P.E.R.C. NO. 2018-22

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF JERSEY CITY,

Petitioner,

-and- Docket No. IA-2017-012

JERSEY CITY POLICE OFFICERS
BENEVOLENT ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission affirms an interest arbitration award establishing the terms of a successor agreement between the POBA and the City. The POBA appealed the award, arguing that with respect to longevity, contract duration, compensatory time, tour exchanges, vacation deferral, and injury and sick leave, the arbitrator did not require the City to satisfy the burden necessary to justify modification of existing terms and conditions of employment and placed almost exclusive reliance on internal comparability while ignoring the other statutory factors. The Commission holds that the arbitrator's award addressed all of the N.J.S.A. 34:13A-16g factors, adequately explained the relative weight given, was based on sufficient evidence, analyzed the evidence on each relevant factor, and did not violate N.J.S.A. 2A:24-8 and -9.

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 Petitioner, Apruzzese, McDermott, Mastro & Murphy, P.C., attorneys (Arthur R. Thibault, Jr., of counsel and on the brief)

For the Respondent, Detzky, Hunter & DeFillippo, LLC, attorneys (Stephen B. Hunter, of counsel and on the brief)

DECISION

On October 25, 2017, the Jersey City Police Officers Benevolent Association (POBA) filed an appeal[1/] of an interest arbitration award involving a unit of approximately 685 police officers employed by the City of Jersey City (City). On May 18 and June 13, 2017, the parties engaged in mediation sessions with a Commission-appointed mediator but did not reach an agreement. On June 27, the City filed a petition to initiate compulsory interest arbitration. On August 3 and 7 and September 5, the

1/ The POBA's request for oral argument is denied given that the parties have fully briefed the issues raised.

parties engaged in mediation sessions with the arbitrator but again did not reach an agreement. On August 31 the parties submitted final offers to the arbitrator.

On September 6 and 11, 2017, the arbitrator held two days of hearings during which the parties presented evidence in support of their positions. The parties also submitted stipulations regarding various issues including a base salary calculation of $61,786,921. On October 4, the arbitrator issued a 144-page Decision and Award covering the period January 1, 2017 through December 31, 2020.[2/] The arbitrator issued a conventional award, as he was required to do pursuant to P.L. 2010, c. 105, after considering the parties' final offers in light of the statutory factors. See N.J.S.A. 34:13A-16.

The POBA appeals the arbitrator's award, requesting that it be vacated in its entirety and that this matter be reassigned to another arbitrator. Alternatively, the POBA requests that the award be modified to include the following:

> (1) a two-year contract as proposed by the POBA;
>
> (2) the maintenance of existing contract language regarding tour exchanges, all summer vacation deferral policies, compensatory time procedures delineated in Article 17, and the existing injury and sick leave article; and

2/ We will use "Award" when referencing specific pages.

> (3) the POBA's longevity proposals and proposed changes regarding the tour exchange policy.

Our decision focuses only on those issues raised in the POBA's appeal. We affirm the arbitrator's award as set forth below.

STANDARD OF REVIEW

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

> (1) The interests and welfare of the public . . .
>
> (2) Comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally:
>
> > (a) In private employment in general . . . .
> >
> > (b) In public employment in general . . . .
> >
> > (c) In public employment in the same or similar comparable jurisdictions . . . .
>
> (3) The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received.

> (4) Stipulations of the parties.
>
> (5) The lawful authority of the employer . . . .
>
> (6) The financial impact on the governing unit, its residents, the limitations imposed upon the local unit's property tax levy[,] and taxpayers . . . .
>
> (7) The cost of living.
>
> (8) The continuity and stability of employment . . . .
>
> (9) Statutory restrictions imposed on the employer . . . .
>
> [N.J.S.A. 34:13A-16g.]

The standard for reviewing interest arbitration awards is well-established. The Commission 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.

See Teaneck Twp. v. Teaneck FMBA, 353 N.J. Super. 289 (App. Div. 2002), aff'd o.b. 177 N.J. 560 (2003); Cherry Hill Tp., P.E.R.C. No. 97-119, 23 NJPER 287 (¶28131 1997).

Within the parameters of our review standard, the Commission will defer to the arbitrator's judgment, discretion, and labor relations expertise. See 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. See N.J.S.A. 34:13A-16g; N.J.A.C. 19:16-5.9; Lodi Bor., P.E.R.C. No. 99-28, 24 NJPER 466 (¶29214 1998).

We note that P.L. 2010, c. 105, effective January 1, 2011, amended the interest arbitration law to impose a 2% cap on annual base salary increases for arbitration awards where the preceding collective negotiations agreement (CNA) or award expired after December 31, 2010 through April 1, 2014. P.L. 2014, c. 11, effective June 24, 2014 and retroactive to April 2, 2014, amended the interest arbitration law and extended the 2% cap to December 31, 2017. See N.J.S.A. 34:13A-16.7.

GENERAL ISSUES

A. Modification of Existing Terms & Conditions

The POBA argues that the arbitrator did not require the City to satisfy the burden necessary to justify modification of existing terms and conditions of employment with respect to compensatory time, tour exchange policies, summer vacation deferral, and injury and sick leave particularly given the City's "extremely low salary proposals" and "numerous proposed compensation 'give backs.'" The POBA cites In the Matter of the

Interest Arbitration between Burlington County Dep't of Corrections and PBA Local No. 249, IA-2013-005 (November 26, 2012) in support of its position that the arbitrator conducted a perfunctory analysis of these operational issues.

