

P.E.R.C. NO. 2014-69

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF MORRIS,
MORRIS COUNTY SHERIFF'S OFFICE,

Appellant,

-and-

Docket No. IA-2012-035

PBA LOCAL NO. 298,

Respondent.

PBA LOCAL NO. 298,

Appellant,

-and-

COUNTY OF MORRIS,
MORRIS COUNTY SHERIFF'S OFFICE,

Respondent.

SYNOPSIS

The Public Employment Relations Commission affirms an interest arbitration award establishing the terms of a successor agreement between the County of Morris and the Morris County Sheriff's Office (County) and the PBA Local 298. The County appealed an interest arbitration award that had been previously remanded to the Commission by the Appellate Division and assigned to a new arbitrator. The Commission rejects the County's arguments on appeal finding that the arbitrator complied with our directive on remand and was correct in considering the entire award and all aspects of the interest arbitration statute when formulating her award. The Commission found that the arbitrator issued a well reasoned opinion and award that complied with the relevant statutes and is supported by substantial credible evidence in the record as a whole.

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 County of Morris, Morris County Sheriff's
Office, Knapp, Trimboli & Prusinowski (Stephen
Trimboli, of counsel and on the brief)

For the PBA Local No. 298, Lindabury, McCormick,
Estabrook & Cooper, P.C. (Donald B. Ross, Jr., of
counsel and on the brief)

DECISION

This is an appeal by the County of Morris, Morris County Sheriff's office from an interest arbitration award that was remanded to a new arbitrator after an appeal to the New Jersey Superior Court, Appellate Division. This matter has a long

history. The first award in this matter was issued on June 25, 2012. Both parties appealed that award to the Commission. On July 19, 2012, we remanded the award back to the arbitrator for a supplemental award in accordance with our decision. Morris Cty., P.E.R.C. No. 2013-3, 39 NJPER 81 (¶31 2012). The arbitrator issued his supplemental award on August 28, 2012, and the County appealed that award. We affirmed the award. Morris Cty., P.E.R.C. No. 2013-27, 39 NJPER 200 (¶64 2012). The County then appealed to the Superior Court, Appellate Division. On November 15, 2013, the Appellate Division remanded the matter back to the Commission to develop the record regarding the arbitrator's analysis of the factors established in N.J.S.A. 34:13A-16(g) consistent with its opinion. The court left the task to the discretion of the Commission and did not retain jurisdiction. County of Morris, Morris County Sheriff's Office and PBA Local 298, P.E.R.C. No. 2013-27, 39 NJPER 200 (¶64 2012), rem'd 40 NJPER 241 (¶92 2013). We remanded the matter to a new arbitrator^{1/} who filed her opinion and award with the Commission on March 5, 2014. The County then filed this appeal.

The original collective negotiations agreement expired on December 31, 2010.

^{1/} The initial arbitrator retired from the interest arbitration panel.

The PBA is the majority representative of all Correction Officers employed at the Morris County jail and has filed a brief^{2/} but has not filed a cross-appeal in this matter.

The County argues that the last arbitrator only had the authority to determine the issue of step increments for 2011 as that was the only issue that was appealed to the Appellate Division. The points asserted by the County are as follows:

POINT I

THE SCOPE OF THIS REMAND HEARING SHOULD BE LIMITED TO THE ISSUE OF 2011 STEP INCREMENTS, THE ONLY ISSUE ON WHICH APPEAL WAS TAKEN FROM THE SUPPLEMENTAL AWARD, AND THE ONLY ISSUE ADDRESSED BY THE APPELLATE DIVISION.

POINT II

THE ARBITRATOR ACTED CONTRARY TO LAW BY AWARDING A CONTRACT OF FOUR YEARS' DURATION THAT DID NOT LIMIT ANNUAL INCREASES IN BASE SALARY ITEMS TO 2.0% PER YEAR ON AVERAGE.

