
Interest Arbitration Developments – 2004

Public Employment Relations Commission

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What follows is a review of interest arbitration developments since the April 2003 Annual Conference. Also included are statistics on the number of interest arbitration appeal decisions issued since 1996.

Interest Arbitration Appeal Decisions
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Court Decisions

Teaneck Tp. and Teaneck FMBA Local No. 42, P.E.R.C. No. 2000-33, 25 *NJPER* 450 (¶30199 1999), aff'd in part, rev'd and remanded in part, 353 *N.J. Super.* 289 (App. Div), aff'd o.b. 177 *N.J.* 560 (2003), is the only one of the Commission's interest arbitration appeal decisions to be reviewed by the Appellate Division and the Supreme Court. As discussed in the General Counsel's report, the Supreme Court affirmed the Appellate Division opinion and thus approved the Commission's standard for reviewing interest arbitration awards, as well as its standard concerning when an arbitrator may place firefighters on a work schedule different

than their superior officers. An arbitrator may do so only if he or she finds that the different schedules will not impair supervision or that, under all the circumstances, there are compelling reasons that outweigh any supervision concerns.

The history of the case is as follows:

- The arbitrator awarded a 24/72 work schedule to a firefighters' unit, and also resolved salary and stipend issues.
- The Commission affirmed the award but delayed implementation of the work schedule until it was adopted for the firefighters' superior officers. The Commission found that the record did not support the award of different work schedules under the above-noted standard.
- The Appellate Division affirmed all aspects of the Commission's decision except the delayed implementation of the work schedule. It held that the arbitrator should have been given the opportunity in the first instance to apply the Commission's standard concerning award of different work schedules.
- The Court directed the Commission to remand the matter to the arbitrator and it did so. However, the arbitration was stayed when the Supreme Court

granted the employer's petition for certification.

- The Supreme Court affirmed the Appellate Division decision substantially for the reasons stated in the Appellate Division opinion. The arbitration proceeding resumed, but the parties have since reached a settlement.

Commission Decisions

In *Union Cty.*, P.E.R.C. No. 2003-87, 29 *NJPER* 250 (¶75 2003) ("*Union Cty. II*"), the County appealed an award involving its corrections officers unit. The award was issued after the Commission vacated an earlier award. See *Union Cty.*, P.E.R.C. No. 2003-33, 28 *NJPER* 459 (¶33169 2002) ("*Union Cty. I*"). The second award was also vacated and remanded.

In *Union Cty. I*, the Commission vacated and remanded the award in part to explain how he weighed and analyzed the parties' arguments and evidence concerning what the County alleged was a settlement pattern among its negotiations units with respect to salary and health benefits.

Union Cty. I directed the arbitrator to make findings as to whether the settlements differed from the offer to this unit; the significance of any differences; and whether in fact there was

a settlement pattern among the County's negotiations units. The Commission also indicated that, on remand, the arbitrator should discuss and apply the principles that *Union Cty. I* had set out concerning pattern and internal comparability.

In his supplemental opinion and award, the arbitrator reached the same determinations on all issues except the contract term. The arbitrator awarded a four-year rather than three-year contract, and granted the same salary increase for the fourth year as he had for the other three years.

In its second appeal, the County contended that the arbitrator did not give due weight to the statutory criteria or comply with the Commission's instructions to provide a fuller discussion of the settlements with other of negotiations units. The PBA maintained that the award comported with the Reform Act and reasonably focused on the unique circumstances facing the corrections officers unit.

Union Cty. II held that the second award did not include the findings and analysis that the Commission had earlier directed. Therefore, the best course was to allow a new arbitrator to consider all of the County's and PBA's proposals and issue a

new opinion and award in accordance with the statutory criteria and both *Union Cty.* decisions.