The City responds that the evidence it submitted (i.e., the testimony of Public Safety Director James Shea (Director Shea) and hundreds of pages of exhibits including voluntarily negotiated agreements with the City's other public safety units) clearly met the requisite burden to modify existing terms and conditions of employment. The City argues that the POBA failed to submit sufficient evidence to warrant any deviation from the pattern of settlement. The City maintains that Burlington County Dep't of Corrections is distinguishable from the instant matter because pattern of settlement was not analyzed in that case.

We find that the POBA has failed to demonstrate that the award should be vacated or modified based upon the arbitrator's determinations regarding the sufficiency of the evidence presented by the City.[3/] The arbitrator acknowledged that "[t]he party seeking to modify an existing term and condition of employment has the burden to prove the basis for the contractual change with sufficient evidentiary support" and that "[a]

3/ A more detailed analysis regarding compensatory time, tour exchange policies, summer vacation deferral, and injury and sick leave is set forth below.

proposed issue cannot be deemed presumptively valid without being supported by credible evidence." See Award at 57; accord City of Trenton, P.E.R.C. No. 2010-73, 36 NJPER (¶50 2010). The POBA has not refuted the sum or substance of the voluminous documentary evidence submitted to the arbitrator by the City in support of its proposals. See City's Appendix Vols. II-IV; Award at 3-4, 19-22. Similarly, although the POBA argues that Director Shea's testimony was inadequate and/or inaccurate, it has not provided evidence that sufficiently contradicts testimony elicited by the City in support of its proposals. See Award at 1-144.

We find the case cited by the POBA distinguishable from the instant matter. Although Burlington County Dep't of Corrections provides one example of how an arbitrator can analyze operational issues, the arbitrator did not consider pattern of settlement in that case and the POBA has not cited any authority demonstrating that a specific methodology is dispositive. In this case, as set forth below, the arbitrator appropriately determined that internal comparability and/or pattern of settlement were relevant factors and gave them "due weight." Moreover, the Commission has held that there is "a strong governmental policy interest in ensuring appropriate discipline, supervision, and efficient operations in a public safety department." City of Trenton, P.E.R.C. No. 2010-73, 36 NJPER (¶50 2010); accord City of Clifton, P.E.R.C. No. 2002-56, 28 NJPER (¶33071 2002).

B. Internal Comparability

The POBA argues that the arbitrator placed almost exclusive reliance on internal comparability while ignoring the other statutory factors. The POBA also maintains that the arbitrator did not acknowledge that two of the other public safety units are comprised of supervisory personnel who work closely with Director Shea and have nothing in common with the POBA.

The City responds that the POBA wants to be treated differently than the other public safety units without providing any evidentiary basis to justify deviation from the pattern of settlement. The City argues that the arbitrator correctly placed considerable weight on internal comparability and pattern of settlement and that these factors implicate other statutory factors that were analyzed throughout the award. The City maintains that its final offer to the POBA included nearly identical terms and conditions of employment that were voluntarily accepted by the other public safety units.

N.J.S.A. 34:13A-16g(2)(c) "requires the arbitrator to consider evidence of settlements between the employer and other of its negotiations units, as well as evidence that those settlements constitute a pattern." Union Cty., P.E.R.C. No. 2003-33, 28 NJPER 459 (¶33169 2002) (citing N.J.A.C. 19:16-5.14(c)(5)). "[I]nterest arbitrators have traditionally recognized that deviation from a settlement pattern can affect

the continuity and stability of employment by discouraging future settlements and undermining employee morale in other units." Id.

The Commission has held that "[m]aintaining an established pattern of settlement promotes harmonious labor relations, provides uniformity of benefits, maintains high morale, and fosters consistency in negotiations." Somerset Cty. Sheriff's Office and Somerset Cty. Sheriff FOP, Lodge No. 39, P.E.R.C. No. 2007-33, 32 NJPER 372 (¶156 2006), aff'd, 34 NJPER 21 (¶8 App. Div. 2008); see also, Essex Cty. and Essex Cty. Sheriff and Essex Cty. Sheriff Officer's PBA Local 183, P.E.R.C. No. 2005-52, 31 NJPER 86 (¶41 2005), req. for stay den. P.E.R.C. No. 2005-56, 31 NJPER 103 (¶45 2005). "Pattern is an important labor relations concept that is relied on by both labor and management" (Madison Bor., P.E.R.C. No. 2013-5, 39 NJPER 93 (¶33 2012)) and "[i]nterest arbitrators have traditionally found that internal settlements involving other uniformed employees are of special significance" (Somerset Cty. Sheriff's Office; accord Ocean Cty. Prosecutor, P.E.R.C. No. 2012-59, 38 NJPER 363 (¶124 2012)).

Given these legal precepts, we find that the POBA has failed to demonstrate that the award should be vacated or modified based upon the arbitrator's reliance on internal comparability and/or pattern of settlement. The arbitrator referenced all of the statutory factors, considered the weight to be given to internal comparability and/or pattern of settlement, and evaluated the

merits of the evidence implicating this factor. See Award at 55-62. He noted that his "review . . . must be based on the evidence presented as well as an application of standards that have been established in interest arbitration." Id. at 57.