POINT III

FOUR CRITICAL FINDINGS IN THE ARBITRATOR'S REMAND AWARD ARE NOT SUPPORTED BY SUBSTANTIAL CREDIBLE EVIDENCE ON THE RECORD BELOW, AND BECAUSE THESE ERRONEOUS DETERMINATIONS HAD A SIGNIFICANT IMPACT ON THE ARBITRATOR'S CONCLUSIONS, IT IS NECESSARY TO REMAND THE MATTER TO THE

^{2/} The brief filed by the PBA contained a newspaper article as an exhibit that was not part of the record below. The County objected to the article as a violation of N.J.A.C. 19:16-8.19(c), "Where no cross-appeal is being filed, . . . the respondent shall file . . . an answering brief limited to the issues raised in the appeal and the brief in support of the appeal." We have not considered the article.

ARBITRATOR SO THAT HER CONCLUSIONS MAY BE RECONSIDERED IN LIGHT OF THE ACTUAL RECORD.

A. The Arbitrator Failed to Attain her Stated Goal of Following the Pattern Set by the Sheriffs Officers, Sheriff's Superiors, and Correction Superiors Contract By Misstating the Increases Under Those Contracts

B. The Arbitrator Further Misconstrued the Pattern She Purported to Rely Upon by Not Accounting for the Surrendering of Retiree Coverage for New Hires.

C. The Arbitrator Placed Excessive Weight on Comparison to Local Morris County Police Departments, and Insufficient Weight on Comparisons to Other Correctional Departments.

D. In addressing the Financial Impact Criterion, the Arbitrator Failed to Consider the Cost to the Appellant of Employees who Received 2011 Step Increments Under the Mason Award that the County Will be Unable to Recoup.

The PBA responds that the Commission should uphold the arbitration award; that the scope of the remand hearing was appropriate based on the language from the Court's decision which remanded the case to the Commission to develop the record regarding the arbitrator's analysis of the statutory factors; that had the arbitrator been limited to the issue of the 2011 step increments, the award would have issued a CNA that was already expired at the time of the award^{3/}; it was not a

3/ The award from the first arbitrator was for a three year (continued...)

violation for the arbitrator to award a four-year CNA that did not limit the annual increases to 2% per year since the statute did not apply to this interest arbitration; and that the arbitrator did not make erroneous determinations in her 93-page award and "gave proper, careful and comprehensive consideration of the statutory criteria."

The arbitrator in the instant matter issued a conventional award as she was required to do pursuant to P.L. 2010, c. 105, effective January 1, 2011. A conventional award is crafted by an arbitrator after considering the parties' final offers in light of statutory factors.

The parties proposals were as follows:^{4/}

COUNTY FINAL OFFER

Duration: January 1, 2012 through December 31, 2013.

Medical Plan:

All employees currently enrolled in the Medallion Plan shall have the option to transfer to the PPO Plan.

3/ (...continued)
period and ended on December 31, 2013...the CNA awarded by the instant arbitrator was for a four year period that ends on December 31, 2014.

4/ The arbitrator informed the parties of the following:

"I advised the parties that the remand for a new hearing would not be an opportunity for the parties to amend their respective final offers filed in 2012 to include additional items in dispute, but that the parties would be permitted to agree upon disputed issues and/or withdraw any issue from consideration."

All employees enrolled in the Wraparound Plan shall transfer to the PPO Plan. The Wraparound Plan will no longer be available for enrollment.

Payroll Contributions - Current Employees

Employees enrolled in the HMO Option plan shall contribute in accordance with Chapter 78.

Employees enrolled in the Medallion Plan shall contribute the greater of 30% of the difference between the cost of the Medallion Plan and the PPO Plan, plus 1.5% of base salary, plus 3% of the premium or in accordance with Chapter 78.

Employees enrolled in the PPO Plan shall contribute the greater of 1.5% of base salary or in accordance with Chapter 78.

Prescription Co-Pays - Applicable to All Active Employees and Employees Who Retire After the Date the Award is Issued.

Generic	\$1.00
Brand Name	\$20.00
Non Preferred	\$35.00

Retiree Health Insurance:

Employees hired after the date the Award is issued, who retire and meet the criteria for County-paid health insurance, will receive a plan for the employee only. Employees hired after the date the Award is issued and meet the requirements for County-paid health insurance will have the option to add their eligible dependents to the plan at the expense of the retiree.

Wage Proposal:

No step movement for the term of the Agreement.

0% increase effective January 1, 2011, with no step movement.

2% increase effective January 1, 2012, with no step movement.

2% increase effective January 1, 2013, with no step movement.