Evaluation of whether any internal settlement pattern should be followed with respect to a particular unit should take into account any unique circumstances pertaining to that unit. The arbitrator recognized this principle and concluded that the increased demands and work problems created by the April 2001 layoff of one-third of the unit made it more reasonable to compare unit members to other corrections officers than to other County employees. While the Commission made no findings and reached no conclusion about working conditions after the layoff, it could not accept the arbitrator's basis for deviating from any settlement pattern without a fuller discussion and weighing of all of the evidence presented on post-layoff working conditions. The Commission noted that the arbitrator had not discussed County evidence that the inmate population was reduced after the layoff and that the officer-inmate ratio remained the same.

With respect to the County's health benefits proposals, the arbitrator did not apply the concepts set out in *Union Cty. I*,— i.e., that pattern is an important labor relations concept;

the reasons for not adhering to any pattern should be specified; and pattern must be considered in evaluating the continuity and stability of employment. The arbitrator's opinion appeared to give little consideration to other units' acceptance of the health benefits proposals, and discussed that acceptance only in the course of noting that it was insufficient to justify the proposals where the County had not shown financial difficulty or inability to pay for existing benefits. The opinion also did not address the effect of not awarding the proposals on employees in other units or the ability to reach future settlements – factors encompassed within the continuity and stability of employment criterion.

In vacating and remanding the award, the Commission expressed no opinion on the merits of the parties' proposals and made no finding either that there was a County-wide pattern on wages or health benefits or that the arbitrator must follow the alleged pattern. In view of its decision, the Commission did not decide whether the arbitrator had complied with the other grounds of the initial remand, including analysis of the evidence on what the County described as its "operational" proposals.

After the *Union Cty. II* decision, the second arbitrator awarded the County's wage and health benefits proposals, together with the PBA's grievance procedure proposal and the eye care and orthodontic coverage it had sought.

The PBA appealed that award, contending that the arbitrator did not apply the principles of conventional arbitration; placed too much weight on the alleged pattern of settlement; did not adequately consider the PBA's stipend and non-salary proposals; and did not calculate the total net annual economic changes for each year of the agreement. The appeal is pending.

In *Allendale Borough*, P.E.R.C. No. 2003-75, 29 *NJPER* 187 (¶56 2003), the Commission affirmed an award involving a negotiations unit of approximately 11 police officers. The Borough's appeal challenged only the arbitrator's denial of its proposal to eliminate longevity for new hires.

The arbitrator awarded a three-year contract that increased the salaries for the initial salary guide steps as proposed by the Borough. For all other steps, the awarded increases were .25% more per year than proposed by the Borough and 1% less per year than proposed by the PBA. With respect to

the longevity proposal, the arbitrator applied the traditional arbitration principle that a party seeking a change in an existing term or condition of employment has the burden of showing a need for the change. He denied the proposal, reasoning that it would reduce long-term compensation for new hires and contribute to the Borough's retention problems. He found that "the record was clear" that the Borough continued to lose young officers to neighboring communities. The arbitrator also wrote that the Borough had not shown a trend to eliminate longevity in its county or offered a quid pro quo for its longevity proposal. Further, the savings to be realized by eliminating longevity in a small department had to be weighed against the adverse effects of a dual compensation system. The arbitrator concluded that the awarded increases, together with the retention of longevity, would allow the Borough to recruit and retain officers.

The Borough appealed, arguing that the arbitrator improperly speculated that award of its longevity proposal would increase turnover; disregarded internal and external comparability evidence; did not take into account the savings that would be realized from the proposal; and erred in suggesting that

award of the proposal would create intra-departmental tensions.

The arbitrator's longevity ruling was one aspect of an overall award and the arbitrator properly placed the burden on the Borough to justify its longevity proposal. Longevity and salary increases are interrelated elements of the department's compensation structure, as the Borough had argued before the arbitrator. The issue was not whether an abstract case could be made for eliminating prospective longevity but whether the decision not to award the proposal was reasonable under all the circumstances. The Commission concluded that it was.