Further, it is undisputed that the arbitrator:

> -provided a detailed assessment of the parties' positions regarding internal comparability and/or pattern of settlement related to the City's three other public safety units in accordance with N.J.S.A. 34:13A-16g(2)(c) and N.J.A.C. 19:16-5.14 (see Award at 30-53; City's Appendix Vols. III-IV at Ra517-545, 713-719);
>
> -referenced and incorporated the parties' stipulations into his award in accordance with N.J.S.A. 34:13A-16g(4) (see Award at 3-4, 15-18);
>
> -noted that "while the lawful authority of the employer and the statutory restrictions on the employer" under N.J.S.A. 34:13A-16g(5) and (9) "are relevant criteria," they did not need to "undergo more extensive analysis" given that "[t]he costs of the parties' proposals can be accommodated within the spending and tax levy . . . and neither party contends otherwise" (see Award at 22, 54-55); and
>
> -noted that despite "stressing the need for fiscal prudence," the City was not relying on N.J.S.A. 34:13A-16g(6) to advance an argument regarding the award's potential adverse financial impact (see Award at 55).

Contrary to the POBA's assertion, the arbitrator assessed the overall compensation presently received by unit members in accordance with N.J.S.A. 34:13A-16g(3) given that he considered the parties' proposals in conjunction with their expired CNA.

See Award at 1-144; City's Appendix Vol. III at Ra435-508. More specifically, the arbitrator considered the issues raised by the parties including unit members' salaries (id. at 76-86), retirement benefits (id. at 86-89, 129-131), longevity benefits (see Award at 95-100), injury and sick leave (id. at 72-76), compensatory time (id. at 100-111), vacations (id. at 111-123), exchange of days off (id. at 123-127), health insurance (id. at 67-71, 131-132), overtime (id. at 132-135), and tuition reimbursement (id. at 135-137).

Also contrary to the POBA's assertion, the arbitrator accurately specified that "[i]nternal patterns of settlement have been found to implicate [N.J.S.A. 34:13A-16g(2)(c)] as well as N.J.S.A. 34:13A-16g(8) and N.J.S.A. 34:13A-16g(1)." See Award at 58-59. The Commission has held that "a settlement pattern is encompassed in N.J.S.A. 34:13A-16g(8) . . . as a factor bearing on the continuity and stability of employment and as one of the items traditionally considered in determining wages." Union Cty., P.E.R.C. No. 2003-33, 28 NJPER 459 (¶33169 2002). The Commission has also held that the interests and welfare of the public (N.J.S.A. 34:13A-16g(1)) is "a statutory factor that implicates virtually all of the factors". International Ass'n of Firefighters Local 198, P.E.R.C. No. 2016-1, 42 NJPER 89 (¶24 2015). Accordingly, in addition to the subsection 16g factors noted above, the arbitrator's analysis of internal comparability

and/or pattern of settlement implicitly includes consideration of N.J.S.A. 34:13A-16g(1) and (8).

Finally, the POBA's assertions regarding the composition of the City's other public safety units and the nature of their relationship with Director Shea are inconsistent with the record. In its post-hearing brief to the arbitrator, the POBA raised its concern that "two of the three other Police/Firefighter Negotiations Units are units of supervisory personnel . . . who are often very closely aligned to the negotiations positions of City negotiators." See POBA's Appendix, Interest Arbitration Br. at 67, n.1. The arbitrator acknowledged receiving testimony from "Director of Public Safety James Shea" (see Award at 4) as well as the fact that the Jersey City Police Superior Officers Association (PSOA) is comprised of "approximately 200 superior officers" (see Award at 19). Moreover, the POBA's claim that it "has nothing in common" with the City's other public safety units is undermined by the fact that it sought an award based upon pattern of settlement with respect to retiree health benefits (see POBA's Appendix, Interest Arbitration Br. at 105-106, 113-114), work schedule (see POBA's Appendix, Interest Arbitration Br. at 109-112), and survivor benefits (see Award at 67-71).

ECONOMIC ISSUES

A. Longevity (Article 33)

The arbitrator only awarded the following aspects of the City's proposal regarding longevity:

> For officers
> (a) hired on or after January 1, 2017; and
> (b) those current officers not yet eligible for longevity, longevity will be paid as part of base pay in accordance with the following schedule:
>
> | | |
> |---|---|
> | First day of 10th year | $1,000.00 |
> | First day of 15th year | $2,000.00 |
> | First day of 20th year | $3,000.00 |
> | First day of 25th year | $4,000.00 |
>
> Add to paragraph B as follows: "Effective for persons hired as police officers on or after January 1, 2017, for the purpose of determining eligibility, longevity is defined as the number of years of actual work performed for the City of Jersey City as a police officer and is not dependent upon seniority date."

The POBA argues that the City did not present any evidence that would justify denying "Tier 2" longevity benefits to police officers who have been employed since 2012 and that the arbitrator "mistakenly included [this] expansive language." The POBA claims that the language at issue is inconsistent with the position that the City took when negotiating longevity benefits with the other public safety units. The POBA also argues that among the ten police departments listed in the City's exhibits, only four departments have three tiers of longevity benefits; and only three departments "provide lesser longevity benefits to

their new hires" than the City proposed for its new hires. If the Commission determines that a third tier of longevity benefits should be awarded, the POBA asserts that it should be effective as of January 1, 2018 in order to avoid reducing existing economic benefits for currently employed police officers.

