P.E.R.C. NO. 2004-18

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NORTH HUDSON REGIONAL
FIRE & RESCUE DISTRICT,

Appellant-Respondent,

-and- Docket No. IA-2000-36

NORTH HUDSON FIRE OFFICERS
ASSOCIATION,

Appellant-Respondent.

SYNOPSIS

The Public Employment Relations Commission affirms an interest arbitration award, as clarified in an October 20, 2003 decision, to establish a first contract between the North Hudson Regional Fire and Rescue and the North Hudson Fire Officers Association. In negotiations and interest arbitration, the parties presented proposals on salary, longevity and other compensation items, along with proposals on an entire range of topics typically included in a negotiated agreement. The arbitrator resolved the issues by conventional arbitration. Both the Regional and the Association filed appeals each challenging the award on one or more aspects of several contractual provisions. The Commission had ordered a limited remand to the arbitrator for the purpose of clarifying the arbitrator's intention concerning accumulated sick leave for fire officers from Union City and Weehawken. The Commission concludes that the parties' objections do not warrant disturbing the award. The Commission further concludes that the arbitrator painstakingly considered the parties' presentations; reached a reasonable determination of the issues; and fashioned an overall award that is supported by substantial credible evidence. The Commission finds that the arbitrator's overall approach and guiding principles are sound, and his award establishes a framework within which the parties may work.

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, The Murray Law Firm, LLC, attorneys (Robert E. Murray, of counsel; Patricia Reddy-Parkinson, on the briefs)

For the Respondent, Loccke & Correia, P.C., attorneys (Leon B. Savetsky, of counsel)

DECISION

The North Hudson Fire Officers Association and the North Hudson Regional Fire and Rescue both appeal from an unusual interest arbitration award, one which established the first collective negotiations agreement between the Regional and its supervisory fire officers. An award involving the Regional's firefighters was issued by the same arbitrator on the same date and has also been appealed by both parties.[1/]

1/ The parties' Notices of Appeal were filed on October 17, 2002. The Association was given the opportunity to perfect its appeal, see Town of Newton, P.E.R.C. No. 98-47, 23 NJPER 599 (¶28294 1997), which it did on November 6. On November (continued...)

On September 25, 2003, we ordered a remand to the arbitrator "for the limited purpose of clarifying whether or not he intended fire officers from Union City and Weehawken to have any accumulated sick leave that carries over into the new agreement for sick leave use and, if appropriate, modifying any aspects of the award accordingly." North Hudson Reg. Fire and Rescue, P.E.R.C. No. 2004-11, 29 NJPER ____ (¶_____ 2003). We retained jurisdiction; directed the arbitrator to issue a written statement; and provided that the parties had five days from receipt of the statement to submit comments. The arbitrator issued a Decision on Clarification on October 10, 2003.

The Regional was created in 1998, pursuant to the Consolidated Municipal Services Act (CMSA), N.J.S.A. 40:48B-1 et seq., in order to replace the paid fire departments in Weehawken, Union City, North Bergen, West New York and Guttenberg. It began operations on January 1, 1999, and employs approximately 93 fire

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1/ (...continued)
1, the Commission approved a briefing schedule agreed to by both parties, which called for initial briefs to be filed by January 15, 2003 and reply briefs by March 3. Between January 7 and March 18, the parties jointly requested four extensions of time to file their initial briefs, citing the complexity of the case and the amount of material they had to review. Initial briefs were received on March 24. On May 5, the Association was granted an extension of time until May 19 to file its answering brief, and the due date for the Regional's answering brief was also extended. The Commission requested additional documents on May 28, which were received on June 6.

officers, most if not all of whom had been previously employed by one of the municipalities.

The parties agreed that the term of their first contract would be from July 1, 1999 through June 30, 2004. In negotiations and interest arbitration, they presented proposals on salary, longevity and other compensation items, along with proposals on the entire range of topics typically included in a negotiated agreement - including grievance procedure, terminal leave, health insurance, work hours, military leave, drug and alcohol testing procedures, and leaves of absence. They stipulated to several items, including the recognition clause, jury duty, personnel files and non-discrimination.

In broad outline, the parties advanced these proposals and arguments.

The Association proposed that, at the commencement of the agreement, the salaries of lieutenant and captain be unified at the highest captain's salary found in the municipal agreements. This proposal derived from a Department of Personnel (DOP) ruling that all first-line supervisors of a truck or engine company should be classified as "Fire Officer 1," even though some had previously been classified as Fire Lieutenants and others as Fire Captains. DOP classified Battalion Chiefs and Deputy Chiefs as Fire Officers 2 and 3, respectively, and the Association proposed that the salaries for these ranks also be unified at the highest

level found in any of the prior agreements. In addition, the Association proposed 6% increases for each year of the agreement on these unified salaries and proposed that benefits such as terminal leave, sick leave and longevity be unified, at the outset of the contract, at the highest level found in any of the agreements.

The Association also sought to include in the agreement the 24/72 work schedule followed in each of the municipal departments.[2/] It did not present a specific health insurance proposal, but argued that unit members' existing medical benefits, which derived from differing predecessor agreements, should be maintained. Finally, with respect to contractual provisions on such issues as injury leave, outside employment, and promotions, transfers and assignments, the Association often proposed clauses similar to those in some of the predecessor agreements and in some instances sought benefits or protections not included in any of the prior agreements.

The Regional contended that the most weight should be given to its status as a new employer and maintained that it should not

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2/ Prior to regionalization, Guttenberg negotiated a transition agreement that adopted the terms of the West New York contract, which included the 24/72 schedule. Before that, Guttenberg had followed a 24/48 schedule. Given the transition agreement, when we refer to contract or award provisions pertaining to West New York fire officers, we intend those references to pertain to former Guttenberg fire officers as well.

be encumbered by the terms of prior agreements. With respect to salary, it proposed separate four-step salary schedules for lieutenant, captain, battalion chief and deputy chief, with maximum base salaries for the first year of the agreement of $57,500, $66,000, $74,000 and $85,000 for the respective positions. It proposed that salaries for the remaining contract years be negotiated; proposed that the schedule apply to fire officers hired and promoted by the Regional; and sought to red-circle current employees whose salaries exceeded those on the new schedule until the schedule surpassed a unit member's base salary. It noted that the Union City fire officers' prior contract had extended through December 31, 1999, whereas the other agreements were effective only through mid-1999. It urged the arbitrator not to award a salary adjustment that would result in "double raises" for Union City officers.

The Regional also sought a single health benefits plan for all unit members; proposed to continue to pay the full premium cost for employees and retirees; and sought premium contributions for dependent coverage. The Regional also proposed a 24/48 work schedule and, with respect to various contract provisions, contended that they should be developed anew with a focus on the Regional's needs as an employer.

The arbitrator resolved the issues by conventional arbitration, N.J.S.A. 34:13A-16d(2), and issued a 390-page

opinion and award that included a 60-page contract containing 46 contract articles. He set out several principles, detailed later, that guided his resolution of the dispute. Among these was the principle that, to the extent feasible, the agreement should merge or unify the terms and conditions of employment for those employees previously employed by one of the municipalities.

The arbitrator unified the salaries for all Fire Officer 2s and all Fire Officer 3s effective April 1, 2004, based on the highest salary schedule for each rank in the prior agreements. He accomplished this by awarding, effective July 1 of 1999 through 2003, 3% across-the-board increases, calculated using the officers' June 30, 1999 base salaries, for all Fire Officer 2s and 3s, except those formerly employed by Union City, who received their first 3% adjustment effective January 1, 2000. In April 2004, he advanced the salaries for Fire Officer 2s from North Bergen, West New York and Weehawken to the level of Fire Officer 2s from Union City, resulting in three-month costs per officer of $1,633, $1,342, and $1,074, respectively. Also in April 2004, he advanced the salaries for Fire Officer 3s from Union City and Weehawken to the level of Fire Officer 3s from West York, resulting in three-month costs per officer of $870 and $1,834, respectively. There were no Fire Officer 3s from North Bergen.

With respect to individuals in the Fire Officer 1 title who were formerly captains, the arbitrator applied the same methodology. That is, officers received 3% across the board increases, effective July 1 in 1999 through 2003, calculated using their June 30, 1999 base salaries, except that former Union City captains received their first adjustment effective January 1, 2000. On April 1, 2004, the arbitrator advanced the salaries for North Bergen, West New York and Weehawken former captains to the level of former Union City captains, resulting in three-month costs per officer of $1,898, $1,342, and $1,785, respectively.

For Fire Officer 1s who had previously served as lieutenants, the award unifies the salaries of North Bergen, West New York, and Weehawken lieutenants at the Union City level, effective January 1, 2004. Union City lieutenants receive 3% annual increases and lieutenants from the other municipalities receive, for July 1, 1999 through January 1, 2004, biannual raises of varying amounts, depending on the municipality by which they had been employed. Effective April 1, 2004, the award merges all lieutenants onto a Fire Officer 1 guide, and places the lieutenants on step one of that guide, which is $3669 greater than the Union City lieutenant salary to which they had been raised as of January 1. That merger results in a three month cost of $917 per officer. The award directs that the former lieutenants will move up one step after one full year of service

on the schedule. Therefore, they will reach the top step in April 2006. Step 3 of the Fire Officer I guide as of April 2004 corresponds to the July 1, 2003 salary for former Union City captains, which all former captains will receive as of April 1, 2004.

The arbitrator also created three-step salary guides for the Fire Officer 2 and 3 positions, the top steps of which correspond to the unified salary that will be received by current unit members as of April 1, 2004. The award directs that individuals hired or promoted into Fire Officer 2 or Fire Officer 3 positions after April 1, 2004 be placed at step one of the appropriate guide. The award also directs that they progress to the next step after one year of service at each step.

With respect to issues such as vacation and holiday pay, the award directed unified benefits for all unit members and, with respect to longevity, unified benefits for officers previously employed by a municipality. On other issues, such as terminal leave and educational incentives, the arbitrator concluded that unification was not feasible. With respect to sick leave, he awarded a unified program for all fire officers, effective January 1, 2003. Pursuant to our September 25, 2003 limited remand order, he issued a Decision on Clarification with respect to fire officers formerly employed by Union City and Weehawken

and changed the effective date of the new sick leave provision to January 1, 2004.

The arbitrator awarded the Association's proposal for a 24/72 work schedule and, as sought by the Regional, directed that a single health insurance contract provide benefits for all unit members. Finally, the arbitrator awarded contract provisions on the remainder of the 40-plus items proposed by the parties.

Both parties appealed the award. N.J.S.A. 34:13A-16f(5)(a). The Association and the Regional challenge one or more aspects of these award provisions:

Salaries
Sick Leave
Terminal Leave
Association Rights
Grievance Procedure
Outside Employment
Health Insurance
Vacation
Holidays
Out-of-Title Work

In addition, the Association also objects to these award sections:

Court Time
Leave of Absence/Emergency Leave
Assignments and Transfers
Promotions and Vacancies
Overtime
Education Incentive
Valic Deferred Income Plan
Longevity and Service Differential
Drug and Alcohol Testing

The Regional also challenges these provisions:

Work Hours
Injury Leave
Clothing Allowance
Off-Duty Action

The Regional argues generally that the overall economic package awarded is well beyond its financial means and not supported by substantial credible evidence. It contends that the arbitrator did not properly analyze and apply the statutory criteria, N.J.S.A. 34:13A-16g, and asks us to vacate or modify the provisions it challenges, including the overall economic package.[3/]

3/ The Regional also raises two threshold procedural arguments: that issues included in the Association's Notice of Appeal but not briefed should be deemed waived and that the Association's brief should be dismissed because it does not conform to the requirements for interest arbitration appeals. With respect to the latter point, the Association's comprehensive brief conforms to applicable standards. The Regional's objections go to the merits of the Association's arguments, which we address throughout this appeal.

As to the first issue, the Association's brief references all items listed in its Notice of Appeal except two - Injury Leave and Fully Bargained Provisions - although some contract articles are discussed more extensively in the Notice of Appeal than in the brief. We confine our analysis to the arguments and issues as framed in the brief. See Whitfield v. Blackwood, 101 N.J. 500, 504 (1986) (Clifford, J., concurring) and Kerney v. Kerney, 81 N.J. Super. 278, 282 (App. Div. 1963). However, we have reviewed the Notice of Appeal and are satisfied that the points discussed there but omitted from the brief would not require vacation of the award.

