P.E.R.C. NO. 2005-52

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF ESSEX and
ESSEX COUNTY SHERIFF,

Appellants,

-and- Docket No. IA-2003-037

ESSEX COUNTY SHERIFF'S
OFFICERS, PBA LOCAL 183,

Respondent.

Appearances:

For the Appellants, Genova, Burns & Vernoia, attorneys (Angelo J. Genova, of counsel; Brian W. Kronick and Kenneth A. Rosenberg, on the brief)

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

DECISION

The County of Essex and the Essex County Sheriff appeal from an interest arbitration award involving a unit of approximately 358 sheriff's officers represented by Essex County Sheriff's Officers, PBA Local 183. Pursuant to N.J.S.A. 40A:9-117.6, these officers are appointed by the County Sheriff subject to the County's budget.

Approximately 70% of the unit is assigned to one of the statutorily-based functions of court security, transportation, service of process, or ballistics identification. See N.J.S.A. 40A:9-117.6. The remaining unit members serve in a variety of specialized assignments such as the canine unit, bomb squad or narcotics bureau.

The arbitrator issued a conventional award, as he was required to do absent the parties' agreement to use another terminal procedure. N.J.S.A. 34:13A-16d(2).

The parties agreed to a four-year contract from January 1, 2002 through December 31, 2005. The remaining elements of their final offers were as follows.

Effective July 1, 2002, the County proposed a "3% lump sum bonus payment to all PBA Local 183 members for half a year." All eligible employees would receive the same dollar amount, regardless of current salary. Eligibility was tied to employment by the County on both July 1, 2002 and the date the County ratified the contract. Effective January 1, 2003, the County proposed a 0% increase but also proposed to distribute the "July 1, 2002 lump sum bonus of three percent (3%) total" in order to increase by 3% the base salary of each employee who was on the payroll on January 1, 2003 and the date of ratification. For calendar year 2004, the County proposed a 0% increase and, for 2005, it proposed a 2% increase effective January 1 and a 2% increase effective July 1.

The County also sought to modify the prescription drug benefit. Effective one month after full ratification of the agreement, it sought to increase prescription co-payments from $1 to $5 for generic drugs and from $5 to $10 for name-brand drugs. Effective January 1, 2005, it sought to increase prescription co-payments to $10 for generic drugs and $15 for name-brand drugs.

In addition, the County proposed to continue its mail order prescription plan and add a "compensatory overtime option" to the agreement. Finally, it sought a provision allowing the Sheriff to reopen the contract to negotiate work schedule changes as required by operational need.

The PBA proposed 5% annual across-the-board increases on January 1 of each contract year and proposed that all holiday benefits be "paid on a folded in basis and utilized for all computation purposes." It also sought a 20-year senior officer differential salary guide step, to take effect on January 1, 2004; increased vacation time; critical event excusal time; a new definition of "grievance"; and full release time, at full pay, for two Local 183 members to perform union business.

The arbitrator awarded 3.5% increases effective July 1, 2002 and July 1, 2003; a 4% increase effective April 2004, and a 4% increase effective January 1, 2005. He awarded prescription co-payments of $5 for generic drugs and $10 for name-brand drugs, to take effect no earlier than September 15, 2004. Effective January 1, 2005, he increased co-pays to $10 for generic drugs and $15 for name-brand drugs. He directed the County to continue the mail order prescription plan and awarded its compensatory time proposal. He denied all other proposals.

The County appeals, contending that its wage proposal should have been awarded in light of what it describes as an internal settlement pattern and its dire financial circumstances. It

maintains that the arbitrator did not analyze or give due weight to the statutory criteria or issue an award supported by substantial credible evidence.

The County also challenges the arbitrator's denial of its reopener proposal and objects to certain of the arbitrator's procedural rulings, including his denial of its motion to dismiss the PBA's interest arbitration petition at the close of the PBA's case. It asks that the award be vacated and the case be remanded to another arbitrator. Finally, it maintains that the Police and Fire Public Interest Arbitration Reform Act (Reform Act), N.J.S.A. 34:13A-14 et seq., is unconstitutional because it is assertedly special legislation; an undue delegation of legislative power; and violative of the Equal Protection Clauses of the New Jersey and United States Constitutions.1/

The PBA counters that the award is thorough and well-reasoned and adheres to statutory standards. It stresses that the New Jersey courts have upheld the constitutionality of interest arbitration.

Preliminarily, we do not address the County's constitutional claims because we do not have jurisdiction to rule on the constitutionality of a statute that we are charged with implementing. Hunterdon Cty., P.E.R.C. No. 2003-24, 28 NJPER 433 (¶33159 2002), aff'd 369 N.J. Super. 572 (App. Div.), certif.

1/ We deny the County's request for oral argument. The matter has been thoroughly briefed.

denied 183 N.J. 139 (2004); Boonton Bd. of Ed., P.E.R.C. No. 84-3, 9 NJPER 472 (¶14199 1983), aff'd as mod. sub. nom. Boonton Bd. of Ed. v. Kramer, 99 N.J. 523 (1985), cert. den. 106 S.Ct. 1388 (1986). However, we note that our Supreme Court has upheld the constitutionality of the interest arbitration section of the County Improvement Authorities Law, N.J.S.A. 40:37A-96, against contentions that it violated the Equal Protection Clause and unduly delegated legislative authority. See Division 540, Amalgamated Transit Union v. Mercer Cty. Improvement Auth., 76 N.J. 245 (1978).

We turn first to the County's challenge to the arbitrator's denial of its motion to dismiss.