Resumption of step movement after expiration of Agreement shall be subject to negotiation.

PBA FINAL OFFER

Duration: The PBA proposes a contract term of January 1, 2011 through December 31, 2014.

Wage Proposal:

2011: 2.5% across the board increase effective January 1, 2011 plus full step movement as per prior contract.

2012: 2.5% across the board increase effective January 1, 2012 plus full step movement as per prior contract.

2013: 2.5% across the board increase effective January 1, 2013 plus full step movement as per prior contract.

2014: 2.5% across the board increase effective January 1, 2014 plus full step movement as per prior contract.

Health Insurance:

Effective as soon as practicable after execution of the new agreement, all officers who are currently enrolled in

either the so-called Medallion Plan or the so-called Wrap-Around Plan shall be required to enroll in the County's "PPO" plan currently provided to certain other County employees. Other officers who are currently enrolled in the "HMO" plan shall be permitted to change to the PPO plan, provided that these officers shall pay 30 percent of the difference between the HMO plan premium and the PPO premium.

Overtime on Holidays:

If an officer is working on a holiday and required to work mandatory overtime on that day, the officer shall be paid double time and one half for working the extra shift or portion thereof.

AWARD SUMMARY

Contract Duration: January 1, 2011 through December 31, 2014

Salary Increases and Increments:

2011 - Wage freeze and guide freeze

2012 - Effective January 1, 2012 all employees at top pay shall receive a 2.5% salary increase. All employees eligible for step guide increases shall move one step on the guide on their anniversary in 2012.

2013 - Effective January 1, 2013 all employees at top pay shall receive a 1.632% salary increase. All employees eligible for step guide increases shall move one step on the guide on their anniversary in 2013.

2014 - Effective January 1, 2014 the salary guide is revised as follows:

2011 - 2014 SALARY GUIDE

Old Step	New Step	2010 Salary Guide	01/01/11 Salary Guide	01/01/12 Salary Guide	01/01/13 Salary Guide	01/01/14 Salary Guide	Increment
Entry	Entry	\$44,162	\$44,162	\$44,162	\$44,162	\$44,162	\$1,813
1	1	45,975	45,975	45,975	45,975	45,975	3,276
2	2	49,251	49,251	49,251	49,251	49,251	3,627
3	3	52,878	52,878	52,878	52,878	52,878	3,626
4	4	56,504	56,504	56,504	56,504	56,504	3,640
	5					60,144	3,640
5	6	60,500	60,500	60,500	60,500	63,784	3,640
6	7	65,733	65,733	65,733	65,733	67,424	3,640
	8					71,064	3,640
7	9	72,273	72,273	72,273	72,273	74,704	3,640
	10					78,344	3,640
8	11	78,824	78,824	78,824	78,824	81,984	3,640
	12					85,624	3,679
9	13	85,726	85,726	87,869	89,303	89,303	

Effective January 1, 2014, employees will move horizontally across the guide from their current step to their new step and their salaries shall be adjusted, as required, to the amount in the column headed "1/1/14". For example, employees currently on step 6 of the old salary guide (\$65,733) will move to the new step 7 on the salary guide (\$67,424). Employees in old steps "entry step" through "step 4", as well as employees on old step 9, will not receive an adjustment.

Employees shall not receive regular increment payments or across-the-board increases in 2014.

Future Increments:

Add the following language to the Salary Article:

The salary schedule shall, unless agreed to otherwise, remain without change upon the expiration of this agreement. However, salary step movement shall not occur beyond the contract expiration date in the absence of a new collective negotiations agreement.

Health Benefit Changes:

Discontinue the Wrap-Around plan effective July 1, 2012. Employees currently in this plan will be permitted to enroll in either the PPO plan or the HMO plan.

Offer PPO plan to all unit employees.

Effective July 1, 2014, employees who wish to enroll in the Medallion Plan will contribute 1.5% of salary plus 30% of the difference between the Medallion plan premium and the PPO plan premium, OR the Chapter 78 contribution, whichever is higher.

All employees will contribute to the cost of health care premiums pursuant to Chapter 78.