The Association also maintains that several award sections should be vacated and remanded because the arbitrator did not provide a reasoned explanation for his award and did not properly analyze and apply the statutory factors. In addition, it requests that several award sections be modified or clarified. With respect to the salary portion of the award, it contends that, contrary to the arbitrator's statements, the award does not gradually unify all Fire Officer 2 salaries and all Fire Officer 3 salaries and does not merge the former lieutenants and captains into a single Fire Officer 1 rank.

The standard for reviewing interest arbitration awards is now established, and was recently affirmed by the Supreme Court. We will not vacate an award unless the appellant demonstrates that: (1) the arbitrator failed to give "due weight" to the subsection 16g factors judged relevant to the resolution of the specific dispute; (2) the arbitrator violated the standards in N.J.S.A. 2A:24-8 and -9, or (3) the award is not supported by substantial credible evidence in the record as a whole. Teaneck Tp., P.E.R.C. No. 2000-33, 25 NJPER 450 (¶30199 1999), aff'd in part, rev'd and remanded in part on other grounds, 353 N.J. Super. 289 (App. Div. 2002), aff'd o.b. ___ N.J. ___ (2003); Cherry Hill Tp., P.E.R.C. No. 97-119, 23 NJPER 287 (¶28131 1997). Because the Legislature entrusted arbitrators with weighing the evidence, we will not disturb an arbitrator's exercise of

discretion unless an appellant demonstrates that the arbitrator did not adhere to these standards. Teaneck, 353 N.J. Super. at 308-309; Cherry Hill.

Arriving at a salary award is not a precise mathematical process. Given that the statute sets forth general criteria rather than a formula, the setting of wage figures necessarily involves judgment and discretion and an arbitrator will rarely be able demonstrate that an award is the only "correct" one. Borough of Lodi, P.E.R.C. No. 99-28, 24 NJPER 466 (¶29214 1998); Borough of Allendale, P.E.R.C. No. 98-123, 24 NJPER 216 (¶29103 1998). Therefore, within the parameters of our review standard, we will defer to the arbitrator's judgment, discretion, and labor relations expertise. City of Newark, P.E.R.C. No. 99-97, 25 NJPER 242 (¶30103 1999). However, an arbitrator must provide a reasoned explanation for an award and state what statutory factors he or she considered most important, explain why they were given significant weight, and explain how other evidence or factors were weighed and considered in arriving at the final award. N.J.S.A. 34:13A-16g; N.J.A.C. 19:16-5.9; Lodi. Once an arbitrator has provided a reasoned explanation for an award, an appellant must offer a particularized challenge to the arbitrator's analysis and conclusions. Cherry Hill; Lodi; Newark.

An overview of the Regional; its financial foundation; and the CMSA's provisions on collective negotiations is an essential backdrop to these appeals, just as it is to the appeals of the award involving the firefighters' unit. We incorporate our discussion of these items in P.E.R.C. No. 2004-17.

In considering the appeals in this case and the companion firefighters' case, we have kept firmly in view the uniqueness and complexity of the interest arbitrations. The arbitrator commended the parties for their professionalism, competence and cooperation in tackling the dozens of major and minor issues involved in the proceeding. We do so as well. As for the arbitrator, he was faced with the challenging task of evaluating the parties' multi-faceted proposals on 46 contract articles; considering those proposals in the context of the predecessor agreements to which the parties frequently referred; and arriving at a single agreement that recognized, in his words, both the Regional's interest in managing and administering efficient and cost effective fire services and the employees' interests in receiving or maintaining economic benefits while working in a safe, productive environment. This was an enormous and precedent-setting responsibility, and we commend the arbitrator's thoughtful and comprehensive analysis.

The deference that we normally accord to arbitrators is especially appropriate here, where the arbitrator had to make so

many difficult judgments. We stress that this is a case about establishing the major constructs and basic terms and conditions of employment in this new relationship. As the arbitrator stated, the parties may propose modifications in future negotiations given that there are reasonable limits to what can be accomplished in a first agreement that requires modifications of contracts developed over many decades and encompassing a variety of circumstances; once the first agreement is established, the parties may propose modifications in future negotiations. We accept the arbitrator's analysis in this extraordinary case, and the guiding principles and objectives he set out shape our consideration of the appeals.

The arbitrator's approach to this award parallels that in the firefighters' award. The arbitrator described how he would explain much of his award in a preface to his discussion of what he identified as the major economic issues - salaries, sick leave, vacation, holidays, overtime, compensatory time, terminal leave, education incentive, longevity, service differential, and health insurance. He stated that he had reviewed each party's evidence and arguments on each of the statutory criteria and that all were relevant to the resolution of the dispute, although he did not give each factor identical weight. He wrote that he had also "strongly considered" that the public interest required that:

> [T]he policy interests supporting the regionalization of fire services should be furthered, with due consideration to the work, welfare and terms and conditions of fire personnel who perform life-saving and life-threatening duties. [Arbitrator's award at 145]

The arbitrator stated that each party bore a burden of proof in support of each of its proposals. He then explained how he would apply the statutory criteria:

> In reaching my conclusions I will summarize the position taken by each party along with the rationale each has submitted. Because of the sheer volume and complexity of the issues and the evidence, I will set forth an Award on each issue with a concise statement of reasons in support of each determination without an extensive analysis of the statutory criterion on each major economic issue. Some of the criteria are implicitly reflected in many of the issues which require decision. For example, an issue proposed by the Union which may contain excessive costs would, if granted, cause adverse financial impact on the Regional. Another example would be an issue the Regional might propose which would have such harsh economic consequences on individual firefighters which could undermine the need for continuity and stability of employment. [Arbitrator's award at 145-146]

With respect to proposals dealing with non-compensation items, the arbitrator stated that he would not discuss the statutory criteria in the same detail as he might in a typical impasse, but that he would discuss and analyze each party's evidence and arguments in reaching his determination on that item.

After setting out this approach, the arbitrator then found that the Regional's and employees' interests were best served and balanced by following these broad guidelines and objectives:

> 1. To the extent feasible, the goal of merging or unifying major terms and conditions of employment should be attained for those employees previously employed in the five municipalities prior to regionalization. For example, certain major compensation issues should be [at uniform levels] even if accomplished over a period of time to ease the cost burden on the Regional.
>
> 2. To the extent that such merger or unification is not feasible, certain benefits of certain employees employed by individual municipalities should be retained even if retention of that specific benefit level cannot be enjoyed by the remainder of the workforce. One factor traditionally employed in collective bargaining is to "red circle" an individual or class of employees due, in part, to the need to avoid unfair individual impacts. For example, certain benefits have accrued over the course of one's career with a reasonable expectation of continuation until retirement. A unity of result on issues such as these may not be achievable without producing harsh inequities either in terms of benefit elimination or excessive cost.
>
> 3. Employees hired by the Regional after regionalization who were not employed by any individual municipality which helped form the Regional should have terms and conditions of employment which give some consideration, but less weight, to the prior terms and conditions of the individual municipalities and some consideration, but more weight, to the establishment of the Regional as a new

> employer. The Regional, as a new employer, must be given some latitude to offer employment on terms reflective of its own character and needs. For example, a firefighter hired after regionalization has never had any employment tie to any individual municipality. Prior terms set by an individual employer should not automatically be controlling on the Regional. This consideration, however, must be balanced by the establishment of terms not so disparate in relation to the more experienced firefighters that morale and unity among all firefighters are compromised or the continuity and stability of employment among the newly hired firefighters [impaired].
>
> 4. Consideration must also be given to internal comparability between firefighters and fire officers. Each bargaining unit faces many of the same considerations and challenges. Although each has separate bargaining units, all employees, regardless of rank, must be integrated into one department charged with the same mission serving the public's health, welfare and safety. [Arbitrator's award at 148-149]

These guidelines distill and synthesize the arbitrator's analysis of the public interest and other statutory criteria; frame the arbitrator's discussion of all the major economic issues; and supplement the more specific discussion of the public interest, cost of living, comparability, financial impact, and continuity and stability of employment factors woven into the arbitrator's analysis of many of the proposals, particularly the parties' salary proposals.

We reject the argument, made by both the Regional and the Association that the arbitrator did not properly analyze the statutory factors because he did not specifically refer to them in discussing every award section. We incorporate our discussion in P.E.R.C. No. 2004-17 to this effect.

As in the firefighters' case, we have reviewed the parties' post-hearing submissions to the arbitrator, and we stress that they engaged in very little discussion of the criteria per se. They argued for or against a proposal based on their respective theories of how the dispute should be decided - i.e., the Regional focused on its alleged financial limitations and its status as a new employer and the Association espoused unification of benefits at the highest level, arguing that the Regional had substantial financial resources. For the most part, neither the Regional nor the Association points to any evidence or arguments that the arbitrator did not consider.

For these reasons, and those articulated in P.E.R.C. No. 2004-17, we reject the parties' generalized objections that the arbitrator did not apply the statutory criteria. Since the Association's brief contends only that the arbitrator did not discuss and analyze the statutory factors with respect to its proposals concerning personal days, management rights, seniority, work hours, exchange of tours, legal services plan, departmental investigations, and preservation of rights, we do not further

address the Association's objections to these contract articles. We will specifically address contentions that the arbitrator did not address or properly weigh particular arguments or evidence concerning the statutory factors.

We also reject the Association's contention that the arbitrator improperly relied on matters outside the record when he stated that he was awarding provisions similar to or consistent with those in the firefighters' award. The Association does not identify any instances where the arbitrator relied on testimony or exhibits not presented in the fire officers' proceeding and we have found none. The arbitrator's consideration of internal comparability between fire officers and firefighters is statutorily required. N.J.S.A. 34:13A-16g(2).

In addition to affirming the arbitrator's method of analysis, we also affirm the substance of the arbitrator's guiding principles and objectives. In considering the parties' objections, we will evaluate whether the arbitrator's award is consistent with the principles and objectives that he derived from the statutory factors.

Further, we accept the arbitrator's statement that each party bore the burden of proof with respect to its proposals. While the CSMA requires the Regional to preserve the various municipal status quos pending a new agreement, analytically, there is no traditional status quo for this new employer.

However, the arbitrator appropriately gave weight to the terms and conditions in the prior agreements, particularly in setting employment terms and conditions with respect to officers previously employed by one of the municipalities. Negotiations history is an element traditionally considered in determining wages and benefits, N.J.S.A. 34:13A-16g(8), and the CMSA does not require an arbitrator to disregard that evidence when negotiations units are merged.

Against this backdrop, we consider the parties' specific objections. We will organize our decision as follows. First, we address the Regional's contention that the award is inconsistent with the financial evidence. Second, we address each party's challenges to the arbitrator's award on the major economic issues, as well as their objections to award sections involving more minor economic items. Third, we consider the parties' challenges to award sections - such as outside employment, Association rights, drug and alcohol testing procedures - where the focus is on administrative, operational, or language issues, as opposed to the amount or nature of an awarded benefit. We include in this section the non-compensation aspects of some of the major economic benefits - e.g., vacation scheduling.

In addition, in several instances, the Regional or the Association contends that an award provision conflicts with a governing statute or regulation. These challenges could and

should have been made prior to the arbitration, because the challenged award sections were proposed by one or the other party. See N.J.A.C. 19:16-5.5(c) (where no pre-arbitration scope petition is filed, parties are deemed to agree to submit all unresolved issues to arbitration). However, in the fourth section of our opinion, we will consider contentions that certain award sections cannot be implemented because they violate a statute or regulation. Compare Teaneck, 353 N.J. Super. at 301-302 (despite regulation requiring that scope petitions be filed before interest arbitration, Commission is not barred from considering, when it chooses to do so, post-arbitration scope challenge in an interest arbitration appeal); Old Bridge Tp. Bd. of Ed. v. Old Bridge Ed. Ass'n, 98 N.J. 523, 525 (1985) (public sector arbitration awards must conform to statutes and regulations); Borough of Roseland, P.E.R.C. No. 2000-46, 26 NJPER 56 (¶31019 1999) (in considering whether to dismiss late-filed scope petition, we will consider whether a challenged proposal, if awarded, would require us to vacate an award). However, we do not decide the Regional's claims that certain award provisions significantly interfere with its managerial prerogatives. The Regional does not explain why it did not raise these objections earlier and we are satisfied that the challenged provisions do not affect the overall validity of the award. Roseland.

Finally, we include a separate section addressing those parts of the award that one or both parties allege are unclear.

