S.A. 34:13A-16d(2) required the arbitrator to calculate and combine the increased costs attributable to that contract year plus the costs attributable to preceding years. It also maintains that the arbitrator's failure to do so affected his analysis of all the statutory criteria, particularly the financial impact criterion, N.J.S.A. 34:13A-16g(6), and requires that the awards be vacated.

We disagree. N.J.S.A. 34:13A-16d(2) requires that an arbitrator "separately determine" whether the total "net annual economic changes for each year of the agreement are reasonable under the statutory criteria." Given the underscored language, an arbitrator satisfies N.J.S.A. 34:13A-16d(2) if he or she

identifies what new costs will be generated in each year of the agreement and figures the change in costs from the prior year rather than from the beginning of the contract. If the Legislature had intended to require that arbitrators calculate each year's new costs, plus the repeating costs from prior years of the award, it would not have directed them to determine the "annual economic changes" for "each" year of the award.

Moreover, we disagree with Rutgers that the cumulative cost of the award must be calculated to assess the financial impact of the award. N.J.S.A. 34:13A-16g(6). Public employers have an annual budget. Salaries and other recurring expenses must be paid each year from available funds. If an arbitrator determines that the yearly costs of the agreement are reasonable for each budget year and may be funded out of the resources available in each of those years, an arbitrator is not necessarily required to determine the cumulative costs of the award. While that cumulative cost may sometimes be relevant to assessing an award's financial impact, Rutgers has not shown how the cumulative cost of the awards undermines the arbitrator's financial impact analysis. It does not challenge the arbitrator's findings that expendable fund balances are useful indicators of available funds for operations; that total expendable fund balances grew by $48 million between 1994 and 1996; that Rutgers may often change "restricted" designations and remove self-imposed limitations on spending funds, and that it has sufficient revenues to fund the

awards in each contract year (Arbitrator's opinion, pp. 87-88). In this posture, and where calculation of cumulative cost is not statutorily required, we will not disturb the arbitrator's awards because he did not determine the cumulative cost of each award.9/

We are also satisfied that the arbitrator analyzed all the evidence on the relevant statutory factors and fashioned an award that is supported by substantial credible evidence in the record as a whole.

As required by N.J.S.A. 34:13A-16g(2), the arbitrator compared the hours, salaries and employment conditions of the employees involved in the proceeding with "employees generally" and employees "performing the same or similar services" in private employment in general, public employment in general, and public employment in the same or similar comparable jurisdictions. He found that the across-the-board increases he awarded were

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9/ Rutgers also argues that, in determining the dollar amount of each year's across-the-board increase, the arbitrator should have adjusted each unit's total base salary for the second, third and fourth years of the agreement by the across-the-board increases and increments for prior years. If net annual economic changes are calculated using the arbitrator's methodology, but Rutgers' figures as to the amount of the across-the-board increases, the total costs increase approximately $20,000 for the primary unit and approximately $10,000 for the superior officers unit. Given these figures, and the offsetting health insurance savings that the arbitrator did not calculate, Rutgers was not prejudiced by any arbitral error.

consistent with both parties' data on private sector wages, N.J.S.A. 34:13A-16g(2)(a), which showed that, for the past three years, nationwide negotiated wage increases for all industries were 3% or more (Arbitrator's opinion, p. 72). Similarly, he noted that FOP data on "public employment in general," N.J.S.A. 34:13A-16g(2)(b), showed a 4.1% increase in local government wages between 1994 and 1995 and concluded that Rutgers' data -- showing lower rates for 1992 through 1994 -- was less persuasive because less current (Arbitrator's opinion, p. 73).

The arbitrator also compared the FOP units with employees performing the same or similar services in the same or similar jurisdictions. Before doing so, he decided that Rutgers police officers worked in circumstances "much more comparable" to municipal police than to those of police officers at other State colleges and universities (Arbitrator's opinion, p. 75). Further, he concluded that Middlesex County municipalities presented a range of policing conditions similar to those on the three Rutgers campuses (Arbitrator's opinion, p. 76). He therefore concluded that they provided the most relevant comparability data under this component of N.J.S.A. 34:13A-16g(2)(c) (Arbitrator's opinion, p. 76).

Within that framework, the arbitrator found that the top Rutgers patrol officer salary of $42,193 was below the Middlesex County average of $48,591, and that this gap would increase under Rutgers' offer, given average negotiated increases in the County

for 1996 of 4.41% (Arbitrator's opinion, pp. 76-77).10/ He reached similar conclusions with respect to the superior officers, noting that the 1995 salaries of Rutgers sergeants and lieutenants were $46,344 and $53,792, respectively, compared to County averages of $53,814 and $58,430 (Arbitrator's opinion, p. 77). He reasoned that this gap would widen under Rutgers' proposal given average County increases of 4.66% for sergeants and 4.42% for lieutenants (Arbitrator's opinion, p. 77). The arbitrator also reviewed both units' non-salary compensation and concluded that the officers had the lowest uniform allowance in the County and were the only police officers who did not receive longevity compensation or increments after contract expiration (Arbitrator's opinion, p. 78).