Prescription Copayments:

Applicable to all active employees and employees who retire after the date the Award is issued:

- Generic \$1.00
- Brand Name \$20.00
- Non Preferred \$35.00

Retirement Health Care for Future Employees:

Employees hired after the date the Award is issued, who retire and meet the criteria for County-paid health insurance, will receive a plan for the employee only. Employees hired after the date the Award is issued and meet the requirements for County-paid health insurance will have the option to add their eligible dependents to the plan at the expense of the retiree.

Stipulations:

All previously agreed upon changes to the contract shall be incorporated in the new agreement.

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

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

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

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

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

298, 299 (App. Div. 2002), aff'd o.b. 177 N.J. 560 (2003), citing Cherry Hill Tp., P.E.R.C. No. 97-119, 23 NJPER 287 (¶28131 1997).

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. Within the parameters of our review standard, we will defer to the arbitrator's judgment, discretion and labor relations expertise. City of Newark, P.E.R.C. No. 99-97, 26 NJPER 242

(¶30103 1999). Because the Legislature entrusted arbitrators with weighing the evidence, we will not disturb an arbitrator's exercise of discretion unless an appellant demonstrates that the arbitrator did not adhere to these standards. Teaneck, 353 N.J. Super. at 308-309; Cherry Hill. Arriving at an economic award is

not a precise mathematical process. Given that the statute sets forth general criteria rather than a formula, the treatment of the parties' proposals involves judgment and discretion and an arbitrator will rarely be able to demonstrate that an award is the only "correct" one. See Borough of Lodi, P.E.R.C. No. 99-28, 24 NJPER 466 (¶29214 1998). Some of the evidence may be conflicting and an arbitrator's award is not necessarily flawed because some pieces of evidence, standing alone, might point to a different result. Lodi. Therefore, within the parameters of our review

standard, we will defer to the arbitrator's judgment, discretion and labor relations expertise. City of Newark, P.E.R.C. No. 99-97, 26 NJPER 242 (¶30103 1999). However, an arbitrator must provide a reasoned explanation for an award and state what statutory factors he or she considered most important, explain why they were given significant weight, and explain how other evidence or factors were weighed and considered in arriving at the final award. N.J.S.A. 34:13A-16g; N.J.A.C. 19:16-5.9; Lodi.

The County's objection in its first point is that the scope of the remand hearing should have been limited to the only issue that was appealed, the 2011 step increments issued by the previous arbitrator. The Appellate Division stated in its opinion, "We therefore remand to develop the record regarding the arbitrator's analysis of the factors established in N.J.S.A. 34:13A-16g consistent with this opinion. We leave this task to the discretion of PERC. We do not retain jurisdiction." County of Morris, Morris County Sheriff's Office and PBA Local 298, supra. We determined that the arbitrator could not solely consider the 2011 step increments without looking at the entire award as a change to the step increments would have an impact on the rest of the award that was appealed. As a result, we instructed the arbitrator that "all aspects of the interest arbitration statute apply in this case." See Bogota Bor. P.E.R.C. No. 99-20, 24 NJPER 453 (¶29210 1998) ("[E]vidence could not be considered in a

vacuum: in formulating a new award, the arbitrator would have to evaluate it together with the evidence on the other statutory criteria.”; Allendale Bor. P.E.R.C. No. 98-123, 24 NJPER 216 (¶29103 1998) (“An arbitrator must assess the evidence on individual statutory factors and then weigh and balance the relevant, sometimes competing, factors.”). Thus, we find that the arbitrator was correct in considering the entire award and all aspects of the interest arbitration statute when formulating her award.

The County’s next argument is that the arbitrator acted contrary to law by awarding a four-year CNA that ended on December 31, 2014 and, as a result, was not subject to the 2% cap per year on average imposed by P.L. 2010, c. 105, codified in relevant part as N.J.S.A. 34:13A-16.7(b):

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

included in the prior collective negotiations agreement.

The effective date of the statute is codified in N.J.S.A.