I. Financial Impact

The Regional contends that the overall economic package awarded is not supported by the record and that the arbitrator did not give due weight to the Regional's evidence with respect to available funds, operating costs, and accumulated debt. It maintains that the award requires $5 million in retroactive salary payments, of which it has only $2.5 million.

We begin with a review of the parties' financial arguments before the arbitrator.

The Regional argued that the Association's proposal, with 6% across-the-board increases and unification of all benefits at the highest level in any of the agreements, was well beyond its financial means and would result in fire officer salaries above those received by other fire officers in the State and nation. It urged the arbitrator to follow an alleged pattern of settlements between the participating municipalities and their police units whereby three of the participating municipalities - North Bergen, Weehawken and Guttenberg - reached voluntary settlements with their police units averaging 3.5% per year for contracts during the 1998-2001, 2001-2003, and 1996-2002 time periods. A fourth municipality, West New York, negotiated two agreements: one with the PBA, with 3% increases for 1999 through

2002, and one with the Police Supervisors, with 3% increases for 2001 and 2002, and 3.5% and 3.74% increases for 2003 and 2004, respectively. The Regional stressed that the CMSA did not provide a basis for departing from the longstanding labor relations concept of "pattern."

While the Regional acknowledged that it had received State assistance, it stressed that, in 2001, State aid ceased and it was required to begin making substantial principal and interest payments on its lease revenue bonds. It also stressed the low per capita income of the residents in the participating municipalities and the obligation to make continuing payments in connection with the early retirement program. The Regional did not attach a total dollar cost to the Association's economic package, but sought to illustrate its impact by example, noting the allegedly excessive salaries that would result for certain ranks and levels of experience if the Association's proposal were awarded.

By contrast, the Association emphasized that the Regional had extremely high credit ratings; the formation of the entity had resulted in substantial savings for taxpayers; and the participating municipalities had a substantial combined tax base, with a tax collection rate of close to 96%. It maintained that the Regional's 1999 financial audit showed restricted total cash

and cash equivalents of approximately $8.7 million and approximately $2.2 million in unrestricted investments.

In arriving at the award and assessing its financial impact, the arbitrator found that unification of salaries was compatible with regionalization, but that excessive costs would occur if unification took place at the beginning of the five-year agreement, as the Association proposed. The arbitrator noted the State assistance received by the Regional and municipalities and found it relevant to assessing the award's financial impact. However, he also found that savings were inherent in the concept of regionalization.

The arbitrator concluded that the cost of living weighed strongly against an award consistent with or close to the Association's offer and he found that the CAP law was pertinent because of its application to the municipalities. He stated that he had accepted the Regional's financial impact arguments to the extent that the award was less than the Association's offer.

On the other hand, the arbitrator rejected the Regional's salary proposal, finding that it would seriously disrupt the longstanding comparison of the Regional's fire officers vis-a-vis those in neighboring communities and would unduly burden the Regional's officers, who would receive little or no salary increases during the five-year agreement. Further, he concluded that the Regional's proposal did not properly address either the

unification of salaries for each Fire Officer rank, or the merger of lieutenants and captains into the Fire Officer I title - a merger which the arbitrator found to be required by the DOP ruling.

The arbitrator observed that the precise costs of the award were difficult to calculate, given the unique circumstances of merging four prior agreements and unifying major terms and conditions of employment. He observed that different methods produced various conclusions and that the parties' cost analyses had served as useful guides.

The arbitrator calculated that 3% increases on the total base salary for the unit, for each contract year, amounted to total new annual costs of $1,059,914. In addition, the fifth-year April 2004 costs for equalizing the salaries of all Fire Officer 2s and all Fire Officers 3s, merging lieutenants onto the Fire Officer 1 guide, and equalizing the salaries of former captains, amounted to $409,420, representing a 5.3% annual rate increase or 1.35% ($102,355) during the contract term, given that the unification took place in the last three months of the contract. When calculated on an annualized basis over five years, the percentage increase averages .27% per year.

The arbitrator also noted that it cost an additional $104,556 or 1.36% to equalize lieutenants' salaries or .27% per

year when annualized over five years. Thus, the total new annual costs calculated by the arbitrator are $1,573,890.

In setting out the rationale for the award, the arbitrator stated that the costs of the award during the first four years were "clearly beneath" the costs of comparable settlements, which he found to be in the range of from 3.5% to 4% per year. Further, he observed that the cumulative costs of the settlements far exceeded the award's cost for the first four years. He reasoned that these factors balanced the equalization costs that will occur towards the end of the agreement.

The arbitrator concluded that the award, including its retroactive costs, could be funded without adverse impact, noting that, the "savings from a reduction in personnel will result in less funding from the municipalities compared to the obligations necessary to fund the pre-existing table of organization" (Arbitrator's award at 292). The arbitrator also presumed that the participating municipalities who contribute to the Regional were aware of their and the Regional's obligation to fund an interest arbitration award for the fire officers - including costs retroactive to the time of regionalization - just as they would have been obligated to fund the retroactive terms of new labor agreements had the municipalities continued to employ the officers. Further, he observed that long-term savings would result from the award of modified terms for employees hired by

the Regional on or after regionalization. He added that under the award, the per officer cost of newly hired officers would be less than the per officer cost for the officers each municipality had previously employed.

The arbitrator recognized that the municipalities would have to contribute to the cost of the award, but stated that they had benefitted significantly from the REAP program and the sale of fire department assets. Finally, he found no indication in the record that the costs of the award would compel any of the municipalities to exceed their CAPs.

The Regional has offered no basis to disturb this analysis. The record supports the arbitrator's finding that the reduction in staffing resulted in substantial savings. And the Regional agrees with the arbitrator's conclusion that the municipalities should have been aware of their obligation to fund the award, including retroactive costs. These findings support the arbitrator's determination that the Regional, which had lower salary costs after the retirements than it had before, had the financial capability to fund an award that, over the five-year term, increases costs less than 3.5% per year and is thus within the range of the settlements between the participating municipalities and their PBAs that the Regional had urged the arbitrator to follow. In this vein, the Regional's focus on the final year rate increases for various ranks is misplaced, given

that the payout for those years is one-fourth the rate increase and the arbitrator recognized that the impact of the award in subsequent years would have to be considered by the parties, or an interest arbitrator, in future negotiations or proceedings.

The Regional objects that the arbitrator placed too much weight on the State aid received, the disbursements to the municipalities, and the alleged savings from the early retirements. It stresses that the State aid was for start-up costs and argues that the retirement savings and municipal disbursements are offset by the Regional's obligation to repay lease revenue bonds and make payments toward the cost of the early retirement package.

Preliminarily, the arbitrator noted these factors, particularly the Regional's bond obligations and the cessation of State aid in 2001, in arriving at an award significantly less than the Association's offer. However, the fact that the Regional and the municipalities have some continuing, long-term obligations associated with regionalization does not mean that the significant lump-sum disbursements to municipalities, as well as the Regional's reduction in staff, are not also relevant in evaluating the Regional's financial status during the period in which those reductions and disbursements occurred. In this vein, the arbitrator did not award the increases he did based on the Regional's alleged ability to pay them. Compare Hillsdale.

Instead, he found that the Regional could fund the salary increases that he found to be appropriate based on the record, the statutory criteria, and the DOP classification ruling. While an employer's financial limitations may militate against an award that would otherwise be warranted, the Regional has not shown that to be the case here.

For example, while the Regional suggests that the award will cause municipal property taxes to increase, it has not pointed to any evidence indicating that any additional municipal contributions necessary to finance the award would require tax increases or strain municipal CAP limits in any of the municipalities. The salary increases awarded are within the range of the municipal settlements the Regional had cited, which are themselves probative of the economic package the municipalities believe they can fund without an adverse financial impact. See Teaneck, 25 NJPER at 458.

Moreover, the Regional's assertion that it lacks sufficient reserves to pay the award is not determinative where its budget is based on municipal allocations that may be adjusted, and the Regional has not shown that any required adjustments would adversely affect the municipalities' financial standing. Compare Middlesex Cty., P.E.R.C. No. 98-46, 23 NJPER 595 (¶28293 1997) (while N.J.S.A. 34:13A-14b states that the interest arbitration process should give due weight to the interests of the taxpaying

public, the Reform Act does not require that the arbitrator award the amount the employer has budgeted for wage increases or automatically equate the employer's offer with the public interest).

Nor are we persuaded by the Regional's contention that the arbitrator was required to include a more detailed calculation of award costs. In this vein, the Regional highlights the longevity, holiday pay, educational stipend, terminal leave, and service differential portions of the award.

N.J.S.A. 34:13A-16d(2) requires an arbitrator to determine the new costs for each year of the agreement. Rutgers, the State Univ., P.E.R.C. No. 99-11, 24 NJPER 421 (¶29195 1998). The items the Regional cites are not new benefits. They were included in one or more of the prior agreements.

For example, the arbitrator continued the education stipend and service differential provisions in the prior agreements only for individuals who were already receiving them, so that the only new costs this red-circling generated are those attributable to an increase in base salary. With respect to the costs of newly awarded education benefits, they cannot be calculated unless and until unit members obtain degrees that entitle them to payments.

Similarly, with respect to longevity, the arbitrator unified benefits effective January 1, 2003, so that costs prior to that date were a continuation of what the Regional was already paying,

plus any increases attributable to an increase in base salary. And after unification, the longevity schedule is the same as that in West New York and less generous than that enjoyed by former Union City fire officers. The award includes a more generous schedule for Weehawken fire officers and North Bergen fire officers.[4/]

With respect to holiday pay, the 112 hours awarded is the same as had been received by West New York officers; 8 hours more than provided for in the Weehawken agreement; and 8 hours less than received by former Union City officers. The award increases the benefit for North Bergen officers, who had received five compensatory twelve-hour tours. In this posture, the Regional has not shown either that the award results in any significant net increases in longevity, holiday, education or service differential costs or that any cost increases undermine the arbitrator's financial impact assessment.

Further, while the Regional maintains that the arbitrator should have calculated the award's impact on overtime payments, that impact cannot be quantified without information on the overtime hours worked by each officer during the contract term.

4/ The arbitrator awarded a separate longevity schedule for future fire officers who do not have any prior service with any of the municipalities. It does not appear that there are any current employees in this category but even if there were, the provision will not generate costs during the term of the agreement because benefits do not begin until the 7th year of employment.

Such information was not submitted to the arbitrator or to us. Similarly, the award's effect on terminal leave payments cannot be calculated without knowing both the number of individuals who will retire during the contract term and the sick leave balances that will in most cases determine their terminal leave payments.

Finally, we comment on the Regional's contention that the award imposes $5 million in retroactive costs. It does not explain how it arrives at that figure. But even if we were to assume its accuracy, along with the Regional's contention that it has only $2.5 million available, it has not shown that the five municipalities together lack the financial ability to contribute $2.5 million for four years of retroactive increases that the arbitrator found to be warranted by the statutory factors.

For all these reasons, the Regional has not shown any deficits in the arbitrator's analysis of the financial evidence that warrants disturbing the award.

II. Major Economic Issues

The arbitrator thoroughly analyzed the parties' proposals on the major economic issues, including salaries, holiday pay, clothing allowance, sick leave, terminal leave, vacation, longevity, health insurance, service differential and education incentives. The predecessor agreements each had clauses on most of these items and, for the most part, each party presented proposals to continue the benefits in some form, with the

Association generally espousing unification of benefits at the highest level and the Regional generally urging that its proposals for lesser benefits be evaluated in the context of its status as a new employer. The arbitrator did not accept either party's theory in its entirety but gave some weight to each party's position in fashioning his own approach. Thus, the main underpinnings of his analysis were that, first, benefits should be unified to the extent feasible to promote unity and morale among unit members and reflect the Regional's status as a single employer; second, the nature and history of some benefits made them difficult to unify; and, third, the Regional had an interest in having a compensation package for newly hired fire officers that reflected its own character and needs, such that the terms of the prior agreements might in some instances be given less weight than in arriving at terms for unit members who had served as officers in one of the municipalities. As we noted at the outset, we accept these principles, which neither party challenges conceptually.

Within this framework, the arbitrator had broad discretion to determine the degree to which benefits should be unified and the method of doing so, and we will not second-guess his decisions with respect to the numerous individual components of the package. Our focus is on the overall award, specifically, whether it was supported by substantial credible evidence and

whether the arbitrator explained his reasoning. See Borough of Allendale, P.E.R.C. No. 2003-75, 29 NJPER 187 (¶56 2003).