The City responds that its final offer regarding longevity benefits was "fully consistent" with the longevity benefits voluntarily agreed to by the three other public safety units. The City maintains that the POBA offered insufficient evidence to justify deviation from the pattern of settlement.

We find that the POBA has failed to demonstrate that the award should be vacated or modified with respect to longevity benefits. The arbitrator considered the City's proposals, which included the language ultimately adopted by the arbitrator, and the parties' legal arguments. See Award at 9-10, 95-99. He also considered the testimony elicited by the parties, including POBA witnesses who testified that "as many as 75 [o]fficers . . . have been hired by the City during 2017." Id. at 98. The arbitrator also considered the documents submitted by the parties, including the voluntarily negotiated agreements between the City and its three other public safety units as well as longevity scales in other Hudson County municipalities. Id. at 33-34, 97-99; City's Appendix Vol. III at Ra509-545. The arbitrator analyzed the evidence with respect to the relevant 16g factors. Id. at 99-100.

The arbitrator determined that there was no basis "to convert longevity payments from percentages to dollars and to freeze longevity at the 2017 rates effective January 1, 2018" and denied these aspects of the City's proposals. See Award at 99-100. However, regarding other aspects of the City's proposals, he determined that the City had shown "a pattern of settlement among its public safety units . . . and insufficient evidence to warrant a deviation." Id.; City's Appendix Vol. III at Ra521-522, Ra528-529, Ra537-538. Specifically, the arbitrator found that "[a] common longevity payment that extends throughout public safety is in the public interest and supported by the statutory criteria as it concerns internal comparability" and that "the other units accepted . . . January 1, 2017 as the effective date and applied this date to employees similarly situated to the POBA."[4/] Id. The arbitrator also found that the POBA had not shown that there should be "a different relationship in either eligibility for, or the level of longevity payments, based upon length of service in Jersey City" between the POBA and the other public safety units. Id. Similarly, he found that the POBA's request to establish "a different date for eligibility for the third tier of longevity would alter the pattern and create [a]

4/ In fact, although immaterial to the award, all of the public safety units agreed to modify longevity benefits on or after the effective date of their respective successor agreements (i.e., January 1, 2016 for IAFF Local 1066, and January 1, 2017 for PSOA and IAFF Local 1064).

different level of benefits for the POBA . . . without convincing rationale to support more favorable treatment." Id.

We agree with the arbitrator's analysis. The POBA has not refuted the evidence submitted in support of the City's longevity proposals, nor has it demonstrated that there was a mistake in the language awarded or any divergence from the pattern of settlement among the City's other public safety units. Moreover, although evidence was presented regarding external comparability, the arbitrator appropriately found that internal comparability was more relevant and afforded it "due weight." Accordingly, and for the reasons set forth above regarding modification of existing terms and conditions, internal comparability and/or pattern of settlement, we affirm the arbitrator's award.

NON-ECONOMIC ISSUES

A. Contract Duration (Article 43)

The arbitrator awarded a four-year contract effective from January 2, 2017 through December 31, 2020 that is consistent with the City's proposal. The arbitrator did not award additional language proposed by the City that would freeze salary step movement in the event that a new agreement has not been negotiated prior to contract expiration.

The POBA argues that the award was not supported by substantial credible evidence and failed to give "due weight" to all of the statutory factors. The POBA maintains that a four-

year contract will have a detrimental impact on "younger" police officers and asserts that "the 'sunsetting' of the 2% cap [on December 31, 2017]" would provide a more attractive negotiating environment. The POBA cites In the Matter of the Interest Arbitration between County of Hudson and Hudson County Sheriff's Officers PBA Local 334, IA-2014-004 (December 30, 2013) in support of its position that all of the statutory factors – including possible changes to the 2% cap – should have been analyzed and considered.

The City responds that the POBA presented speculation and assumptions to support its two-year contract proposal and failed to justify a departure from the pattern of settlement. The City maintains that the arbitrator considered all of the statutory factors and appropriately gave "significant weight" to the fact that all of the City's other public safety units agreed to contracts that expire on December 31, 2020. The City asserts that despite claiming that the POBA has "nothing in common" with the City's other public safety units, the POBA relied upon pattern of settlement in support of other proposals.

We find that the POBA has failed to demonstrate that the award should be vacated or modified with respect to contract duration. The arbitrator considered the parties' proposals and legal arguments and analyzed the evidence with respect to the relevant 16g factors. See Award at 4, 9, 62-67.

The arbitrator determined that the City had established a pattern of settlement on the issue of contract duration based upon the voluntarily negotiated agreements between the City and its three other public safety units that contained a common expiration date of December 31, 2020. See Award at 64-67; City's Appendix Vols. III-IV at Ra523, 530-531, 713, 719. He found the POBA's speculation regarding expiration of the 2% cap to be insufficient evidence to justify deviation from the pattern, particularly given that "all four public safety unions . . . had [a] full opportunity to engage in negotiations under the existing law and reach agreements that extend over a common time period." Id. at 66.