In order to further the goals of maintaining benefit levels and preventing turnover, the arbitrator reasonably decided to give more weight to police comparables as opposed to internal comparables. The arbitrator analyzed the parties' evidence concerning longevity benefits received by police officers in comparable communities and the record supported his finding that police comparability favored retaining the longevity benefit. In considering evidence that prospective longevity had been eliminated for a Borough public works unit, the arbitrator

appropriately considered the total economic package received by that unit.

There was no reversible error in the arbitrator's comments about the financial incentives that may have been offered in those jurisdictions where longevity benefits had been reduced. The theme of those comments was that the significance of longevity changes should not be evaluated in the abstract, but must be viewed as part of the overall compensation package that is negotiated or awarded. There was also no flaw in the arbitrator's analysis to the effect that a two-tiered longevity system could adversely affect the morale of newly-hired employees. The arbitrator did not suggest that police officers would not perform to expectations, but was concerned instead that a two-tiered system could affect morale, a factor included in the public interest. *Teaneck, 25 NJPER* at 459.

In sum, the arbitrator's judgment to deny the longevity proposal represented a reasonable determination of the issues. The arbitrator reasonably found that the proposal was not justified because, given the salary increases awarded, it would diminish the unit's overall compensation; that diminution was not required by the Borough's fiscal condition; and award of the proposal could

exacerbate the Borough's retention problems.

In *North Hudson Reg. Fire & Rescue*, P.E.R.C. No. 2004-17, 29 *NJPER* 428 (¶146 2003), *app. pending*, App. Div. Dkt. No. A-002071-03T5, the Commission affirmed a 467-page award that established the first contract between the North Hudson Regional Fire and Rescue and the North Hudson Firefighters' Association. The Regional is a political subdivision created pursuant to the Consolidated Municipal Services Act (CMSA), *N.J.S.A. 40:48B-1 et seq.*, in order to replace the fire departments in five municipalities.

The following is an overview of the background to the arbitration; the arbitrator's award; and the Commission's decision. The full award and Commission decision are on the Commission's website.

Background to Arbitration

The CMSA provides that until a new entity's first collective negotiations agreement is in place, the terms and conditions of employment of individuals previously employed by a local unit are governed by the contracts negotiated between their former employer and majority representative. *N.J.S.A. 40:48B-2*. Thus, at the time of the arbitration, Regional firefighters had varied

terms and conditions of employments on such items as salary, vacation, health insurance and longevity. Firefighters previously employed by a municipality were subject to the contract terms negotiated between their former employer and majority representative. Firefighters hired after the regionalization worked under terms set by the Regional.

In negotiations and interest arbitration for their first contract, the parties presented proposals on salary, longevity and other compensation items, along with proposals on the entire range of topics typically included in a negotiated agreement. The parties agreed on a contract term from July 1, 1999 through June 30, 2004, but had competing proposals on approximately 56 multifaceted contract articles. In broad outline, the parties advanced these proposals and arguments.

The Association argued that all unit members should be governed by the same salary and benefit provisions from the outset of the agreement. It urged that the new terms on such issues as salary, longevity, terminal leave, sick leave and vacation should be set at the highest level found in any of the prior agreements. It proposed annual increases on the unified salaries and sought to continue the 24/72 work schedule in place in each of the

five municipalities. It proposed that the Regional maintain each of the health plans that the municipalities had contracted for prior to the regionalization, with any unit member being able to choose any one of the plans.

The Regional contended that the most weight should be given to its status as a new employer and maintained that it should not be encumbered by the terms of prior agreements. With respect to salary, it proposed a maximum base salary for the first year of the agreement and proposed that the salaries for the remaining contract years be negotiated. It sought to "red-circle" those firefighters whose salaries exceeded those on the new schedule. 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. It sought a single health plan for all unit members and sought premium contributions for dependent coverage.

Arbitrator's Award

The arbitrator was faced with the enormous and precedent-setting task of evaluating the parties' multi-faceted proposals; 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. In deciding the major economic issues, the arbitrator found that the interests of the public, the Regional and the employees 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 are 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.