Our recognition that fashioning a salary package is not a precise mathematical process is an understatement in this case, given the numerous terms and conditions that had to be considered. In that vein, it is not grounds for vacating or remanding the award that the arbitrator could have chosen a different method for unifying some benefits or reached another conclusion about which benefits should be merged and which should not.

Against this backdrop, we address the parties' objections to award provisions where the arbitrator unified benefits either for all unit members or for all previously employed fire officers - i.e., salary, vacation, sick leave, holiday pay, clothing allowance, health insurance and longevity. We next discuss the challenges to the terminal leave article, where the arbitrator decided not to merge benefits. Finally, we address objections to a few other economic items.

Salaries

The parties raise three broad objections to the salary portion of the award. First, both parties object to the arbitrator's decision to unify all Fire Officer 2 and all Fire Officer 3 salaries in April 2004, as well as to the manner in which the award unifies former captains' salaries and merges

lieutenants onto the Fire Officer 1 salary schedule. Second, the Regional maintains that the increases awarded for all officers are inconsistent with the evidence on various of the statutory factors. Third, each party contends that the award is imperfect because it does not address salaries for fire officers promoted after regionalization but before April 1, 2004. We address each of these issues in turn.

Timing of Salary Unification

Both parties object to the timing of the salary unification, with the Regional contending that the record supports an award where unit members are eased into a unified structure at some point after the parties' first contract expires, and the Association protesting that immediate unification is required under the arbitrator's own reasoning and, with respect to former lieutenants and captains, the DOP classification ruling. The record amply supports the decision to unify salaries during the last three months of the contract. That decision achieves what both parties recognize is a desirable goal and does so within the term of the first agreement, without jeopardizing the Regional's financial security.

As we have stated, the Regional has not shown a basis for disturbing the arbitrator's conclusion that salaries can be unified in April 2004 without adverse financial impact. With respect to the Association's contention that the salaries of all

ranks should have been unified immediately, this objection goes to the essence of the arbitrator's broad discretion to arrive at salary increases, see Lodi and Newark, and the record does not point ineluctably to a date when unification should occur. We defer to the arbitrator's judgment that the transition to a unified salary schedule was best accomplished at the end of the contract term rather than at its outset, given that the latter method would have resulted in higher cumulative costs throughout the term of the agreement.

In this vein, the record supports the arbitrator's judgment to moderate the costs of the award and the unification. The residents of the constituent municipalities have comparatively low per capita incomes; the financial assistance received was for start-up costs; and much of that assistance was allocated to items other than salary. The municipalities' REAP payments were required to be passed through to taxpayers as property tax credits and the REDI assistance they received was to help fund the early retirement package. Moreover, the Regional received no State aid in 2001, and was required to begin making substantial principal and interest payments to the Authority beginning in 2001 and continuing through 2024. Finally, as we explain in other sections of the opinion, the Association has not shown that the record or the statutory factors required the arbitrator to award a more substantial economic package.

Method of Unification

With respect to Fire Officers 2 and 3, the Association objects that the award does not achieve the gradual integration of salaries described by the arbitrator. Instead, the Association contends that the award initially increases the disparity among officers from different municipalities due to the compounding effects of the annual percentage increases, but then unifies all salaries as of April 2004.

There is no basis to disturb the arbitrator's discretionary judgment concerning the process for unifying salaries. The arbitrator considered both the desirability of unifying salaries during this contract and the cost of doing so immediately. He fully explained the financial reasons for choosing to unify salaries at the end of the term. The Association has not articulated any basis why the record or the statutory factors require a consistent, step-by-step progression toward unified salaries.

Both parties question the rationale and method for merging lieutenants and captains into a Fire Officer I title. The Association protests that the award is inconsistent with the DOP ruling unifying the lieutenant and captain job titles because, even after April 1, 2004, former lieutenants will still be paid $8,000 less than former captains. By contrast, the Regional contends that the DOP ruling did not mandate a salary adjustment

for former lieutenants; the record provides no basis for eliminating the pre-existing differential between captains and lieutenants; and the award may undermine harmony within the command structure because newly-promoted lieutenants will receive the same salary as captains who may have been officers for a substantial period of time.

The arbitrator reasoned as follows with respect to the Fire Officer I schedule:

> Given the ruling for Fire Officer I by the DOP, the obligation to unify the salaries of Lieutenant with Captain is one which I view as necessitated by that ruling. I have done so on a phase-in approach despite the order which arguably justifies more immediate unification which would be far more costly. I have also placed the Lieutenants on the first step of the new three step salary schedule which also eases the cost of unification. [Arbitrator's award at 290]

Neither party has explained why we should not accept this thoughtful analysis. While the DOP ruling did not address salaries, the arbitrator reasonably concluded that, in developing an overall compensation and benefit system for the unit, it was logical to establish a single salary structure for employees performing the same duties. It is possible that, as the Regional argues, longtime former captains may be displeased with newly promoted officers being placed on the same salary schedule as they. However, if that were not done, newly promoted officers would likely be dissatisfied that the salary structure did not

recognize that they performed work equivalent to that of the former captains. The arbitrator reasonably chose to award a lieutenant's salary structure that is consistent with the DOP ruling.

With respect to the Association's objections, the record supports the arbitrator's phase-in approach because, in unifying Fire Officer I salaries, the arbitrator had to overcome both the salary disparities among lieutenants from various municipalities and the gap between lieutenants' and captains' compensation. While the arbitrator found that the DOP ruling could have justified awarding all Fire Officer 1s the same salary, he reasonably exercised his discretion in determining that such an award would be too costly. Further, the award will result in lieutenants advancing to step three on the Fire Officer 1 salary guide two years after the contract term. In that sense, the award is consistent with two of the prior agreements, which had salary guides for some superior officer ranks. Stated another way, the arbitrator reasonably interpreted unification to mean placement on a single salary guide, as opposed to payment of an identical salary.

Newly Hired or Promoted Fire Officers

Both parties contend that the award is imperfect because it does not address salaries for individuals hired or promoted into

a fire officer position on or after regionalization but before April 1, 2004. This is the background to this issue.

In January 2000, 19 firefighters from the participating municipalities were promoted to lieutenant. The salary schedule awarded by the arbitrator is preceded by the following statement:

> Fire Officers shall receive salary increases pursuant to the following salary schedule with increases retroactive to the effective dates reflected on the following salary schedule. The new salary schedule for all of the aforementioned Fire Officers shall be entitled "all Fire Officers employed by the NHRD who were previously employed by the municipalities of Union City, Weehawken, West New York, North Bergen and Guttenberg at the time of regionalization. [Arbitrator's award at 381]

Since all of the individuals promoted in 2000 had been previously employed by one of the municipalities, it appears from the terms of the award that the awarded salary schedule pertains to them.

The award also states that individuals hired or promoted into a fire officer position after April 1, 2004 shall be placed on step one of the schedule for the appropriate rank. The award does not address individuals hired by the Regional as a Fire Officer between 1999 and April 2004 who were not employed by one of the municipalities. However, the record does not show, and the parties do not allege, that there are any unit members in this category. Further, neither party presented a proposal addressing the salaries of Fire Officers who were directly hired

by the Regional. For these reasons, we find no basis for a remand on this ground.

Regional's Objection to Other Aspects of the Salary Award

Finally, we address the Regional's contentions that the awarded salary increases are excessive and unsupported by the record and the statutory factors. We conclude that the salary award is well supported and grounded in the arbitrator's explicit and implicit consideration of comparability, the continuity and stability of employment, financial impact and the other statutory factors.

The Regional protests that there was no more basis to unify salaries by using the highest salary guide for each rank than there was to use the lowest, and that the arbitrator did not explain his choice of guides. However, the arbitrator stated that he linked the across-the-board salary increases awarded during the first four years of the agreement with his method of unifying salaries later. The arbitrator stated that he chose to award 3% increases - which he found to be lower than average - to balance the costs of unification on the Union City and West New York schedules, which resulted in higher than average increases in the final contract year.

Thus, the guide used to unify salaries is only one aspect of the unification process, which the arbitrator fully explained.

There is no basis to disturb his overall approach, which included use of the highest salary schedule for each rank.

The arbitrator's comparability discussion underpinned his unification analysis and, contrary to the Regional's objections, we find that discussion to be well grounded. Before the arbitrator, the Regional and the Association both primarily cited the annual percentage increases included in the settlements between the participating municipalities and their police units. As discussed earlier in this opinion, three of those settlements averaged 3.5% over the full contract terms; one averaged 3%; and another 3.4%. The Association showed that the average percentage increases during 1998 through 2002 ranged from 3.75% through 4.25%. Thus, this data supports the arbitrator's finding that the 3% increases awarded were below these averages.

The Regional emphasizes seven contracts that include average annual increases ranging from 2.25% to 3%. They include four firefighter contracts (two each, for different periods of time, for two jurisdictions), two police contracts, and one fire officer contract which, taken together, reflect average increases of 3%. This selective comparability evidence does not undermine the arbitrator's findings.

While firefighter contracts are useful comparables, the Regional does not explain why it focuses on only four contracts, as opposed to, for example, the broader range of firefighter

comparables from urban communities submitted in the companion firefighters' case - which this employer had the opportunity to examine and rebut.

Moreover, while the Regional challenges the salary increases awarded in the final contract year, unit members receive the higher salaries for only three months, so that the final year rate increases are not an accurate measure of the costs that the employer will bear during this contract term. Moreover, those higher increases must be viewed in the context of the arbitrator's unification goal; the DOP ruling; and the arbitrator's decision to award a backloaded contract with lower cumulative costs than, and average annual contract increases in the range of, the settlements the Regional had cited.

Similarly, the arbitrator's analysis is not undermined because he did not place more weight on an exhibit showing salaries for a range of public and private sector occupations in New Jersey. The arbitrator described the exhibit in summarizing the Regional's arguments. However, he was not required to discuss it in more detail where the document reflects 1996 salaries and may no longer be probative, especially since many of the listed salaries appear to be entry level. In any case, the Reform Act does not mandate that a particular salary relationship be maintained between fire officers and other public or private employees. See Allendale, 24 NJPER at 219.

The Regional also points to a recent NJDOL document that it submitted to the arbitrator, which shows a statewide 1.2% increase in average private sector wages in 2001, and .3% decrease for Hudson County. We have reviewed the report but it does not require different salary increases where the preceding report showed a 6.9% statewide increase in average private sector wages for 2000, and an 11.7% increase for Hudson County.

In addition, we find that the arbitrator appropriately considered the continuity and stability of employment in awarding the salaries that he did. We accept his labor relations judgment that the "red-circling" proposed by the Regional, which would have resulted in freezing many fire officer salaries, would have undermined the morale of employees who already had to deal with the significant changes resulting from regionalization. He was not required to accept the Regional's theory that this statutory factor favored the Regional's offer because unit members do not face the same possibility of layoffs as some non-public safety employees.

Finally, the Regional maintains that the arbitrator did not adequately consider the cost of living or the overall compensation criteria. The arbitrator found that the cost of living militated against award of the Association's offer; that increases in the consumer price index were below the terms of the award; but that, given the overall record, the cost of living

criterion, N.J.S.A. 34:13A-16g(5), was not entitled to the most weight.

The Regional has not shown why the cost of living should be the single most important factor in a proceeding where, following a merger of negotiations units in a regionalization, the dominant concern was how to begin structuring a unified compensation and benefit structure. Moreover, while the Regional cites the cost of living as rising .1% in 1999, 1.6% in 1998, and 1.7% in 1997, the Regional-submitted data included in the appellate record shows that the Consumer Price Index for all Urban Consumers (CPI-U) for New York-Northeastern New Jersey had risen by 3.1% between December 1999 and December 2000 and that the CPI for all Urban Wage Earners & Clerical Workers (CPI-W) had risen 3.3% during the same time period.

The Regional also emphasizes the benefits received by unit members and the allegedly excessive salaries that will result from the award. It contends that the arbitrator did not adequately consider the "overall compensation" criterion, when he unified salaries at the highest levels in the predecessor agreements.