In comparing the FOP units to "employees generally" in the same jurisdiction, N.J.S.A. 34:13A-16g(2)(c), the arbitrator concluded that the officers' compensation "marginally exceeded" that of Rutgers' clerical, maintenance, custodial, dining service, guard and craft employees (Arbitrator's opinion, pp. 42, 83). He noted that Rutgers' offer paralleled settlements reached with unions representing those employees and recognized that those settlements were, in turn, consistent with the "State settlement" -- agreements that the State of New Jersey had reached with unions representing the State's professional, supervisory, health care,

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10/ Top step senior patrol officers earned $44,301 in 1995 (Arbitrator's opinion, p. 39).

maintenance, service and craft employees (Arbitrator's opinion, pp. 42-43, 74).[11/] In evaluating all the comparability evidence and concluding that the 3.5% increases were appropriate, the arbitrator noted that statewide interest arbitration awards averaged 3.6%, 3.67% and 3.57% for 1996, 1997, and 1998 and that mediated interest arbitration settlements averaged 4.1%, 4.05% and 4.01% for 1996, 1997 and 1998 (Arbitrator's opinion, pp. 18, 80).

The arbitrator also discussed the lawful authority, financial impact and cost of living criteria. N.J.S.A. 34:13A-16(5), (6) and (7). He concluded that Rutgers' offer would decrease the officers' purchasing power (Arbitrator's opinion, p. 89) and noted that Rutgers had stipulated that it was not subject to the Cap law, N.J.S.A. 40A:4-45.1 et seq., a factor ordinarily required to be considered in connection with an employer's lawful authority (Arbitrator's opinion, p. 85). In assessing the financial impact of the award, N.J.S.A. 34:13A-16g(6), he found, as noted earlier, that expendable fund balances were a useful indicator of the resources available for operations; that Rutgers had substantial unrestricted fund balances; and that it could afford the increases required by his awards (Arbitrator's opinion, p. 88).

11/ Rutgers maintained that its proposal to include the $525 uniform maintenance allowance in base pay was an enhancement to the package agreed to by other Rutgers units.

Finally, the arbitrator analyzed the public interest and welfare, N.J.S.A. 34:13A-16g(1), and concluded that it favored awards closer to the FOP's offers than Rutgers' offers (Arbitrator's opinion, p. 71). He stressed the importance of Rutgers having a competent police force, noting that Rutgers police were responsible for many more people per officer than the average municipal police officer in Middlesex County and that Rutgers' total crime index accounted for almost half of all recorded New Jersey University and College offense data (Arbitrator's opinion, p. 70). He concluded that the public was not served by compensating the FOP units at levels far below those prevailing in Middlesex County communities, while paying faculty units at the highest national levels (Arbitrator's opinion, pp. 15, 71).

Against this backdrop, we conclude that the arbitrator gave due weight to the statutory criteria and that the award is supported by substantial credible evidence in the record. Although we emphasize that we evaluate the entire award to determine whether it is supported by substantial credible evidence in the record as a whole, we will separately consider Rutgers' contentions that the arbitrator erred in comparing unit members to Middlesex County police officers rather than officers at other State colleges and universities; did not give sufficient weight to the agreements between Rutgers and its other employees; and did not adequately discuss the "State settlement."

We find that the arbitrator appropriately compared Rutgers officers to municipal police officers in Middlesex County. We reject Rutgers' contention that the Commission's comparability guidelines, N.J.A.C. 19:16-5.14, require that Rutgers police be compared only with those at other State colleges and universities. While comparison with other college and university police officers would also have been appropriate, the lack of specific discussion concerning those officers does not, on this record, undermine the arbitrator's award.

In describing the working conditions of officers in the FOP units and concluding that they were comparable to municipal police officers, the arbitrator noted that Rutgers was as large as a mid-sized American city and that its officers receive police training and perform traditional police functions (Arbitrator's opinion, p. 12). He found that the New Brunswick/Piscataway, Newark and Camden campuses were integrated into those cities; that city streets ran through the campuses; and that officers patrolled both city and campus sectors and dealt with members of the public and students (Arbitrator's opinion, p. 75). He added that the campuses in Newark and Camden "have higher crime rates than New Brunswick and present much more challenging policing issues on day-to-day operations" (Arbitrator's opinion, p. 75). Rutgers does not dispute any of these findings. They support the arbitrator's conclusions that Rutgers police have much in common with municipal police officers. See Rutgers, the State Univ.,

P.E.R.C. No. 94-45, 19 NJPER 579 (¶24275 1993), aff'd 21 NJPER 45 (¶26029 App. Div. 1994), certif. den. 140 N.J. 275 (1995) (Appellate Division noted that responsibilities of the Rutgers police force were virtually indistinguishable, within its territorial jurisdiction, from responsibilities of any other local police force).