With respect to issues such as longevity, holiday pay, vacation and sick leave, the award directed unified benefits either for all firefighters or for all firefighters previously employed by a municipality. The arbitrator clarified the sick leave program in a post-award decision. On other issues, such as terminal leave and educational incentives, the arbitrator concluded that unification was not feasible.

With respect to salaries, for July 1, 1999 through July 1, 2003, the arbitrator awarded all firefighters uniform annual salary increases based on their June 30, 1999 salaries. Effective January 1, 2004, the arbitrator unified the salaries of all previously employed firefighters by advancing the various maximum salaries to the level of the municipality that, pre-regionalization, had had the highest top-step salary. Firefighters hired by the Regional were placed on a salary guide with the same maximum salary, but more steps, than the one that pertained to previously

employed firefighters. In addition, the arbitrator awarded the Association's proposal to continue the 24/72 work schedule included in all of the prior agreements, along with contract provisions on the variety of administrative, operational and contract language proposals presented to him. He awarded a single health benefits plan for all unit members, and denied the proposal for premium contributions for dependent coverage.

Both parties appealed the award. The Regional contended that the overall economic package awarded was well beyond its financial means and not supported by substantial credible evidence. The Association maintained that the award unjustifiably eliminated or reduced benefits that had been achieved over the course of prior negotiations, despite the fact that regionalization resulted in significant savings for the Regional and the municipalities. Both parties contended that the arbitrator did not properly analyze and apply the statutory criteria, *N.J.S.A. 34:13A-16g*.

Commission Decision

The Commission concluded that the arbitrator painstakingly considered the parties' presentations; reached a reasonable

determination of the issues; and fashioned an overall award that was supported by substantial credible evidence. The deference normally accorded to arbitrators was especially appropriate in this case, where the arbitrator had to make so many difficult judgments. *North Hudson* was a case about establishing the major constructs and basic terms and conditions of employment in the parties' new relationship. As the arbitrator stated, there are reasonable limits to what can be accomplished in a first agreement that requires modifications of multiple 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. The arbitrator's decision establishes a framework in which the parties may work.

The Commission accepted the guiding principles and objectives set out by the arbitrator in deciding the major economic issues. Those guidelines distilled and synthesized the arbitrator's comprehensive analysis of the public interest and other statutory criteria; framed his discussion of all the major economic issues; and supplemented the more specific discussion of the cost of

living, comparability, financial impact, and continuity and stability of employment woven into the arbitrator's analysis of many of the proposals, particularly the parties' salary proposals. The arbitrator was not required to mention every statutory criterion with respect to each of the 56 contract proposals where he issued a comprehensive 467-page opinion that discussed all the evidence and fully explained the rationale for his carefully crafted conventional award. Further, parties rarely argue, and arbitrators rarely find, that the full panoply of statutory factors is relevant to administrative or operational proposals concerning, for example, grievance procedures or sick leave verification.

The Commission reasoned as follows with respect to the parties' challenges to specific aspects of the award.

Financial Impact of the Award

Neither party showed a basis to disturb the arbitrator's analysis of the financial evidence. The record supported the arbitrator's determination that the Regional had the financial capability to fund an award that, over the five-year term, was within the range of the settlements between the participating municipalities and their PBAs that the Regional had urged the arbitrator to

follow. The Regional and the municipalities have some continuing long-term obligations associated with regionalization. However, that circumstance did not mean that the significant State aid that they received in connection with the regionalization, as well as the Regional's reduced staffing costs due to an early retirement package, were not also relevant in evaluating the Regional's financial status during the period in which those reductions and disbursements occurred.

At the same time, the record supported the arbitrator's decision to moderate the costs of the award and unification. The residents of the constituent municipalities have comparatively low per capita incomes; the State aid the Regional received was for start-up costs; and much of that assistance was allocated to items other than salary. The Regional received no State aid in 2001 and was required to begin making substantial payments on lease-revenue bonds in 2001.