The arbitrator thoroughly and comprehensively described the pre-award compensation and benefit packages received by fire officers from the various municipalities, and thus fully satisfied his obligation to consider "[t]he overall compensation

presently received by the employees" involved in the proceeding. N.J.S.A. 34:13A-16g(3). Moreover, he explicitly rejected the Association's position that all benefits should be unified at the highest level and unified some benefits - e.g., longevity, sick leave, and holiday pay - at less than the highest level in the prior agreements. Thus, the arbitrator considered all benefit and compensation components in arriving at an overall award.

For all these reasons, we find that the arbitrator's salary analysis is well supported by the evidence on the several statutory factors.

Longevity - Association Objections

In effecting his conclusion that benefits for previously employed firefighters should be unified to the extent feasible, the arbitrator awarded a unified longevity schedule for previously employed fire officers effective January 1, 2003. He reasoned that maintaining the different municipal programs would result in substantial disparities in compensation inconsistent with having a single new employer.

As noted earlier, the award's longevity article is the same as that in West New York and less generous than that enjoyed by former Union City fire officers. The award includes a more generous schedule for former Weehawken officers and for North Bergen fire officers hired. The award "red-circles" some Union City firefighters already receiving longevity percentages higher

than the maximum unified benefit (14%), but provides that the percentage will not increase pursuant to the former schedule. The percentages under the award's longevity schedule will be applied to higher base salaries.

The Association protests that the arbitrator substantially reduced economic benefits without any analysis of the statutory factors and without a reasoned explanation as to how he arrived at his award. However, as we discussed in P.E.R.C. No. 2004-17, the reduction in some fire officers' longevity benefit (or expectation) must be viewed in the context of the overall award for the unit, which equalizes salaries at the highest level for each rank and grants more extensive longevity benefits to some fire officers. The arbitrator was not required to specifically explain the rationale for reducing longevity benefits for one group of fire officers where the reduction results from his award of a unified compensation system and benefit structure and he set forth the principles that underpin that structure.

As we also discussed in P.E.R.C. No. 2004-17, benefit adjustments such as this flow from the arbitrator's reasoned decision to unify some benefits at less than the highest level provided for under the predecessor agreements. We decline to disturb that determination: awarding the highest-level benefits in all of the prior agreements would have culled the provisions

most favorable to employees, without incorporating the offsetting concessions that might also have been part of those agreements.

We also decline to disturb the arbitrator's decision to award a separate longevity schedule for those fire officers employed by the Regional on or after regionalization and whose overall seniority does not include prior service with the member municipal departments. While the Association maintains that the arbitrator reduced benefits for these individuals without explanation, the affected employees would not enter employment with a longevity entitlement. His award of the separate longevity schedule derives from one of his guiding principles: that the provisions governing new hires should be less tied to the terms in the predecessor agreement than those of previously employed firefighters, provided that those terms are not so disparate in relation to the more experienced firefighters that they undermine morale, unity, and the continuity and stability of employment. We find no flaw in the arbitrator's reflecting this principle in the longevity portion of the award. We note that one of the prior agreements had less favorable longevity schedules for more recent hires.

Vacation - Association Objections

The arbitrator awarded a unified vacation schedule effective January 1, 2003 and, as with longevity, the Association objects to the level of benefit awarded. We address that issue now and

later consider the Regional's challenges to award sections concerning vacation scheduling.

We find that the arbitrator reasonably exercised his discretion in unifying vacation benefits when he awarded Fire Officer 2s and 3s 12 24-hour tours of duty and Fire Officer 1s 11 24-hour tours. The arbitrator approached his analysis of vacation leave as follows:

> Turning first to the amount of vacation to be provided to Fire Officers, as stated earlier, the parties' proposals must be examined in light of the benefits provided in the municipalities that comprise the Regional with an eye towards unifying those benefits to the extent feasible. [Arbitrator's award at 185]

The arbitrator explained that the Regional proposed that fire officers receive four to nine 24-hour vacation days, keyed to years of service, while the Association sought 33 12-hour vacation blocks for Fire Officer 3s; 31 12-hour blocks for Fire Officer 2s; and 29 12-hour blocks for Fire Officer 1s. The arbitrator noted that under the predecessor agreements, fire officers generally received more generous vacation benefits than those proposed by the Regional but fewer days than proposed by the Association. The award results in greater vacation benefits for former Weehawken and Union City fire officers, who received eight to nine and nine to eleven tours, respectively, depending on rank, as well as for North Bergen fire officers hired after 1986, who received 12 to 20 12-hour tours based on years of

service. The award results in lesser benefits for West New York officers, who received 12 or 13 24-hour days depending on rank, along with three compensatory days, as well as lesser benefits for North Bergen officers hired before November 1986, who received 24 to 28 12-hour tours depending on rank.

The arbitrator's award is in between the parties' proposals and the Association does not point to any evidence that he did not consider. While it protests that some North Bergen officers will lose 3.5 vacation days per year, we reiterate that this type of benefit reduction must be considered in the context of the overall award, which grants greater vacation benefits to some North Bergen officers, and officers from two other municipalities, and also unifies salaries at the highest levels in the predecessor agreements. We reiterate our earlier discussion about the consequences of establishing a single compensation and benefits structure from four separate agreements.

The Association also maintains that the award improperly results in a forfeiture of earned vacation time for some officers. The background to this issue is as follows.

The arbitrator awarded, with minor language changes, an Association proposal concerning banked compensatory time credited to former West New York fire officers. The clause reads:

> Employees covered by this Agreement who were previously employed by [the] Town of West New

> York Fire Department shall be entitled to maintain all previously banked compensatory and accumulated time which existed as of the time of the regionalization. [Arbitrator's award at 192]

The Association had sought this clause because the West New York agreement had provided that if a fire officer could not use all vacation time by the end of the calendar year, due to either disability or departmental procedure, he would either be paid for the unused vacation time or given compensatory time, which could be banked. The Association now contends that the award should have also preserved banked vacation time for officers from other municipalities.

Since the Association proposal pertained only to West New York officers, the arbitrator cannot be faulted for not deciding an issue not presented to him. In any case, the Association does not challenge the arbitrator's findings that Union City permitted vacation to be banked for the succeeding year only and that North Bergen allowed the practice only for terminal leave purposes. The award includes such provisions for all unit members, so that officers from North Bergen and Union City do not lose any rights with respect to unused vacation time and have an additional option concerning such time (Arbitrator's award at 192). While Weehawken allowed vacation time to be banked for two years, that type of provision contravenes N.J.S.A. 11A:6-3, which allows vacation time to be accumulated only in the year following the

year in which it was earned and only if the employee was prevented from taking the time due to departmental needs. See State of New Jersey (Dept. of Higher Ed.), P.E.R.C. No. 96-47, 22 NJPER 37 (¶27018 1995).

For these reasons, we decline to modify the award or require reconsideration of this point with respect to Weehawken fire officers who may have accumulated vacation time in excess of that permitted by statute.

Service Differential - Association Objections

The Association objects that the arbitrator's award with respect to service differential substantially reduces benefits without a reasoned analysis. However, the arbitrator did not reduce the benefit when he decided to maintain the service differential for those former North Bergen and Weehawken fire officers who already received it or who would earn it as of December 31, 2002.

Longevity, Vacation, Service Differential - Association Objections to Effective Date

The Association argues that if we affirm the longevity, vacation, and service differential articles, their effective dates should be changed to January 1, 2004, consistent with the adjustment the arbitrator made to the sick leave article in his Decision on Clarification. The Association argues that when the award was issued, these provisions, like the sick leave article, were intended to apply prospectively. It urges that employees

who receive reduced benefits under the award should not have to pay back amounts received, or vacation days used, in 2003.

The arbitrator adjusted the effective date of the sick leave article in conjunction with the changes that he made to the sick leave program pursuant to the limited remand order. That order did not direct him to re-examine the longevity, vacation, or service differential portions of the award and he did not do so. Initial briefs in this matter were filed in March 2003, after the scheduled effective date of the longevity, vacation, and service differential articles, but this issue was not raised. In this posture, we decline to entertain the Association's argument.[5/] In the event that any dispute arises over implementation of the longevity, vacation, and service differential articles, such dispute may be resolved through the parties' grievance procedure.

Sick Leave - Association Objections

The arbitrator awarded a uniform sick leave program that pertains both to newly hired fire officers and those previously employed by one of the participating municipalities. Effective January 1, 2004, the program grants unit members a set number of

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5/ After submitting a letter indicating that it would not submit comments on the Decision on Clarification, the Regional sought leave to respond to those portions of the Association's comment letter that addressed longevity, vacation, and service differential. Both parties then filed additional submissions. Given that we have declined to entertain the Association's argument on this issue, we deny the parties' requests to file further submissions.

sick days per year based on years of service, and includes provisions on sick leave verification and an incentive program for non-use of sick leave.[6/] In his Decision on Clarification, the arbitrator addressed whether, after the effective date of the awarded program, fire officers from Union City and Weehawken would have an accumulated sick leave bank available to use for non-work connected illnesses of injuries.

The Association objects to the amount of sick leave awarded and the award provisions concerning Regional-directed medical examinations. It also asks that we modify the Decision on Clarification. We address those issues now. We consider the Regional's challenges to the award's sick leave verification provision in another section of this opinion.

With reject the contention that the award does not conform to N.J.A.C. 4A:6-1.3(a)2 and incorporate our discussion in P.E.R.C. No. 2004-17, where we found that the regulation by its terms does not pertain to police officers and firefighters. Further, and as we also stated in P.E.R.C. No. 2004-17, the regulations apply to employees who, by regulation, work seven or eight hour days. When the number of 24-hour sick days awarded is translated into hours, the award equals or exceeds the regulatory requirements.

6/ As noted earlier, the Decision on Clarification changed the effective date from January 1, 2003 to January 1, 2004.

The Association also protests that there are no limits on the Regional's ability to require fire officers to undergo, at the Regional's expense, physical, neurological, or psychiatric examinations, and no indication as to where medical treatment is to be rendered or by whom. However, it does not appear that the Association raised these objections to the Regional's proposal before the arbitrator. Therefore, we decline to disturb this section of the award.

We next consider the Association's objections to the clarification decision. The arbitrator wrote as follows:

> Although not expressly stated, PERC's inquiry concerning the conversion of some employees from "unlimited" sick leave to a specific allotment of paid sick leave is whether those employees would have access to an accumulated sick leave bank, the type of which other firefighters might have accrued by virtue of having had a specific allotment, a portion of which may have been unused and therefore accumulated. If not, that employee might not have access to accumulated sick leave to apply to a non-work connected injury or illness which would force that employee to exceed his newly awarded annual allotment and therefore be put in an unpaid status. It was not my intention to allow such situation to exist as a result of the conversion. [Decision on Clarification at 9-10]

The arbitrator made these clarifications. First, he concluded that Union City and Weehawken fire officers with twenty or more years of service as of January 1, 2004, should continue to receive the sick leave benefits to which they were entitled under the prior agreements. Second, for Weehawken fire officers with

less than 20 years of service as of January 1, 2004, he created an annual sick leave bank for sick leave use consisting of 72 hours for each full year of service earned prior to January 1, 2004. The bank was created without regard to prior sick leave usage. Third, for Union City fire officers, he found that the prior agreement provided for an annual sick leave bank and accumulation of sick leave. He clarified that for fire officers with less than 20 years of service as of January 1, 2004, any accumulated sick leave time earned as of January 1, 2004 shall be carried forward into each employee's sick leave bank, to which allotments earned under the newly awarded sick leave program could be added.

The Association requests that we modify the Decision on Clarification by adopting the Association's proposed method for providing for accumulated sick leave for Union City and Weehawken fire officers. We decline to do so.

The arbitrator's Decision on Clarification addresses the issue framed in our remand order and substantially ameliorates the concern that fire officers from Weehawken and Union City would not have a sick leave bank available for an extended illness once the awarded sick leave program goes into effect. For example, under the clarification, a former Weehawken fire officer with 10 years of service would, as of January 1, 2004, have a sick leave bank of 30 24-hour days, and would earn 7.5 24-

hour days that year. That sick leave bank must be viewed in the context of the unit's work schedule, where firefighters are scheduled to work approximately 91 days per year, less vacation and other leave time.

With respect to Union City fire officers, the arbitrator found that, under the prior agreement, they had an annual allotment of sick leave days that were placed in a terminal leave bank; the ability to accumulate the days; and an ability to use them for a non-work related illness or injury. The Decision on Clarification specifies that, for former Union City fire officers with less than 20 years of service as of January 1, 2004, the bank will be carried forward once the new sick leave program goes into effect and that sick days earned under the new program will be added to it. Of course, fire officers from Weehawken and Union City with more than 20 years of service will continue to have up to one year of sick leave.