The comparability guidelines do not require that Rutgers police be compared only with those at other colleges and universities. The guidelines are instructive but not exhaustive. N.J.A.C. 19:16-5.14(b). They are intended to assist the parties and the arbitrator in focusing on the types of evidence that may support comparability arguments. Ibid. In any case, the factors highlighted by the arbitrator correspond to some of the "comparability considerations" for similar comparable jurisdictions -- geographic size, density, crime rate, workload, and "other conditions of employment." See N.J.A.C. 19:16-5.14(d)1, 2 and 4. Since the arbitrator was comparing the working conditions of municipal and Rutgers police, his analysis is not undermined by the fact that Rutgers cannot be compared with Middlesex County municipalities on such factors as average household income, tax revenues, or equalized tax rate.

As noted earlier, we agree that comparison with officers in the State Law Enforcement Conference (SLEC) and at the University of Medicine and Dentistry (UMDNJ) would also have been

appropriate.[12/] Indeed, the arbitrator may have given these comparisons some consideration: while he stated that Rutgers police were "much more comparable" to municipal police officers than to those at other State colleges, that statement also suggests that he may have found that other college police officers were also comparable, but to a lesser degree. In any case, Rutgers has not shown that the award is deficient because the arbitrator did not discuss the evidence concerning UMDNJ and SLEC officers in more detail. See Cherry Hill Tp. (appellant may not attack opinion in the abstract but must show how alleged analytical deficiencies resulted in those aspects of the award adverse to its position). For example, while Rutgers urges that the arbitrator should have considered information concerning UMDNJ police, the record includes only the 1995 minimum and maximum salaries of UMDNJ rank-and-file officers. Those salaries are slightly higher than the 1995 salaries for Rutgers primary unit officers and, absent information about UMDNJ agreements or awards for future years, we cannot speculate that the arbitrator's analysis or award would have been altered had he given greater weight to comparisons with UMDNJ police.[13/]

12/ Rutgers informs us that the SLEC represents police officers at five State colleges and universities.

13/ For this reason, we need not address Rutgers' contention that the arbitrator erred in finding that UMDNJ campuses at Newark, Piscataway and New Brunswick were isolated from those cities.

Similarly, while the arbitrator could have discussed the 1995-1999 agreement between the State and the SLEC, the arbitrator would not have been required to give it dispositive weight in arriving at his award because comparisons with municipal police officers were also appropriate. In any case, the SLEC agreement does not alter our view that the arbitrator's award represents a reasonable determination of the dispute. The 1995-1999 contract for that unit included no across-the-board increases in 1995-1996 and 1996-1997 but, as here, 3.5% wage increases in 1997-1998 and 1998-1999. Moreover, the State's written contract with SLEC does not appear to include the health care premium sharing provisions awarded here and agreed to by other Rutgers and State employees -- provisions that offset the cost of the award to Rutgers.14/ While the top step SLEC patrol officer's salary for 1998-1999 will be $43,862 -- lower than the $48,315 top patrol officer salary under the award -- that fact, considered along with all other comparability evidence, does not negate the reasonableness of the award. This is particularly so since the arbitrator's findings concerning Rutgers' size, its campus locations, and the fact that it accounts for almost one-half of all recorded New Jersey

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14/ Under the award and current regulations, officers earning over $40,000 per year who choose the traditional indemnity plan pay the difference between the cost of that plan and NJ PLUS and participating HMOs. According to the New Jersey State Health Benefit Program Statement for the 1998-1999 annual enrollment period, this difference is $1937 per year for family coverage.

University and College offense data would support somewhat higher salaries for Rutgers police than for those at other State colleges.

We are also satisfied that the arbitrator considered the agreements with other Rutgers employees and the State settlement in comparing FOP members to "employees generally" in the same jurisdiction and to employees in "public employment in general." N.J.S.A. 34:13A-16g(2)(b) and (c).

The arbitrator noted that Rutgers' 1995-1999 agreements with its other non-faculty employees conformed to the State settlement (Arbitrator's opinion, pp. 43, 74). The arbitrator found that the FOP units were distinct from these employees because they were subject to greater safety risks and were entitled, through interest arbitration, "to compensation that is reasonable under the eight statutory criteria" (Arbitrator's opinion, p. 74).