The arbitrator also determined that the instant parties had "attempted to negotiate a four year contract with a common expiration date," that a common expiration date "would allow all bargaining units to negotiate successor agreements based upon the existing budgetary, financial, economic and legal framework that will exist at that time," and that "[l]abor relations stability would not be furthered by fragmenting expiration dates . . . ." See Award at 65; City's Appendix Vol. IV at Ra735-752. He found "[t]he fact that settlements were reached on more favorable salary terms for the other three pubic safety units [was] not persuasive evidence to award a two year contract given the fact . . . that more favorable salary terms were available here if a

voluntary settlement had been [reached]." Id. at 66; City's Appendix Vol. IV at Ra735-752; see also, Award at 32-33, 76-86.

We find the case cited by the POBA distinguishable from the instant matter. In County of Hudson, the arbitrator found that voluntary settlements with three of eight police units was "not necessarily a pattern that [she was] compelled to follow" and that it "would be unfair . . . to saddle [unit members]" with the limitations of the 2% cap "for a long period" given that it was set to expire in April 2014. In this case, given that all three of the City's other public safety units voluntarily agreed to a common expiration date of December 31, 2020 despite the fact that the 2% cap will expire on December 31, 2017 absent legislative action, we find that the arbitrator appropriately determined that internal comparability and/or pattern of settlement were relevant factors and gave them "due weight."

B. Compensatory Time (Article 17)

The arbitrator modified the City's proposals regarding compensatory time and awarded the following:

> No compensatory time off shall be granted during emergencies. Officers assigned to the patrol division shall be granted time off, whether through the use of compensatory days, sick leave, or vacation days, until the district in which the officer works reaches minimum manning, regardless of whether a substitute officer is available and willing to work overtime to cover the shift. Once a district reaches the minimum of patrol officers on the road, two additional officers only shall be granted time off through the

> use of compensatory days, sick leave or vacation days so long as the City can fill these two positions through overtime. Thereafter, after these two positions are filled, the City shall have no obligation to grant additional time off, but may do so in its sole discretion.
>
> The City shall have the right to record compensatory time electronically as the official means of maintaining compensatory time information. The City may continue the use and availability of the manual entry book.

The POBA argues that the City failed to provide sufficient evidence to demonstrate that it had issues maintaining staffing levels above minimum manning other than Director Shea's claim that the existing compensatory time policy "hindered" his ability to protect residents. The POBA maintains that existing policy includes restrictions on the use of compensatory time and has "always successfully balanced the interests between the City and the POBA." The POBA asserts that the award would result in a 40% reduction in the number of compensatory time requests granted by the City and is "patently illegal" because it means that sick leave requests would have to be denied once manning levels reached a certain level.

The City responds that it submitted sufficient evidence to justify the award including voluntarily negotiated agreements with other public safety units that demonstrated a pattern of "restrictions on the use of compensatory time," crime rate statistics, overtime costs incurred, and Director Shea's

testimony. The City argues that the only evidence submitted by the POBA was testimony that unit members "enjoyed the peace of mind knowing they could use a compensatory day without any restriction" without any demonstration that other public safety units have "the unrestricted right to take scheduled days off below minimum manpower." The City asserts that the award does not reduce any benefit; it simply ensures more than "minimum coverage" by establishing a reasonable limitation on the use of compensatory time while allowing the City discretion to grant additional requests.

We find that the POBA has failed to demonstrate that the award should be vacated or modified with respect to compensatory time. The arbitrator considered the City's proposals and the parties' legal arguments. See Award at 10, 100-107. He considered POBA President Carmen Disbrow's (POBA President) testimony that unit members enjoy the peace of mind of knowing they are guaranteed a day off whenever they need it. He also considered Director Shea's testimony that "the current ability of an officer to take time off has made it difficult to maintain staffing levels at or above minimum manning levels"; "examples and situations when the number of officers . . . deployed were not sufficient to provide the protections that the [D]epartment felt were necessary to react to those situations"; explanation that "each district normally schedules double the number of

officers above the minimum manning level but . . . is often faced with having to replace officers on overtime when the taking of time off causes staffing to fall below minimum staffing levels."[5/] Id. at 102-109. The arbitrator also considered the documents submitted by the parties, including the voluntarily negotiated agreements between the City and its three other public safety units as well as crime rate statistics and overtime costs incurred. Id. at 19-22, 102-111; City's Appendix Vols. III-IV at Ra367, 521, 528, 537, 572-598, 600-605, 716-717.

The arbitrator found that "[t]he interests and welfare of the public require the City be able to provide sufficient qualified plice officers on the ground to prevent crime, to apprehend those who violate the law and to adequately protect the public and the on-duty police officers who perform law enforcement duties." See Award at 107. He also found that "any award on this issue . . . [required] a balancing in the department's need to properly staff its patrol shifts with an officer's right to use contractual compensatory days, sick leave

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5/ The City also maintains that Director Shea explained "the difficulty in predicting spikes in crime"; the current compensatory time policy "which requires the City to grant patrol officers time off regardless of minimum levels so long as there is an officer available and willing to work overtime"; and his opinion "that the City should be permitted to decide to generate overtime for proactive policing above minimum manning levels . . . [rather than] be handcuffed to spend overtime dollars just to provide minimum police coverage, which is not safe for the officers working or the public." See City's Br. at 48.

or vacation days." Ibid. The arbitrator also found that "no other City bargaining units have an unrestricted right to time off when staffing levels are below minimum manning" and that "the two other firefighter units have agreed upon certain staffing restrictions in their voluntary agreements." Id. at 110-111.