The Association does not explain why its proposed program is necessary to provide for sick leave for extended illness or assert that the arbitrator's decision does not do so. We therefore decline to disturb the arbitrator's Decision on Clarification.

Holiday Pay, Clothing Allowance, and Base Pay - Regional and Association Objections

The Regional contends that the arbitrator exceeded his authority and issued an imperfect award, N.J.S.A. 2A:24-8d,

because the award results in some fire officers receiving an unjustified "double payment" for clothing allowance and holiday pay. This is the background.

The arbitrator awarded a unified clothing allowance of $650 per year, effective July 1, 2002. Effective January 1, 2003, he unified holiday pay benefits at 112 hours per year for all previously employed and newly hired fire officers. The Regional maintains that officers from Union City, North Bergen and Weehawken will receive an unwarranted "double payment" because clothing allowance was included in the base salary for Union City fire officers and holiday pay was included in the base salary of North Bergen and Weehawken officers. The Union City contract stated that "clothing allowance was negotiated out of this agreement and the $650 formerly attributed to clothing maintenance allowance became part of the employee's base salary." Similarly, the North Bergen agreement provided that the Township "will include payment for holidays or holiday pay in the base rate of each member of the unit as per past practice." The Weehawken agreement stated that holiday pay was included in base salary after 19 years of service.

As we stated in P.E.R.C. No. 2004-17, the arbitrator could reasonably conclude that it was not relevant whether the base salaries under the predecessor agreements were achieved through successive salary increases or salary increases plus clothing or

holiday pay fold-ins. That is particularly so since a fold-in may be agreed to in exchange for lower across-the-board increases. Compare City of East Orange, P.E.R.C. No. 2003-39, 28 NJPER 581 (¶33181 2002) (arbitrator awarded fold-in of holiday pay in lieu of an across-the-board salary increase).

We recognize that while a benefit can "disappear" into base salary, as was the case with the Union City clothing allowance, it can also be maintained in an agreement, together with a proviso that it be paid as part of base salary. Even if that were the case with respect to North Bergen or Weehawken, there is no double payment because any separate holiday pay or clothing allowance provisions in those contracts are superceded by those in the award.

The Association also raises a question about holiday pay and base pay, arguing that the award is unclear when it directs that holiday pay "shall be considered as added to an employee's base salary." The arbitrator observed in his opinion that "holiday pay should be received as compensation and included in base pay" (Arbitrator's award at 201-202). The intent that it be included in an employee's regular paycheck as opposed to a lump sum is apparent. The Association does not suggest what other construction could be placed on the language or why the phraseology used is problematic.

Holiday Pay - Association Objections

The Association notes that the arbitrator unified holiday benefits mid-contract, on January 1, 2003, but did not account for the "holiday credits" that some unit members may have earned during the first half of the contract year. The Association also contends that the arbitrator did not explain why he denied its proposal to allow line supervisors two hours of leave on New Year's Day, Easter Sunday, Thanksgiving and Christmas to enable officers to enjoy holiday meals with their families.

With respect to the holiday meal proposal, the arbitrator was persuaded by the Regional's arguments that the proposal could entail costs and result in less than adequate coverage (Arbitrator's award at 201). The Association does not point to any flaws in that analysis and we decline to disturb it.

Turning to the issue of holiday benefits that were allegedly unaccounted for, we note that the arbitrator awarded 112 hours of holiday pay - a benefit equal or greater than that received by all officers except those from Union City, who had received 120 hours of pay. Before the arbitrator, the Association explained that Union city officers received holiday pay as part of their regular paychecks (Arbitrator's award at 193; 197). Therefore, it would appear that unit members received their entitlement under the Union City agreement for the first half of the year through paychecks received during that period. Absent any more

particularized description of what credits Union City officers are owed, we decline to order a remand on this point.

Health Insurance - Association and Regional Objections

The arbitrator was required to resolve a number of complex and significant issues with respect to health insurance including: whether all firefighters would be covered by the same plan; the type of plan or plans; benefit levels; co-payments for dependent coverage (proposed by the Regional); nature of prescription drug, dental, and eye care coverage; and the type of retiree health care coverage and the eligibility requirements for such. Each party challenges one aspect of the detailed health insurance provision that the arbitrator awarded, which directed the Regional, no earlier than January 1, 2003, to provide health benefits under either the State Health Benefits Program (SHBP) or an "equal or better" program.

The Regional objects to the award of retiree dental and eyeglass coverage, arguing that the benefit will impose additional costs and is unsupported by the evidence. It also maintains that the arbitrator lacked authority to award the coverage because neither party had proposed it. The Association protests that the award does not provide for continuation of health benefits for surviving dependents of deceased fire officers, even though some of the agreements had such provisions.

The arbitrator explained his decision to unify health benefit coverage as follows:

> Health insurance is a major term and condition of employment with significant implications for each party. Administration, costs and benefit levels are paramount considerations. This benefit is one which should be merged or unified for all employees of the Regional. The testimony of Director Welz must be credited in this regard. The interests of the Regional and all of its employees will be served by a single contract providing comprehensive health insurance benefits [to] all of its firefighting personnel regardless of unit placement. The Union's plea for a continuation of health insurance programs based upon individual prior contracts and arrangements with each municipality is simply not feasible. [Arbitrator's award at 317-318]

We turn first to the Regional's objections and incorporate our discussion in P.E.R.C. No. 2004-17. As we held there, extension of eyeglass and dental coverage to all current unit members upon their retirement was encompassed within the parties' proposals. The arbitrator's decision to award this benefit derives from his goal of unifying benefits.

With respect to the Association's objection, the Association did not submit a proposal requiring continuation of coverage for surviving dependents. Therefore, the arbitrator cannot be faulted for not addressing the issue. Moreover, the arbitrator made a reasoned decision to unify health benefits and to do so at the level of the State Health Benefits Program (SHBP). As a consequence, there may be some benefits included in some

agreements or health plans that will not be continued. We note that if the Regional enters the SHBP, the program allows survivors of retirees to continue SHBP coverage at their own cost. N.J.A.C. 17:9-6.6.

Court Time

The Association challenges the arbitrator's award of a "court time" clause stating that employees will not be paid for legal appearances at arbitration and PERC proceedings unless the employer requires their attendance. It argues that witnesses should receive equal treatment whether they testify for or against the employer.

We will not disturb the arbitrator's exercise of discretion on this issue. The thrust of each party's court time proposal was that employees should be compensated, at overtime rates, for off-duty legal appearances required in connection with departmental matters. The arbitrator could reasonably conclude that the rationale for the employer's payment obligation was the employer mandate to attend the proceeding.

Terminal Leave - Association and Regional Objections

One theme that runs throughout the arbitrator's discussion of the major economic issues is the desirability of merging the four salary guides and benefits structures into a single compensation system. However, as noted, the arbitrator also found that it was not feasible to merge some benefits that accrue

over the course of a career, and which an individual reasonably expects will continue until retirement. The arbitrator's conclusion that terminal leave was one such benefit is amply supported by the record, as is the terminal leave article he awarded for fire officers employed by the Regional after regionalization.

The arbitrator analyzed the widely divergent terminal leave provisions in the prior agreements, as well as the parties' proposals. For example, he noted that Union City provided for a sick leave bank of 120 hours for each year of service and provided for payment of unused sick leave at a rate of one hour of compensation for every two hours accumulated. Weehawken officers had no fixed number of annual sick days but received a terminal leave payment of 90 days pay. In West New York, officers were paid a rate of $136 to $174, depending on rank, for each unused sick day, subject to a cap that was also tied to officer rank. In North Bergen, officers were compensated for accumulated sick leave at one-half the daily rate of pay received by the employee during the last year of employment, subject to a maximum of 57% to 70% of the top salary for the applicable rank.

The Association proposed to establish a sick leave bank - for terminal leave purposes and non-work related illness - of 120 hours for each year of service. It proposed to compensate employees at retirement for all unused sick days at the rate of

one-half the employee's final rate of pay. It also sought a clause requiring that all leave accumulated by fire officers in their employment with the municipalities be maintained for retirement use on a special list. The Regional proposed to compensate employees for one-half of accumulated sick days, at a rate of $120 per 24-hour tour.

Against this backdrop, the arbitrator found merit in the Regional's arguments for limiting terminal leave benefits, as well as in the Association's position that some terminal leave benefits should be maintained, since all the prior agreements had included such benefits. He then reasoned:

> Balancing the firefighter's desire to consolidate all firefighters in a single terminal leave program, while maintaining terminal leave benefits previously accrued while they were employed by the municipal fire departments with the Regional's need to control future costs warrants different terms for those employees originally employed by one of the municipalities that comprise the Regional and for those employees hired directly into the Regional department.
>
> Terminal leave is a benefit where the merger of accrued benefits under the prior agreements is simply not feasible. The benefits for those employees employed by individual municipalities should be retained even though those specific benefit levels cannot be enjoyed by the entire workforce on a uniform basis. Each of the previous agreements included different methods of accumulating time towards terminal leave and different formulas for its calculation. It is generally accepted that leave time accrued by employees towards terminal leave is vested

> and should not be diminished. [Arbitrator's award at 166-167]

Therefore, for previously employed fire officers, the arbitrator awarded a maintenance of the terminal leave benefits received under their prior agreements. For employees directly hired by the Regional, he reasoned that they had no vested interest in a particular terminal leave program, and he awarded a benefit that was more than that proposed by the Regional and less than that proposed by the Association: compensation for all unused sick leave and some vacation days, at a rate of $120 per 24-hour day, and subject to a $15,000 cap. The arbitrator found that the $120 per tour payment was reasonable and that the cap limited the Regional's future terminal leave costs and enabled it to plan for them.

Neither party objects to the arbitrator's overall analysis, but the Regional protests that the municipal programs should not have been continued with respect to time accumulated with the Regional. The Association challenges three aspects of the terminal leave article: its impact on former Weehawken officers; the inclusion of vacation days in the terminal leave payment; and the rate of payment for unused sick or vacation days.

The Regional has not provided a basis to disturb the arbitrator's analysis. Preliminarily, there is ample support for the arbitrator's conclusion that leave time accumulated toward terminal leave should not be reduced absent a knowing and

intentional waiver by those adversely affected. See Morris Cty. Schl. Dist., 310 N.J. Super. 332 (App. Div.), certif. denied, 156 N.J. 407 (1998). Thus, the entitlements that previously employed fire officers had earned under the municipal agreements were reasonably preserved. Further, the arbitrator's decision to apply these terminal leave provisions to officers' time with the Regional derives from one of his guiding principles: that there are certain benefits that accrue over the course of a career that employees reasonably expect will continue until retirement. Terminal leave is one such benefit because it is tied to retirement. We defer to the arbitrator's judgment that, given the range of terminal leave programs under the prior agreements, unification could not be accomplished without harsh inequities either in terms of benefit elimination or excessive cost.

While the arbitrator could have awarded different terminal leave provisions for time served with the Regional, as the Regional maintains he should have, that type of award is not compelled and would have resulted in more of the complications that the Regional attributes to administering separate terminal leave benefit programs under the prior agreements. That is, the terminal leave entitlements for previously employed fire officers would have had to be allocated between their pre- and post-regionalization service.

In addition, while the Regional objects to the cost of continuing the prior terminal leave provisions, those costs must be considered together with the terminal leave benefit for newly-hired officers, which caps terminal leave payments at $15,000. Only two of the prior agreements had a terminal leave cap and each was higher than $15,000. Finally, the arbitrator could not have precisely costed out the terminal leave provisions, when the benefits for both previously employed firefighters and those directly hired by the Regional largely depend on the amount of sick leave accumulated by an employee's retirement date.

Similarly, we are not persuaded by the Association's objections to the terminal leave article. First, it maintains that the award does not provide uniformity for former Weehawken officers, who had no sick leave banks to carry into their Regional employment and who therefore will not receive the same type of terminal leave payments as other officers.

As discussed above, the arbitrator did not attempt to achieve uniformity on this issue but continued the entitlement of former Weehawken officers to 90 days terminal pay upon retirement, at the employee's final salary. That amount may exceed the payments received by other officers, depending on the number of sick days accumulated and the payment method included in the applicable municipal agreement.