34:13A-16.9:

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

As set forth above, the CNA awarded by the arbitrator was for a four-year period from January 1, 2011 to December 31, 2014. Since the original CNA expired on December 31, 2010, the CNA awarded by the arbitrator was not subject to the 2% cap as set forth in P.L. 2010, c. 105. If the arbitrator had awarded a CNA that ended on December 31, 2013, as requested by the County, then the subsequent CNA would have been subject to the 2% cap. The

County argues, however, that since the CNA awarded by the arbitrator ends on December 31, 2014, it effectively allows the PBA members to "escape" the 2% cap. The County further argues in its brief that this result is counter to the Legislative intent of the statute:

The clear intention in this Legislative scheme is that every public safety employee union be party to at least one contract negotiations that is subject to the mandatory "hard" 2.0% base salary cap. The obvious purpose of the scheme is to provide cost relief to local government by limiting the cost of public safety base salary increases to an aggregate total of 2.0% per year for a specified period of time. This purpose is not served if a bargaining unit is permitted to escape the 2.0% cap by virtue of a contract that commenced negotiation before the cap's effective date, but has a duration that extends well after the cap's expiration. (Emphasis in original).

We have reviewed the Statements from both the New Jersey Senate and the Assembly, dated December 9, 2010 (both are identical in relevant part) regarding the statute which states in pertinent part:

Finally, the provisions of the bill are to sunset in 39 months. All police and fire collective negotiation agreements that expire during that period are subject to the bills provisions. The provisions of the bill continue to apply in arbitration cases that began during the three year period, but where the arbitrator's award is not rendered until after the sunset date. Parties that enter into contracts that expire during the sunset

period, but otherwise meet the criteria enumerated in the bill, are not subject to the provision of the bill when negotiating future contracts.

As an administrative agency, we are empowered to enforce P.L. 2010, c. 105, "[I]nterpretations of the statute and cognate enactments by agencies empowered to enforce them are given substantial deference in the context of statutory interpretation. Matturri v. Bd. of Trs., Judicial Ret. Sys., 173 N.J. 368, 381, 802 A.2d 496 (2002) (citing R & R Mktg., LLC v. Brown-Forman Corp., 158 N.J. 170, 175, 729 A.2d 1 (1999))." TAC Associates v. New Jersey Dept. of Environmental Protection, 202 N.J. 533, 541 (2010).

We find nothing in the plain meaning of the statute, or the Legislature's statements, that indicates that the arbitrator's award was contrary to law since the CNA "escaped" the 2% cap. It should be noted that the Legislature may elect to extend the 2% cap, and if so, the subsequent CNA between the parties will be subject to the 2% cap. Additionally, with respect to the length of the awarded CNA, the arbitrator took into account that seven of the nine completed law enforcement officer CNAs with the County all expired on December 31, 2014. The arbitrator stated:

Noteworthy is the fact that all of these contracts but two (Park Police and Park Superiors) extend through the end of 2014. It is in the public interest for parties to have

contracts expiring contemporaneously so that many bargaining units competing for scarce dollars are doing so during the same round of negotiations. This is particularly true here, where both of the sheriff's officers bargaining units and the corrections superiors unit, extend through 2014. Therefore, I intend to extend the awarded contract for the corrections officers through 2014 as well.

We find that, under the facts of the instant matter, it was appropriate for the arbitrator to award a four year contract.^{5/}

The third and final objection point from the County is that the arbitrator erred in four critical findings in her award. As set forth above, the County asserts that the arbitrator erred when she "Failed to Attain her Stated Goal of Following the Pattern Set by the Sheriffs Officers, Sheriff's Superiors, and Correction Superiors Contract By Misstating the Increases Under Those Contracts." The County primarily relies on the testimony of its Manager of Labor Relations, who testified at the arbitration hearing, for its argument. We find that the arbitrator's award with respect to this issue is supported by substantial credible evidence in the record. The arbitrator stated, "Since there is no broad universal pattern of settlement increases among the other law enforcement County groups, I intend to give the greatest weight to the settlements achieved by the Corrections SOA and the

^{5/} It is not clear from the record why the County proposed a two year CNA, as set forth above, from January 1, 2012 to December 31, 2013, leaving out the 2011 calendar year.

two sheriff's officers groups." Specifically, the arbitrator did not state that she would mirror the other CNAs. With respect to the County's Manager of Labor Relations, the arbitrator credited specific provisions in the sheriff's officers' CNA over her testimony:

Notwithstanding [the Manager of Labor Relations'] testimony that the third settlement pattern of 2.16% was inclusive of increment payments, the sheriff's officers' contract contradicts this assertion. Increment payments for that group ranged from \$1,813 to \$6,902, which equates to 4.1% to 8.7%. Therefore, it would not be possible to pay employees step movement and also provide for a 2.5% increase to the top step and still be within a cap of 2.16%. I credit the specific provisions in the contract over [the Manager of Labor Relations'] testimony.