Major Economic Items

In affirming the arbitrator's award on salaries, vacation, holiday pay, clothing allowance, longevity, sick leave, terminal leave, health insurance and other items, the Commission held that the arbitrator had broad discretion to determine the degree to which

benefits should be unified and the method of doing so. For example, the Commission deferred 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. Similarly, the Commission declined to disturb the arbitrator's reasoned decision to unify some benefits at less than the highest level provided for under the predecessor agreements. 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.

The Commission's focus was on the overall award, specifically, whether it was supported by substantial credible evidence and whether the arbitrator explained his reasoning in the context of the statutory factors. It is not grounds for a remand 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.

Administrative and Operational Proposals

Each party challenged a variety of award provisions on administrative, operational and contract language issues. The Commission evaluated those objections by assessing whether the arbitrator considered the evidence and arguments presented and offered a reasoned explanation for his award. It declined to disturb his judgment because one or the other party argued that its own proposal was preferable to the arbitrator's award on a particular issue.

With respect to work hours, the Commission affirmed the arbitrator's decision not to award the Regional's proposal for a 24/48 work schedule, as opposed to the 24/72 schedule which had been used in the participating municipalities. The Commission agreed with the arbitrator that the regionalization statute does not direct a change in the equation between work hours and compensation beyond what would otherwise be required by application of the statutory factors in any interest arbitration proceeding. The Legislature believed that regionalization would save money and reduce property taxes, presumably because it would eliminate duplicate services. *See N.J.S.A. 40:8B-15; N.J.S.A. 54:4-8.77b.* However,

there is no indication that the Legislature intended that savings would or should result by increasing the work hours or reducing the compensation of employees of local units who become employees of a regional entity.

Scope of Negotiations Arguments

The Commission considered contentions that certain award sections violated a statute or regulation and thus could not be implemented, even though those claims could and should have been made prior to the arbitration. *Compare Teaneck*, 353 N.J. Super. at 301-302 (N.J.A.C. 19:16-5.5(c) does not bar the Commission 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). The Commission did not modify any award sections on these grounds and did not decide the Regional's claims that certain award provisions, which had been proposed by the Association, significantly interfered with its managerial prerogatives. The Regional did not explain why it did not raise its objections prior to arbitration and the Commission was

satisfied that the challenged provisions did not affect the overall validity of the award.

The Association has appealed the Commission's decision to the Appellate Division.

In *North Hudson Reg. Fire & Rescue*, P.E.R.C. No. 2004-18, 29 NJPER 453 (¶147 2003), the Commission affirmed a 390-page award that established the first contract between the North Hudson Regional Fire and Rescue and the North Hudson Fire Officers Association. The arbitrator's approach to the fire officers' award paralleled that in the firefighters' case, and he stated that the Regional's and employee's interests were best served by balancing the same broad guidelines and objectives quoted in the foregoing discussion of P.E.R.C. No. 2004-17. The Commission's decision in P.E.R.C. No. 2004-18 also reiterated the analysis in P.E.R.C. No. 2004-17 on such points as the Commission's acceptance of the arbitrator's guiding objectives; its conclusion that the arbitrator was not required to mention every statutory criterion with respect to each of the numerous contract provisions; and the Commission's approach to analyzing the parties' scope of negotiations arguments and their challenges to

the award's administrative, operational, or contract language provisions.

As in P.E.R.C. No. 2004-17, the Commission found that the arbitrator painstakingly considered the parties' presentations; reached a reasonable determination of the issues; and fashioned an overall award that was supported by substantial credible evidence. P.E.R.C. No. 2004-18 also made three corrections to the award to conform the contract language to the intent expressed in the arbitrator's opinion.

The following summarizes the parties' proposals, along with the sections of the arbitrator's award and Commission decision addressing fire officer salaries. The award and Commission decision in P.E.R.C. No. 2004-18 are also on the Commission's website.