With respect to the terminal leave provisions for new employees, the Association objects to the provision providing $120 per day for accumulated sick and vacation days. It reasons that a sick day is a contingent benefit but that vacation days are earned and vested and should not have been grouped with sick days for terminal leave purposes. It also maintains that the $120 figure is arbitrary.

The reference to vacation days in the terminal leave article dovetails with the vacation article, which allows vacation leave to be accumulated, for vacation purposes, in the year following that in which it is earned, but allows it to be banked indefinitely for terminal leave purposes. In this posture, the $120 figure compensates an employee for a vacation day that would otherwise have been forfeited. We will not second-guess the arbitrator's discretionary compensation decision to award $120 per day for unused sick days and some unused vacation days. That figure was included in the Regional's proposal, which the arbitrator awarded in modified form.

III. Award Provisions on Administrative, Operational & Contract Language Proposals

We next turn to the parties' objections to a variety of award sections on administrative, operational and contract language proposals. We evaluate those objections by assessing whether the arbitrator considered the evidence and arguments presented and offered a reasoned explanation for his award. If

the arbitrator's analysis satisfies these criteria, we will not disturb his judgment because one or the other party argues that its proposal was preferable to the arbitrator's award.

The Regional's arguments are essentially the same as in P.E.R.C. No. 2004-17, and we incorporate our analysis of the issues in that case and summarize our holding on each point.

Work Hours - Regional Objections

The Regional maintains that the arbitrator erred in not awarding its proposal for a 24/48 hour work schedule, which would have increased the number of days and hours worked annually. On appeal and before the arbitrator, it urged that the substantial salary and benefit package enjoyed by Regional firefighters warranted this workload increase, given that the legislative intent in adopting the regionalization statute was to achieve cost savings.

We incorporate our analysis in P.E.R.C. No. 2004-17. The record supports the arbitrator's conclusion that the evidence on the interest arbitration criteria did not warrant the change in the work hours/compensation equation that the Regional proposed. Further, the circumstance of regionalization does not in and of itself require a change in the work hours/compensation equation beyond what would otherwise be required by application of the section 16g factors.

Outside Employment - Regional and Association Objections

The arbitrator awarded an outside employment clause, proposed by the Regional, stating that employees shall consider their Regional positions as their primary employment and may not engage in any outside employment or activity that would interfere with that position or constitute a conflict of interest. Also as proposed by the Regional, the award states than an employee may not engage in outside employment while on sick or compensable work-related injury leave. Despite the arbitrator having awarded its proposed clauses, the Regional objects that they will have no effect because the arbitrator did not also award its proposal requiring employees to report and request approval for all outside employment. Without these provisions, it maintains that it will not be able to ascertain whether outside employment is contributing to costly and allegedly excessive sick leave use.

For its part, the Association argues that the prohibition against engaging in outside employment is too broad and should be vacated, because inability to perform firefighting need not mean that an individual cannot engage in less strenuous employment. This is essentially the same argument made by the Firefighters' Association in P.E.R.C. No. 2004-17.

As we held in P.E.R.C. No. 2004-17, the outside employment sections of the award do not provide grounds for a remand. As the arbitrator recognized, this is a first contract and there is

a limit on what can be accomplished in a first agreement. Only one of the prior contracts had an outside employment reporting requirement and the arbitrator could reasonably decide to incorporate general principles governing outside employment without also awarding the procedures the Regional proposed. After experience under the award, the Regional may again choose to propose a reporting requirement.

Similarly, the arbitrator had the discretion to give weight to the Regional Director's testimony that a fire officer on sick or injury leave should devote that time to recovering from an injury or illness, because outside work could impair that recovery.

Drug and Alcohol Testing Procedures - Association Objections

The Regional proposed and the arbitrator awarded a clause stating that the Regional may administer a drug and alcohol testing program pursuant to the Attorney General's Law Enforcement Drug Testing Policy, which the arbitrator incorporated by reference. The Association does not object to the portion of the clause authorizing the Regional to conduct drug testing, but states that it never had the opportunity to review the Attorney General policy and thus was deprived of its opportunity to negotiate drug testing procedures.

The Attorney General's policy was submitted as an employer exhibit before the arbitrator but the Association did not oppose

the testing procedures it contained or offer a rationale to support its own proposal, which would have limited drug tests to those administered based on probable cause or as part of an annual physical examination. Therefore, we decline to vacate and remand this aspect of the award.

Assignments and Transfers

The Association objects to the arbitrator's award of the following Regional-proposed clause:

> The assignment and transfer of Fire Officers shall be solely the responsibility of the Executive Director. It shall be understood nothing shall prohibit any employee from submitting, through proper channels, a written request for transfer to a new or vacant position for which that employee is qualified. [Arbitrator's award at 136]

The arbitrator observed that this was the "lone proposal on which both parties are silent" and therefore awarded it.

The Association now claims that the proposal conflicts with the fire chief's authority to make assignments at a fire scene and that, by awarding it because of the parties' silence, the arbitrator contravened his earlier statement that he would assume opposition where a party did not respond to an adversary's proposal.

Regardless of the arbitrator's presumptions for analyzing proposals, we will not disturb this portion of the award based on arguments that the Association could have but did not make to the arbitrator. In any case, the clause does not appear to refer to

fire scene assignments but to longer-term job or title classifications, as evidenced by the reference to written requests for transfers.

Vacation Scheduling - Regional Objections

The Regional objects to the award provisions governing use of vacation time, maintaining that the arbitrator should have awarded its seasonal scheduling policy so that it could limit vacation use on weekends; control overtime costs; and maintain staffing levels.

Before the arbitrator, it proposed that the year be divided into three periods, with no more than one third of the officers permitted to take vacation during each period. By contrast, the Association proposed a clause whereby up to nine officers would be allowed off at any one time, pursuant to a vacation schedule established by the Regional after consultation with the Association president. Its proposal that officers receive between 29 and 33 12-hour vacation blocks by its terms would permit vacation time to be taken in 12-hour segments, and it also sought 72 hours of "reserve time" that could be used in units of six hours or more.

The arbitrator thoroughly reviewed the parties' evidence and arguments, including the Regional's exhibits showing vacation patterns, and arrived at an award that recognizes and accommodates both the firefighters' desire for some flexibility

and input into vacation scheduling and the Regional's cost and staffing concerns. For example, while the Regional objects that the arbitrator did not consider its need to maintain minimum staffing, the arbitrator did not award the Association's proposal to allow nine officers to be on vacation at one time. Instead, the award allows the department to set the vacation schedule, taking seasonal considerations into account if it chooses, after consultation with the Association president. While the Regional objects to the consultation requirement, it does not negate or significantly interfere with the Regional's right to set staffing levels to the extent such are implicated by the vacation schedule. As we explained in North Hudson Reg. Fire & Rescue, P.E.R.C. No. 2000-78, 26 NJPER 184 (¶31075 2000), we have found to be mandatorily negotiable clauses requiring an employer to consult or discuss actions which it has the managerial prerogative to effect, but which have an impact on employee working conditions or performance.

With respect to the Regional's contention that the arbitrator did not resolve the unsettled issues because he did not award a specific vacation distribution schedule, we reiterate our analysis in P.E.R.C. No. 2004-17. The arbitrator commented that he had awarded a regional-wide vacation program and encouraged the parties to negotiate a more specific vacation use and distribution schedule during the next round of negotiations.

That language does not establish a lack of finality where the award provides that the vacation schedule shall be set by the Regional in consultation with the Association. Nor does it indicate a belief that interest arbitration is not the proper forum for resolving vacation scheduling issues. Compare Cherry Hill. Rather, it is consistent with the arbitrator's earlier observation that there is a limit to what can be accomplished in a single and initial contract.

The Regional also maintains that we should vacate the award provision allowing vacation time to be taken in 12-hour blocks. The clause allows some flexibility in vacation scheduling and, absent any particularized discussion of why it is problematic, we decline to disturb it. However, as the Regional notes, the arbitrator's opinion, like the award and opinion in the firefighters' case, states that the taking of a 12-hour block of vacation time is contingent upon the remaining 12 hours of the tour being covered on a non-overtime basis (Arbitrator's award at 189). We correct the award to include this language in the contract. See East Orange (Commission has authority to correct minor errors that are apparent on the face of the award).

Association Rights - Regional Objections

Before the arbitrator, both parties proposed a union leave provision for the purposes of contract administration. As it does in the firefighters' case, the Regional objects that the

awarded clause does not adequately define "association business" or what constitutes the "reasonable notice" Association representatives must give in order to take union leave. It also objects to the award clause requiring it to permit up to two Association representatives time off to attend Association business.

We reiterate our discussion in P.E.R.C. No. 2004-17. "Association business" is a term of art and the award references some of the items included within it - e.g., investigation and settlement of grievances and negotiations meetings. "Reasonable notice" is a common term that may derive its content from the circumstances presented. Both may be defined more precisely through the parties' experience and contractual grievance procedures. We also decline to disturb the arbitrator's decision to allow two unit members leave time to attend to Association business. This portion of the award strikes a balance between the parties' proposals.

IV. Scope of Negotiations and Statutorily-Based Arguments

The Regional contends that certain sections of the award conflict with governing statutes and that others impermissibly impinge on its managerial prerogatives. It asks us to vacate or modify the sections identified. Similarly, the Association maintains that two award sections are inconsistent with pertinent statutes. As noted at the outset of our opinion, we will

evaluate allegations that an award provision violates a statute or regulation but will not resolve late-raised claims that an award section significantly interferes with a managerial prerogative.

Injury Leave, Sick Leave Verification, Off-Duty Action - Regional Objections

The arbitrator awarded injury leave and off-duty action provisions identical to those in the firefighters' case and the Regional advances the same objections to the clauses as in P.E.R.C. No. 2004-17. We incorporate our analysis in that decision and restate our holdings. We will not modify the award because of an asserted conflict with N.J.S.A. 40A:14-16, providing that injury leaves may not exceed one year. While the award allows the Regional to extend a leave beyond one year at its sole discretion, the Regional has the ability to deny an extension and thus prevent the problem it fears from arising.

Further, the award does not prevent the Regional from adhering to the requirement in N.J.S.A. 40A:14-16 that the employer's own physician certify disability for purposes of injury leave. That obligation can be accomplished while honoring the award's provisions allowing an employee to be treated by his or her own physician.

Finally, we will not disturb the off-duty action section of the award, which provides that officers responding to an emergency while off-duty are entitled to the same "rights and

benefits" as if they had been scheduled to work. While the Regional contends that the award improperly confers worker's compensation benefits, the clause does not refer to such benefits and an arbitrator is without authority to award them.

The award's sick leave verification provisions are also the same as in the firefighters' award. As in that appeal, the Regional contends that the award interferes with its prerogative to verify sick leave by stating that a doctor's note shall be required when an employee has been on sick leave for more than one tour of duty and may be sought when there is reason to believe that sick leave is being abused. It maintains that, under our scope of negotiations decisions, an employer has the prerogative to determine the number of absences that trigger a doctor's note requirement.

The Regional filed a pre-arbitration scope petition with respect to the Association's proposal to require employees to submit a doctor's note after three one-day absences or one absence of two or more days. North Hudson. We held the proposal not mandatorily negotiable, reasoning that the clause suggested that the employer was prohibited from verifying sick leave in other circumstances.

The award's sick leave verification provision does not conflict with North Hudson or interfere with the Regional's prerogative to verify sick leave. While it confers a contractual

right or obligation on the Regional to verify sick leave after an absence for one tour of duty, it does not prohibit the Regional from requiring a note for a single absence.

Association Rights - Association Objections

This award includes a convention attendance provision, similar to that in the firefighters' award. The clause allows three elected Association officers, delegates, trustees and/or alternates, or employees elected to State or international office, to attend IAFF and FMBA State and district conventions. The Association contends that the award section contravenes N.J.S.A. 11:6-20 and N.J.S.A. 40A:14-177, which entitle duly authorized union representatives, up to a maximum of 10% of the membership or 10 employees, to attend such conventions.

The Association sought a provision authorizing four representatives to attend conventions, as opposed to the 10 members it claims it is now authorized to send. As we held in P.E.R.C. No. 2004-17, to the extent that the Association is entitled by statute to send more than that number, the right is incorporated in the contract, State v. State Supervisory Ass'n, 78 N.J. 54, 80 (1978), and thus there is no need for the arbitrator to reconsider the award provision.