Preliminarily, we agree with Rutgers that N.J.S.A. 34:13A-16g(2) requires an arbitrator to compare employees involved in the interest arbitration proceeding with a range of employees, including those not entitled to interest arbitration. However, we are satisfied that the arbitrator's comment was a preface to his discussion of all of the comparability evidence (Arbitrator's opinion, pp. 71-79) and that he was simply stating that an internal settlement pattern was not dispositive by itself and that he had to assess all relevant statutory criteria. We are also

satisfied that the arbitrator considered the internal agreements with Rutgers' other non-faculty employees.15/

The arbitrator awarded Rutgers' health benefits proposal -- even though only two Middlesex County jurisdictions require police officers to share payment of health insurance premiums -- because all other Rutgers employees are subject to the premium sharing it proposed (Arbitrator's opinion, p. 79). Similarly, he awarded the four-year contract that Rutgers had sought, which placed the FOP units on the same contract cycle as State employees and other Rutgers employees (Arbitrator's opinion, p. 91). However, the arbitrator was not required to give dispositive weight to the dollar amount increases included in agreements with non-faculty employees where, based on the evidence concerning higher private-sector wage increases, the cost of living, statewide interest arbitration awards and settlements, and the salaries of police officers in Middlesex County, he concluded that a higher award was appropriate. See Middlesex Cty., P.E.R.C. No. 98-46, 23 NJPER 595 (¶28293 1997). This is particularly so where it appears that Rutgers' agreement with the AAUP, although modeled on the State settlement, differs from its agreements with other non-police employees and gives some unit members higher dollar amount increases than were included in those agreements and in

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15/ As discussed later, Rutgers' agreement with the AAUP, which represents its faculty members, was not identical to its agreement with its other non-police employees.

Rutgers' offer to the FOP.16/ Moreover, even if the AAUP had agreed to a proposal identical to that offered the FOP units, the arbitrator noted that the FOP units were in a different position than the faculty unit. He observed that while faculty members were paid at the highest national levels vis-a-vis other state university professors, Rutgers police were paid less than their counterparts (Arbitrator's opinion, p. 71).

We also reject Rutgers' contention that the arbitrator did not appropriately consider the State settlement or "explain why it was not relevant." The arbitrator recognized that Rutgers' offer tracked that settlement; he granted the health benefits proposal included within it; and he awarded the four-year agreement that Rutgers had sought to place the FOP units on the same cycle as State employees. We thus infer that he found the settlement relevant. He did not commit reversible error by not referring to it in his discussion of "public employment in general" and Rutgers has not shown why the arbitrator should have given the settlement greater weight. Rutgers acknowledged at the

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16/ The record includes a December 1997 factfinder's report and recommendation that, Rutgers informs us, the parties have agreed to. The factfinder recommended no across-the-board increases for 1995-1996 and 1996-1997. For 1997-1998, he recommended a 2.15% across-the-board increase for faculty members and, for 1998-1999, he recommended a 2.29% increase on July 1, 1998 and a .56% increase on January 1, 1999. For faculty members earning the average unit salary, these percentage increases yield higher dollar amounts than Rutgers' offer to the FOP. The report also recommended inclusion of the health benefit premium sharing awarded here and included in the State settlement.

interest arbitration hearing that FOP unit members were not State employees and it does not challenge the arbitrator's conclusion that Rutgers' fiscal situation was better than that of the State (Arbitrator's opinion, p. 75). We note that the across-the-board increases awarded, which may be offset for some employees by contributions to health care premiums, are close to the 3% increases received by local government employees between 1995 and 1996 and the 3.3% increases received by federal government workers in New Jersey between 1995 and 1996.17/

Finally, we reject Rutgers' argument that the arbitrator improperly relied on facts outside the record when he found, based on his observations as a student, parent and college professor, that campus police must often act with unusual restraint (Arbitrator's opinion, p. 13). That college police must act with restraint is a fact so universally known as to be deemed beyond reasonable dispute. See N.J.R.E. 201(b)(1). The arbitrator could therefore take notice of it. Ibid.

For all these reasons, we conclude that the arbitrator adequately analyzed the evidence presented on the relevant statutory factors and reached conclusions supported by substantial credible evidence in the record. We also find that he gave "due

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17/ This information is included in the 1997 annual wage report, prepared for the Commission by the New Jersey Department of Labor pursuant to N.J.S.A. 34:13A-16.6. For the same period, average private sector wages in New Jersey increased 4.3% and State employee wages increased 2.1%.

weight" to each of those factors and decided the dispute based on a reasonable determination of the issues. N.J.S.A. 34:13A-16g; N.J. State PBA Local 29 v. Irvington, 80 N.J. 271, 295 (1979). He properly exercised his authority under N.J.S.A. 34:13A-16d(2) and 16g and fully considered the requirements of the law.

ORDER

The arbitrator's awards are affirmed.

BY ORDER OF THE COMMISSION

Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, Klagholz and Ricci voted in favor of this decision. Commissioner Finn abstained from consideration. Commissioners Boose and Wenzler were not present.

DATED: July 30, 1998
Trenton, New Jersey
ISSUED: July 31, 1998