The Association's proposal derived in part from a Department of Personnel (DOP) ruling that all first-line supervisors should be classified as a "Fire Officer 1, even though some had previously been classified as Fire Lieutenants and others as Fire Captains. The Association sought to unify, at the commencement of the agreement, all lieutenant and captain salaries at the level of the highest captain's salary set forth in the municipal agreements. It also proposed that

the salaries for the ranks of Fire Officer 2 and Fire Officer 3 (formerly Battalion chiefs and Deputy Chiefs, respectively), be unified at the highest level established in the municipal agreements. It then sought annual across-the-board increases based 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 the municipal contracts. The Association also sought to include in the new agreement the 24/72 work schedule followed in each of the municipal departments. It argued that unit members' existing medical benefits, which derived from the differing predecessor agreements, should be maintained.

The Regional contended that the most weight should be given to its status as a new employer and maintained that it should not 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 and specified the maximum base salaries for the first year of the agreement. It proposed that the salaries for the remaining contract years be negotiated and sought to red-circle current

employees whose salaries exceeded those on the new schedule.

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. It sought a single health plan for all unit members and premium contributions for dependent coverage.

With respect to such issues as longevity, vacation, sick leave, and holiday pay, the award directed unified benefits either for all fire officers or for fire officers previously employed by a municipality. As he had in the firefighters' award, the arbitrator clarified the sick leave program in a post-award decision. On issues such as terminal leave and educational incentives, the arbitrator concluded that unification was not feasible.

With respect to salaries, for July 1, 1999 through July 1, 2003, the arbitrator awarded all fire officers salary increases based on their June 30, 1999 salaries. Effective April 1, 2004, the arbitrator unified the salaries for all Fire Officer 2s and all Fire Officer 3s based on the highest salary schedule for each rank in the prior agreements. He did the same for individuals

in the Fire Officer 1 title who were formerly captains. As of January 1, 2004, the award advanced the salaries of all Fire Officer 1s who had previously served as lieutenants to the level of lieutenants formerly employed by the municipality with the highest maximum lieutenant salary. As of April 1, 2004, the award further merged all lieutenants onto the first step of a Fire Officer 1 guide, with a resulting salary higher than that to which they had been raised as of January 1. Under the award, former lieutenants will advance to step three on the Fire Officer 1 salary guide two years after the contract term. Step three of the Fire Officer 1 salary guide corresponds to the April 1, 2004 salary for Fire Officer 1s who were formerly captains.

The arbitrator also awarded the Association's proposal for a 24/72 work schedule. He directed that a single health insurance contract provide benefits for all unit members but denied the Regional's proposal for premium contributions for dependent coverage. Finally, the arbitrator awarded contract provisions on the remainder of the 40-plus items proposed by the parties

Both parties appealed. The parties arguments on such issues as the financial impact of the award and the arbitrator's

treatment of major economic issues other than salary were substantially similar to those made by the parties in P.E.R.C. No. 2004-17. Accordingly, P.E.R.C. No. 2004-18 reiterated and incorporated much of the analysis in P.E.R.C. No. 2004-17.

P.E.R.C. No. 2004-18 also addressed challenges to the salary award that were distinct from those in the firefighters' appeal. In particular, both parties questioned the award's rationale and method for merging lieutenants and captains into a Fire Officer 1 title. The Association protested that the award was inconsistent with the DOP ruling unifying the lieutenant and captain job titles because, even after April 1, 2004, former lieutenants will still be paid less than former captains. By contrast, the Regional contended that the DOP ruling did not mandate a salary adjustment for former lieutenants; the record provided no basis for eliminating the pre-existing differential between captains and lieutenants; and the award could 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 Commission held that neither party had offered a basis to disturb the

arbitrator's thoughtful analysis. The arbitrator reasonably concluded that, in developing an overall compensation and benefit system for the unit, it was logical to establish a single salary guide for employees performing the same duties. At the same time, the record supported the arbitrator's phase-in approach to unifying Fire Officer 1 salaries, given that the award had to address 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. The arbitrator reasonably interpreted unification to mean placement on a single salary guide, as opposed to payment of an identical salary.