While acknowledging the parties' respective positions, including the POBA's contention that "existing language provides sufficient protections to the department to insure that there are sufficient staffing levels," the arbitrator determined that "it is in the interests and welfare of the public to award a modification to Article 17 that, to the extent possible, provides police officers time off, that gives the City the ability to spend overtime money to fill overtime slots[,] and that conditions the City's obligation to grant all requests for time off on a clear standard of staffing that is understandable and known to all parties." See Award at 108-110. He determined that modifying Article 17 by "requir[ing] [the City] to grant two (2) additional officers with time off per district through the use of compensatory days, sick leave or vacation days so long as the City can fill these positions through overtime after it reaches the minimum number of patrol officers on the road" was a reasonable limitation. Id. at 110. The arbitrator also included a provision specifying that the City retained managerial

discretion to "grant more officers with additional time off . . . after these two positions are filled." Ibid.

We find that the arbitrator's analysis was based on substantial evidence and complies with N.J.S.A. 34:13A-16g. The POBA has not refuted the evidence submitted to the arbitrator in support of the City's proposal, nor has it demonstrated that the award is illegal[6/] or that there was any divergence from the pattern of settlement among the City's other public safety units. The arbitrator's award ensures efficient operations and affords "due weight" to the appropriate 16g factors including the financial impact on the City and its residents, the interests and welfare of the public, and internal comparability and/or pattern of settlement. Accordingly, and for the reasons set forth above regarding modification of existing terms and conditions and internal comparability and/or pattern of settlement, we affirm the arbitrator's award.

6/ The Commission has held that a public employer has managerial prerogative to determine minimum staffing for each shift, that scheduling leave is mandatorily negotiable so long as an agreed-upon system does not prevent an employer from fulfilling its staffing requirements, that the need to pay overtime to an employee so another employee may use earned compensatory time is not "unduly disruptive" as that term is used in the Fair Labor Standards Act and related regulations, and that a public employer has a reserved right to deny leave if granting a request would prevent it from deploying minimum manpower for a shift. See Howell Tp., P.E.R.C. No. 2017-31, 43 NJPER 229 (¶70 2016).

C. Exchange of Days Off (Article 15)

The arbitrator denied the City's proposal to eliminate tour exchanges.[7/] He also denied the POBA's "proposed guidelines seeking to retain [tour exchanges] in [their] present form" because they "contain[] no limitations on . . . use" and do not resolve "issues raised at hearing over whether an officer could refuse to work makeup for [an] exchange day owed." See Award at 127. The arbitrator awarded a new provision stating, "[A]n officer shall be allowed one tour exchange day each month on a noncumulative basis commencing January 1, 2018, unless the Director of Public Safety or his designee agrees in his/her sole discretion to grant additional days . . . ." Ibid.

The POBA argues that the arbitrator incorrectly stated that "there is no limitation" on tour exchanges, ignoring the fact that a comprehensive policy has been in effect for decades and includes a "significant restriction" limiting the use of this benefit to "no more than one tour exchange per week." The POBA maintains that the award is not a "balanced resolution" of this issue and that the arbitrator ignored POBA proposals regarding additional significant restrictions. The POBA also asserts that

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7/ Unlike a tour swap where one unit member swaps his/her tour with another member, a tour exchange is where a unit member chooses not to work on a day that he/she is scheduled without having to find a replacement and must either repay the City or work a different tour at the City's convenience. See Award at 125.

the City failed to provide sufficient evidence demonstrating that the existing tour exchange policy created an "administrative nightmare" as Director Shea alluded to in his testimony.

The City responds that there is no evidence in the record indicating a "once per week limitation" on tour exchanges. The City argues that the voluntarily negotiated agreements with other public safety units demonstrate a pattern of "restricting . . . unit members' use of time off" and that the POBA failed to submit any evidence that would warrant a deviation from the pattern of settlement. The City maintains that Director Shea's testimony supports its proposal.

We find that the POBA has failed to demonstrate that the award should be vacated or modified with respect to tour exchanges. The arbitrator considered the parties' proposals and legal arguments. See Award at 8, 13, 123-126. He also considered the testimony elicited by the parties, including "POBA testimony acknowledging that [the POBA] is unaware of any other police unit that has the ability to swap tours with oneself" as well as Director Shea's testimony that "the Department's staffing levels are thrown off" by tour exchanges because "there is no replacement for the officer who has decided not to work his scheduled shift"; that eliminating tour exchanges will help avoid an administrative nightmare affecting staffing levels and the impact of allowing unlimited choice of days off; and that the

current tour exchange policy does not require unit members to use a paid day off or compensatory time. Id. at 125-126. The arbitrator also considered the documents submitted by the parties, including the parties' expired agreement and the voluntarily negotiated agreements between the City and its three other public safety units. Ibd. at 125-127; City's Appendix Vols. III-IV at Ra435-507, 517-545, 713-719.