The Association also objects that by limiting leave for convention attendance to one 24-hour tour, the award could in some circumstances contravene the statute, which allows up to

seven days leave for convention attendance and travel time. This concern is not a basis to remand the award for reconsideration or clarification. If a situation arises where the Association believes that the award would not allow the leave time required by statute, the Association or affected employees could advise the Regional when requesting time off and grieve the matter should the Regional disagree with the Association's position.

V. Clarification Issues

In the final section of this opinion, we discuss contentions by both parties that particular award sections are ambiguous and need to be clarified. For the most part, we do not find the provisions unclear and, more to the point, the alleged ambiguities do not implicate the arbitrator's obligation to consider the statutory factors and the parties' evidence and arguments. Nor do they present grounds for delaying implementation of the parties' first agreement. Our discussion explains why we have reached these conclusions, but we stress that we are not definitively interpreting the cited award sections. The parties may jointly request clarification from the arbitrator; amend the award by stipulation, N.J.S.A. 34:13A-19; or allow grievance arbitration to resolve an issue once a dispute arises under a particular award section. Absent mutual agreement, a joint clarification request shall not stay implementation of the award or any portion thereof.

We except one of the highlighted award sections - the grievance procedure article - from this analysis. As detailed later, we correct the grievance procedure article to conform to the arbitrator's opinion.

Association Requests for Clarification - Leave of Absence/Emergency Leave, Overtime, Educational Incentive, Deferred Income Plan

Leave of Absence/Emergency Leave

The Association first seeks clarification or modification with respect to the award's "Emergency Leave" clause, arguing that the award is ambiguous as to whether the leave is paid or unpaid. The clause provides:

> Employees may be granted emergency leave, with or without pay, for the serious illness requiring hospitalization in the immediate family including childbirth, necessitating the employee's presence at the discretion of the Executive Director, which discretion shall not be unreasonably or arbitrarily exercised. Paid leave shall be limited to one tour annually.

The text and the arbitrator's opinion indicate that paid leave is to be limited to one tour, but that unpaid emergency leave could be granted as well.

Overtime

The arbitrator awarded an overtime section that reads in part:

> Overtime shall be paid for all hours worked in addition to the employee's normal scheduled hours as well as entitlements under the Fair Labor Standards Act (FLSA). The

> overtime rate shall be calculated by dividing the employer's annual salary by 2080 hours times one and one-half (11/2). [Arbitrator's award at 216]

The Association urges that clarification of this provision is required because it contains incompatible standards for when overtime will be awarded. The award requires overtime for hours worked in excess of an employee's normal day or weekly schedule, regardless of whether overtime is required by the FLSA. It thus tracks the Association's proposal that an employee receive overtime for all extra hours worked and contrasts with the Regional's proposal that employees receive overtime only as required by the FLSA. Absent any more particularized objection by the Association, there is no basis for a remand for clarification or reconsideration.

The Association also requests clarification of the Recall Compensation provision, which reads:

> The compensation required to be paid to employees who have been recalled to duty shall be a minimum four (4) hour's overtime pay, at the rate of time and one-half (11/2). Time actually required after a recall shall be left at the discretion of the Fire Officer's immediate superior. The four (4) hour minimum shall not apply to employees held over following the termination of their regular shift. [Arbitrator's award at 21]

The Association maintains that clarification is required because the award does not specify whether a recalled officer may be held for four hours even if the reason for the recall has passed.

While the Association's proposal did not address this point, the award directs that the recalled officer's superior determine how long the officer shall be required to remain on duty. This section does not require clarification.

Education Incentive

The Association maintains that a clarification or correction, or a vacation and remand, is required because the educational incentive section of the award is unclear as to the rights of officers who are in the process of attending school.

The award states that officers previously employed by a municipality who had, as of the date of the award "commenced matriculation in higher education for credit, shall retain all aspects of education incentives, if any, previously provided in the labor agreements in those departments." Previously employed fire officers who begin a program of study after the award's issuance receive the same benefits as fire officers hired by the Regional on or after regionalization. Again, this section does not need to be clarified.

Deferred Income Plan

The Association argues that a remand is required to address its proposal for a deferred compensation plan, which was included in its wage proposal. It suggests that the arbitrator may have overlooked this issue.

The award includes a comprehensive 68-page discussion of the parties' salary positions, and the arbitrator issued a detailed salary award that did not adopt either of the parties' proposals. The arbitrator stated that all proposals not awarded "shall be dismissed and denied" (Arbitrator's award at 330) and we will not infer that the arbitrator overlooked the deferred compensation aspect of the Association's wage proposal. While the arbitrator did not specifically refer to the deferred compensation aspect of the Association's proposal, we will not second-guess his weighing and balancing of the evidence in arriving at the salary portion of the award. As we have stated throughout this opinion, there is a limit to what may be accomplished in a first agreement and the Association may propose to include deferred compensation in the contract through the next round of negotiations.

Promotions and Vacancies/Out-of-Title Work - Association Request for Clarification; Regional Objection

The Association maintains that the Out-of-Title work and Acting Pay clauses conflict, and require clarification, because the former provides that an officer working at a higher rank for two consecutive tours receives one-half the differential between the two ranks, whereas the Acting Pay clause states that the individual serving in a higher rank due to a vacancy receives the full salary for the higher rank after 30 consecutive days of satisfactory service, retroactive to the first day. The Regional

raises the same objection but contends the award sections should be vacated.

The award sections are similar to two Association proposals. The arbitrator's discussion, and the Association's post-hearing brief, indicate that the out-of-title clause was intended to compensate an employee covering for another on a short-term basis, while the acting pay clause applied to longer-term vacancies. The award sections do not appear to us to conflict. The award provides for some compensation for short-term coverage but directs that an individual receive the full salary for the higher rank once he has assumed long-term responsibility for the position.

The Association also maintains that the out-of-title work clause needs to be clarified or corrected because it is triggered by assignment to a higher title by a "competent authority" - a term which the Association argues should be more specific. Absent any discussion of how or why this clause would present problems, we find no need for clarification. The award provision must be read together with the Regional's general operating orders.

Finally, the Association contends that the arbitrator should have included its proposed language that "the employer shall not defeat the intent of the clause by shifting two (2) or more employees to cover the higher rank in question." However, as the

arbitrator noted, North Hudson held that clause to be at most permissively negotiable because it would prohibit the employer from rearranging the schedules of officers of equal rank, thus eliminating the need to fill the vacancy with lower-ranked officers and triggering the out-of-title pay requirement. Compare City of Kearny, P.E.R.C. No. 98-22, 23 NJPER 501 (¶28243 1997), aff'd 25 NJPER 400 (¶30173 App. Div. 1999) (superior officers had a mandatorily negotiable interest in receiving overtime compensation for work performed in their own job titles, for which they were presumptively the most qualified). Because the Regional did not agree to submit the proposal to interest arbitration, the arbitrator could not consider it.

Grievance Procedure - Association and Regional Requests for Clarification

Both parties maintain that the grievance procedure article is unclear with respect to minor discipline. This is the background.

Before the arbitrator, the Regional proposed that "[g]rievances concerning the imposition of discipline of less than forty-eight (48) hours pay affecting one employee shall not be arbitrable." The Association proposed that "[m]inor disciplinary matters (less than six (6) days of fine or suspension or equivalent thereof) shall be included in this Grievance Procedure."

The arbitrator found that permitting binding arbitration of all minor discipline would be more economical than requiring some minor discipline to be challenged through judicial procedures (Arbitrator's award at 54). He then awarded a grievance procedure that does not refer to minor discipline and defines a grievance as:

> [A]ny disagreement between the Fire Officer and the Employer, or between the Association and the Employer, involving the interpretation, application or violation of the terms of this agreement, matters of safety affecting or impacting upon employees and administrative decisions affecting employees. Grievances concerning administrative decisions affecting employees may be filed through step 2 (two) of the grievance procedure. [Arbitrator's award at 55]

In the firefighters' case, the grievance procedure must be read together with the section on "disciplinary action", which specifies that minor discipline may be submitted to binding arbitration. However, in this case, the award does not include a separate disciplinary action article because neither party proposed one.

Both parties agree that the arbitrator intended the grievance procedure article to provide for binding arbitration of

all minor discipline.[7/] Therefore, we will correct the grievance arbitration article to so provide. East Orange.

The Regional also contends that the grievance procedure article is "imperfect as to form" because it includes two different versions of the Step One procedure, with one version allowing 10 days to present a grievance and the other 8 days. It contends that a 10-day limit would be inconsistent with the arbitrator's stated intent to provide time limits that will ensure that grievances be resolved as soon as possible.

In the section of his opinion discussing the parties' grievance proposals, the arbitrator set out the grievance article he awarded and, after commenting on the desirability of having consistent procedures for both fire department units, included a step one procedure providing 10 days to present a grievance (Arbitrator's award at 56). The discrepancy that the Regional cites is in the "Award" section, where the arbitrator reproduces all the contract articles awarded. The award section includes two step one paragraphs, one with an 8-day period for presenting grievances and the other with a 10-day period.

7/ For this reason, we do not consider the Regional's claim that because the grievance procedure article was not listed in the Association's Notice of Appeal, the Association should be deemed to have waived any objection to it.

The Regional has not explained how the 8-day vs. 10-day window for presenting grievances would affect their resolution in any measurable way, so the only issue is the arbitrator's intent. It appears clear to us that the arbitrator intended to include a 10-day time period, given that is the time frame set forth in the opinion and the period included in the firefighters' award. The firefighters' award is pertinent given the arbitrator's conclusion that there should be consistent procedures for both fire department units. Accordingly, we correct the award by deleting the paragraph, at page 344 of the award, that includes an eight-day period for instituting action under the grievance procedure article.

Accrual of Vacation Time - Regional Request for Clarification

The Regional maintains that, in order for it to implement the award's vacation provisions, the award needs to be modified or clarified with respect to accrual of vacation time. We see no need for modification or clarification.

Before the arbitrator, the Regional proposed that, during their first year of service, unit members would accrue vacation days at the rate of one every four months. After completing one year to five years of service, they would be entitled to four

days, and would receive an extra day for each five years of service.

The arbitrator did not award a provision concerning accrual of vacation days for officers in their first year of employment and did not tie vacation entitlement to years of service. Instead, he awarded a set number of vacation days for each rank. Therefore, we do not believe that the article is ambiguous without an accrual clause. Absent a clause providing otherwise, it would appear that officers are entitled to the number of days corresponding to their rank, upon promotion to that rank.

Conclusion

In our issue-by-issue review, we have concluded that the parties' objections do not warrant our disturbing the award. The arbitrator's overall approach and guiding principles are sound, and his award establishes a framework within which the parties may work. The arbitrator painstakingly considered the parties' presentations; reached a reasonable determination of the issues; and fashioned an overall award that is supported by substantial credible evidence. It is perhaps inevitable that each party would disagree with some award provisions, given the length and complexity of this conventional award and the extraordinary number of issues it addressed. However, neither party has pointed to evidence or arguments that the arbitrator did not

consider or shown that any element of the award is unsupported by the evidence.

We stress that an interest arbitration appeal is not a means to seek adjustments to award provisions with which one disagrees, particularly since, in general, an appeal decision will not vacate or remand one piece of an award without requiring a re-examination of the award as a whole. See Union Cty., P.E.R.C. No. 2003-87, 29 NJPER 250 (¶75 2003) (award vacated and remanded at employer's request to reconsider its proposals; arbitrator directed to also reconsider union's proposals); contrast East Orange (limited remand ordered for arbitrator to explain how she calculated one item). If the parties still wish to change aspects of the award, N.J.S.A. 34:13A-19 expressly authorizes them to amend or modify the award by stipulation. Absent the parties' agreement, such efforts shall not stay implementation of the award or any portion thereof.

ORDER

The arbitrator's award is corrected to: (1) provide for binding arbitration of minor discipline; (2) delete, from page 344 of the award, the paragraph providing for an eight-day period for instituting action under the grievance procedure article; and (3) state that vacation time may be taken in 12-hour blocks only if the remaining twelve hours of the tour are covered on a

non-overtime basis. The award as corrected, and as clarified in the arbitrator's October 10, 2003 decision, is affirmed.

BY ORDER OF THE COMMISSION

Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, DiNardo, Katz, Ricci and Sandman voted in favor of this decision. None opposed. Commissioner Mastriani recused himself and was not present.

DATED: October 30, 2003
Trenton, New Jersey
ISSUED: October 30, 2003