The Association also objected that the award did not gradually unify Fire Officer 2 and Fire Officer 3 salaries, as the arbitrator had stated. Instead, the Association maintained that the award initially increased the disparity among officers from different municipalities due to the compounding effects of the annual percentage increases, while unifying all salaries as of April 2004. Both

parties' contended that the award did not establish a salary for individuals hired or promoted into a fire officer position before April 2004 but who were not previously employed by a municipality.

The Commission declined to disturb the arbitrator's award on these points. There was 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 the contract term and the cost of doing so immediately. He fully explained the financial reasons for choosing to unify salaries at the end of the agreement. The Association did not show why the record or the statutory factors required a consistent, step-by-step progression toward unified salaries.

The record did not show, and the parties did not allege, that there were any unit members who were hired or promoted before April 2004 who were not previously employed by a municipality. Further, neither party presented a proposal addressing the salaries of Fire Officers who were directly hired by the Regional. Therefore, the Commission declined to remand the award on this ground.

Interest Arbitration Appeal Statistics Since January 1996

Since the Reform Act went into effect, the Commission has issued 23 decisions reviewing final interest arbitration awards. It has affirmed eleven awards; affirmed two with a modification; and vacated and remanded ten awards, including one limited remand. The Commission has also denied one motion to file a late appeal and five requests to review interim procedural rulings by interest arbitrators. One decision, *Teaneck*, has been reviewed by the Appellate Division and Supreme Court and another, *North Hudson*, P.E.R.C. No. 2004-17, has been appealed to the Appellate Division.

Continuing Education for Special Panel Members

In October 2003, the Commission held its annual continuing education program for its special panel of interest arbitrators.

The program included a review of interest arbitration developments; Court and Commission interest arbitration appeal decisions; and other Court and Commission decisions of note. A "roundtable" discussion was held where all panel members were

encouraged to discuss mediation techniques; approaches to opinion-writing; and issues arising with respect to particular types of interest arbitration proposals.

**Biennial Report on the
Police and Fire Public
Interest Arbitration Act**

N.J.S.A. 34:13A-16.4 requires that the Commission submit biennial reports to the Governor and Legislature on the effects of the Police and Fire Public Interest Arbitration Reform Act on “the negotiations and settlements between local governmental units and their public police departments and public fire departments.” The Commission’s fourth report was submitted in January 2004. It reviewed Commission actions in implementing and administering the statute and provided information concerning interest arbitration petitions, settlements, awards and appeals during the eight years the Act has been in place. The report also included an eleven-year salary analysis and identified the following trends:

- Parties are invoking the interest arbitration process less frequently than before the Reform Act
- In a substantial majority of cases – and virtually all cases during the past five years – the parties have mutually

agreed on the selection of an interest arbitrator instead of having an arbitrator assigned by lot by the Commission

- There is a significant trend towards interest arbitrators assisting parties in reaching voluntary settlements, rather than issuing formal awards
- When disputes do proceed to an award, interest arbitrators are overwhelmingly deciding disputes by conventional arbitration -- the terminal procedure mandated by the Reform Act unless the parties agree to one of the other optional procedures allowed by statute
- The number of awards issued in each of the last eight calendar years is substantially less than the average annual number of awards issued under the predecessor statute. In addition, the number of interest arbitration appeals filed with the Commission has been low

These developments were evident in the first years the Reform Act was in place and some of the trends – those concerning mutual selections and the low number of awards – have become more marked in the past five years.

The report concluded that there have been no significant problems in the implementation of the Reform Act and that the parties have completed the transition to the Act and adapted to its provisions and

requirements. The report stressed that the Commission plans to continue its emphasis on encouraging mediation and maintaining a high quality special panel of interest arbitrators.