The arbitrator found that "the right to a tour exchange has existed for many years" and that it "is a benefit of significance" which allows "[a]n officer who wishes not to work a scheduled tour . . . [to] simply choose not to work as long as . . . the officer repays the City by working another tour at another time." See Award at 127. He also found that unit members were not required to "find a replacement . . . [or to] take a vacation day [or use] any other contractual paid day of leave." Ibid.

The arbitrator determined that under the current policy – which sets no limitation on the use of tour exchanges – there is "the potential for the City not having the ability to properly staff the department because no replacement is required as a condition for an officer choosing not to work his/her regularly scheduled tour." See Award at 127. He determined that establishing "a reasonable limitation on [the] use" of tour exchanges was more appropriate than eliminating the benefit as

proposed by the City or adopting the guidelines proposed by the POBA. Ibid. The arbitrator's award continues the tour exchange benefit but establishes a limitation of "one tour exchange day each month on a noncumulative basis commencing January 1, 2018" while allowing for managerial discretion "to grant additional days beyond the limitation." Ibid.

We find that the arbitrator's analysis was based on substantial evidence and complies with N.J.S.A. 34:13A-16g. The POBA has not refuted the evidence submitted to the arbitrator in support of the City's proposal, nor has it submitted sufficient evidence to demonstrate that there was any pre-existing limitation on the use of tour exchanges or that there was any divergence from the pattern of settlement among the City's other public safety units. The arbitrator's award is intended to ensure efficient operations and affords "due weight" to the appropriate 16g factors including the financial impact on the City and its residents, the interests and welfare of the public, and internal comparability and/or pattern of settlement. Accordingly, and for the reasons set forth above regarding modification of existing terms and conditions and internal comparability and/or pattern of settlement, we affirm the arbitrator's award.

D. Vacations (Article 11)

The arbitrator denied the City's proposal to immediately eliminate unit members' ability to convert summer vacation weeks into additional compensatory days. He also denied the POBA's proposal to reduce the number of vacation allowance tiers from three to two given that it "would result in an officer receiving 26 more vacation days after 25 years . . . [and] result[] in an opportunity for a cash out of the days" in violation of N.J.S.A. 34:13A-16.7(b). See Award at 121. The arbitrator awarded "a phase out of an officer's ability to receive additional compensatory days after the conversion of summer vacation weeks . . . [that] allow[s] an officer to receive no more than additional two compensatory days in 2018, no more than one additional compensatory day in 2019[,] and no additional compensatory days in 2020." See Award at 122-123. The arbitrator also awarded the following additional language:

> Employees who take qualifying FMLA/NJFLA leave will be required to use available vacation time concurrent with FMLA/NJFLA leave.
>
> The City shall have the right to record vacation time electronically as the official means of maintaining vacation information. The City may continue the use and availability of the manual entry book.

The POBA argues that other than the "staffing nightmare" that Director Shea alluded to in his testimony, the City failed to provide sufficient evidence demonstrating that receipt of

compensatory days in exchange for the deferral of a week of summer vacation created any operational deficiency.

The City responds that every other public safety unit agreed to eliminate the grant of compensatory days "solely because an officer elects to utilize summer vacation during a different time of year" and the POBA failed to submit any evidence that would warrant a deviation from the pattern of settlement. The City argues that the existing policy creates liability costs in two ways: (1) unit members can bank compensatory days at one rate of pay and cash them out later at a higher rate of pay; (2) if unit members utilize compensatory days that result in a shift dropping below minimum manning, overtime costs are incurred.

We find that the POBA has failed to demonstrate that the award should be vacated or modified with respect to the phase out of granting compensatory days for summer vacation deferral. The arbitrator considered the parties' proposals and legal arguments. See Award at 8, 12, 111-120. He also considered the testimony elicited by the parties, including the POBA President's testimony that the parties have led successful efforts to limit the amount of vacation time taken during the summer season "by providing . . . incentives" and that compensatory days "accrue[]" if they are not used as well as Director Shea's testimony that granting an additional compensatory day for summer vacation deferral creates "staffing issues." Id. at 117-120. The arbitrator also

considered the documents submitted by the parties, including the voluntarily negotiated agreements between the City and its three other public safety units. See Award at 40-42, 121-123; City's Appendix Vols. III-IV at Ra517-545, 713-719.

The arbitrator determined that the City had "established a basis to modify the existing contractual scheme but not to the extent that it seeks." See Award at 122. He found that "all three of the other public safety units . . . have voluntarily agreed to some modifications in the method of deferring and converting summer vacation days and the benefit of adding compensatory days by doing so." Id. at 122-123; City's Appendix Vols. III-IV at Ra519, 525, 532-533, 714; see also, Award at 40-42. The arbitrator's award preserves "the options . . . for officers to exchange or defer summer season vacation weeks to single use days" but phases out receipt of "an additional compensatory day for each week [that an] officer defers" the use of "any or all summer season vacation weeks to other than the summer or holiday season." Id. at 122-123.