The County attributes this discrepancy to a different method of calculating step increases. The County has not provided specific calculations establishing a mistake or pointed to evidence in the record for the Commission to observe an error. Broad assertions of calculation errors, without mathematical explanation or specific evidentiary support, are not persuasive.

Second, under this point, the County argues that the arbitrator erred by "[N]ot accounting for the surrendering of retiree coverage for new hires." However, as set forth above, and

as argued by the PBA, the arbitrator awarded the County's exact proposal concerning retiree health benefits for future employees.^{6/}

Third, under this point, the County argues that the arbitrator "[P]laced excessive weight on comparison to local Morris County Police Departments, and insufficient weight on comparisons to other correctional departments." The County essentially argues that corrections officers and police officers perform "vastly different functions." However, comparison with the conditions of employment of other public employees is one of

^{6/} The arbitrator stated the following with respect to this issue in her award:

"I note that each contract the County has negotiated with its bargaining unit since 2011 has included at least this provision [the elimination of retirement health care benefits for dependents of employees hired after the date of the award] and some have also included the elimination of retiree health benefits for future hires entirely. In the absence of compelling reasons to abandon the established Employer-wide pattern, the pattern must be followed. Applying the statutory criteria of the interest of the public and relying on the pattern of settlement, I award this proposal [the County's proposal]."

the factors that an interest arbitrator is required to consider.^{7/}

The arbitrator also noted in her award that:

The County acknowledged that there are a disproportionate number of officers who resign within their first two years of service, (4 of 5 in 2010 and 2011, 6 of 9 in 2012, and 4 of 9 in 2013). The assertion that the resigning employees resigned to receive higher pay or step increments in other departments is therefore nothing more than unsupported speculation. However, the County asserts that one might infer that the recruits were more interested in becoming police officers, and accepted corrections work merely until police positions became available. Significantly, there is no sign of excessive resignations among more senior employees.

7/ N.J.S.A. 34:13A-16g provides the following with respect to comparisons with other private and public employment:

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

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

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

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

Under the facts of this case, we find that the arbitrator properly considered the comparison to local Morris County police departments under N.J.S.A. 34:13A-16g(b).

Finally, the County argues that the arbitrator failed to consider, under the financial impact criterion,^{8/} the cost to the County of employees who received 2011 step increments, who have since left the employ of the County, under the previous award "that the County will be unable to recoup."^{9/} The PBA argues that

8/ N.J.S.A. 34:13A-16g(6) provides:

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

9/ The parties stipulated to the following in the instant arbitration proceeding regarding the 2011 step payments:
(continued...)

the County has "[T]he means to recoup compensation paid under the overturned Award" We find that the County has the ability, at a minimum, to request reimbursement from the those affected previous employees and/or to make a judicial application through the New Jersey Superior Court of necessary to receive reimbursement. As a result, this argument was not a factor that the arbitrator was required to consider.

The arbitrator complied with our directive on remand and was correct in considering the entire award and all aspects of the interest arbitration statute when formulating her award. We find that the arbitrator issued a well reasoned opinion and award that complied with the relevant statutes and is supported by substantial credible evidence in the record as a whole. Having not met our review standard, we dismiss the County's appeal and affirm the award.

9/ (...continued)

"Retroactive payments made pursuant to the [arbitrator's] award were paid on a prorated basis to employees who were promoted out of the bargaining unit between January 1, 2011 and the implementation date of [arbitrator's] award. In addition, employees who retired during this period were also given a prorated increase pursuant to the [arbitrator's] award. No retroactive payments were made to employees who resigned or were discharged from the County's employ prior to the implementation of the [arbitrator's] award."

ORDER

The interest arbitration award is affirmed.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Boudreau, Voos and Wall voted in favor of this decision. Commissioners Bonanni and Eskilson voted against this decision. Commissioner Jones was not present.

ISSUED: April 10, 2014

Trenton, New Jersey