We find that the arbitrator's analysis was based on substantial evidence and complies with N.J.S.A. 34:13A-16g. The POBA has not sufficiently refuted the evidence submitted in support of the City's proposal, nor has it demonstrated that there was any divergence from the pattern of settlement among the City's other public safety units. Moreover, although the

arbitrator appropriately afforded internal comparability and/or pattern of settlement "due weight," phasing out the grant of compensatory days for summer vacation deferral also ensures efficient operations and implicates other 16g factors, including the financial impact on the City and its residents and the interests and welfare of the public. Accordingly, and for the reasons set forth above regarding modification of existing terms and conditions and internal comparability and/or pattern of settlement, we affirm the arbitrator's award.

E. Injury and Sick Leave (Article 12)

The arbitrator awarded the City's proposals regarding the following changes to injury and sick leave:

> a. Add as new Section: "Police officers who have been on sick leave for up to one (1) year, must return to work for six (6) months in order to receive the benefit of one-year leave benefit of Section B. Officers who do not return to work for at least six (6) months will have all sick time, from whatever off-duty injury or illness, counted toward the one (1) year limitation herein and, if granted additional sick time for any reason beyond one (1) year, such sick leave shall be without pay."
>
> b. Add as new Section: "Police officers who have been on injury leave for up to one (1) year, must return to work for two (2) months in order to receive the benefit of one-year leave benefit of Section A. Officers who do not return to work for at least two (2) months will have all injury leave time, excepting the officer who suffers a different and unrelated on-duty injury before the two (2) month period has been reached, counted toward the one (1) year limitation herein and

> if granted additional injury leave beyond one (1) year, such leave shall be without pay other than any compensation available under worker's compensation."
>
> c. Add as new Section: All use of injury or sick leave pursuant to this Article shall be in accordance with procedures established by General Orders of the Department. Vacation time shall run concurrent with sick time consistent with the current department policy and practice. Any member on sick leave for more than 60 days shall not accrue 2 comp days; after 120 sick days, the member shall not accrue 4 comp days; at 180 sick days, the member shall not accrue 6 comp days, and after 181 sick days, the member shall not accrue 8 comp days. An officer will not forfeit more comp days tha[n] he has accrued in one year. As used herein, sick leave includes leave for off-duty injuries. On-duty injuries shall be exempt from this Section, and will be defined in the General Order.
>
> d. Change paragraph D to 3 months.
>
> e. Change paragraph to read: "Any police officer that has a perfect attendance record during any calendar year (1/1 - 12/31) shall receive pay equivalent to two days' pay, which shall be paid in January of the next year. As used herein, perfect attendance means no missed days on sick or injury leave."
>
> f. Add to Article: "Employees out on sick or injury leave that qualifies under the FMLA will have FMLA time run concurrent with their sick leave."

The POBA argues that the City failed to provide sufficient evidence demonstrating that the existing sick leave policy was inadequate to address the misuse and/or abuse that Director Shea alluded to in his testimony.

The City responds that the changes it proposed to injury and sick leave were "modest" and agreed to by every other public safety unit and that the POBA failed to submit any evidence that would warrant a deviation from the pattern of settlement. The City maintains that "[t]he awarded language does not eliminate sick or injury leave" but rather "caps the ability of an officer to be out with pay on multiple and consecutive periods without returning to work for a specified period of time before retriggering unlimited paid sick or injury leave . . . ."

We find that the POBA has failed to demonstrate that the award should be vacated or modified with respect to injury and sick leave. The arbitrator considered the City's proposals and the parties' legal arguments. See Award at 12-13, 72-75. He also considered the testimony elicited by the parties, including Director Shea's testimony that officers currently have "unlimited sick and injury leave"; the pervasiveness of "staffing issues" when unit members are out on sick and injury leave; misuse and abuse of sick and injury leave; and the ineffectiveness of "disciplining officers" for violations. Id. at 73-74. The arbitrator also considered the documents submitted by the parties, including the voluntarily negotiated agreements between the City and its three other public safety units. See Award at 42-44, 75-76; City's Appendix Vols. III-IV at Ra517-545, 713-719.

The arbitrator determined that his analysis regarding internal comparability and/or pattern of settlement related to

contract duration was applicable to injury and sick leave. See Award at 75-76. He found that "[t]he modifications sought by the City are consistent with the terms agreed to by its other public safety units . . . ." Id. at 42-44, 75-76; City's Appendix Vols. III-IV at Ra518, 527, 535-536, 715-716. The arbitrator's award "preserve[s] the quintessential elements of the existing negotiated agreement that allows for up to one (1) year sick and injury leave benefit with pay and additional leave with pay in individual circumstances" while placing a reasonable limitation on unit members' ability to utilize this benefit on multiple and/or consecutive occasions without returning to work for a specified period. Id. at 75-76.

We agree with the arbitrator's analysis. The POBA has not refuted the evidence submitted in support of the City's injury and sick leave proposals, nor has it demonstrated that there was any divergence from the pattern of settlement among the City's other public safety units. Moreover, although the arbitrator appropriately afforded internal comparability and/or pattern of settlement "due weight," placing a reasonable limitation on the use of this benefit also ensures efficient operations and implicates other 16g factors including the financial impact on the City and its residents and the interests and welfare of the public. Accordingly, and for the reasons set forth above regarding modification of existing terms and conditions and

internal comparability and/or pattern of settlement, we affirm the arbitrator's award.

ORDER

The interest arbitration award is affirmed.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson and Voos voted in favor of this decision. None opposed. Commissioner Jones was not present.

ISSUED: December 21, 2017

Trenton, New Jersey