The gravamen of the County's motion was that the PBA had presented insufficient evidence bearing on the public interest, overall compensation, financial impact, and continuity and stability of employment criteria to support the salaries and contract changes it sought. The County urged the arbitrator to apply the analytical framework set out in court rules governing civil actions, see R. 4:37-2(b), and to dismiss the PBA's petition on the grounds that the PBA's offer could not be justified under the statutory criteria.

The arbitrator concluded that granting the County's motion would undermine the aim of the interest arbitration process: to provide for an expeditious, binding, and effective means for resolving labor disputes. He reasoned that the statute requires

an analysis of the evidence and criteria in the final award, not during the hearings, and that it contemplates that both parties will have the right to have all unresolved issues decided so that they will have a contract. He added:

> Both parties have the right to have their evidence considered no matter how clear it may appear at [the] end of its case that its final offer is unlikely to be granted. In a conventional arbitration proceeding, it is the arbitrator's responsibility to weigh the evidence and fashion an award. In a conventional arbitration proceeding, arbitrators do not normally grant either party's final offer on economic issues. The evidence in the record must support the terms of the conventional arbitration award - not the final offer submitted by the PBA or the Employer. [T129-T133]

The arbitrator also found no basis to rule the PBA's submission inadequate.

We affirm the arbitrator's ruling and accept his analysis. Interest arbitration is an extension of the negotiations process, City of Clifton, P.E.R.C. 2002-56, 28 NJPER 201 (¶33071 2002), and throughout formal arbitration proceedings the arbitrator may continue to mediate and assist the parties in reaching a mutually agreeable settlement. N.J.S.A. 34:13A-16f(3).[2/] Absent such an agreement, the filing of an interest arbitration petition

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2/ There is a significant trend towards interest arbitrators assisting parties in reaching voluntary settlements rather than issuing formal awards. See Biennial Report of the Public Employment Relations Commission on the Police and Fire Public Interest Arbitration Reform Act, p.2 (January 2004). In addition, parties are invoking the interest arbitration process less frequently than before the Reform Act. Ibid.

initiates a compulsory impasse procedure that entitles the parties to a final and binding award. Thus, interest arbitration is a labor relations process, not a civil action, and we do not believe that the Legislature intended that the process could be terminated by a motion to dismiss for insufficient evidence - or that it could proceed based only on the evaluation of one party's evidence.

A different result is not warranted by our interest arbitration decisions, cited by the County, stating that a party proposing a change bears the burden of justifying it. First, that principle applies to an arbitrator's analysis of the evidence in rendering an award. See Teaneck Tp., P.E.R.C. No. 2000-33, 25 NJPER 450, 455 (¶30199 1999), aff'd in part, rev'd and remanded in part on other grounds, 353 N.J. Super. 289 (App. Div. 2002), aff'd o.b. 177 N.J. 560 (2003). It is not appropriately applied to dismiss an interest arbitration petition, given that an arbitrator may ask for additional information if he or she believes a party's presentation is insufficient. PBA Local 207 v. Bor. of Hillsdale, 137 N.J. 71, 82 (1994). Second, the "burden" principle was articulated in cases where one of the parties had proposed work schedule or health benefits changes and the other party sought to maintain the status quo on that issue. See Union Cty., P.E.R.C. 2003-87, 29 NJPER 250 (¶75 2003); Clifton; Teaneck. The burden concept does not apply where, as here, both parties have salary

proposals; neither party seeks a continuation of the pre-award salary guide; and the award must contain a salary ruling.

For these reasons, we find no basis to disturb the arbitrator's ruling. Accordingly, we turn to the County's challenge to the award. In the course of so doing, we will consider the County's evidentiary objections to some of the PBA's submissions.

The standard for reviewing interest arbitration awards is now established, and was recently affirmed by the Supreme Court. We will not vacate an award unless the appellant demonstrates that: (1) the arbitrator failed to give "due weight" to the subsection 16g factors judged relevant to the resolution of the specific dispute; (2) the arbitrator violated the standards in N.J.S.A. 2A:24-8 and -9; or (3) the award is not supported by substantial credible evidence in the record as a whole. Teaneck. Because the Legislature entrusted arbitrators with weighing the evidence, we will not disturb an arbitrator's exercise of discretion unless an appellant demonstrates that the arbitrator did not adhere to these standards. Teaneck, 353 N.J. Super. at 308-309; Cherry Hill.

Arriving at a salary award is not a precise mathematical process. Given that the statute sets forth general criteria rather than a formula, the setting of wage figures necessarily involves judgment and discretion and an arbitrator will rarely be able to demonstrate that an award is the only "correct" one.

Borough of Lodi, P.E.R.C. No. 99-28, 24 NJPER 466 (¶29214 1998); Borough of Allendale, P.E.R.C. No. 98-123, 24 NJPER 216 (¶29103 1998). Some of the evidence may be conflicting and an arbitrator's award is not necessarily flawed because some pieces of evidence, standing alone, might point to a different result. Lodi. Therefore, within the parameters of our review standard, we will defer to the arbitrator's judgment, discretion, and labor relations expertise. City of Newark, P.E.R.C. No. 99-97, 25 NJPER 242 (¶30103 1999). However, an arbitrator must provide a reasoned explanation for an award and state what statutory factors he or she considered most important, explain why they were given significant weight, and explain how other evidence or factors were weighed and considered in arriving at the final award. N.J.S.A. 34:13A-16g; N.J.A.C. 19:16-5.9; Lodi. Once an arbitrator has provided a reasoned explanation for an award, an objection will not be entertained unless an appellant offers a particularized challenge to the arbitrator's analysis and conclusions. Cherry Hill; Lodi; Newark.

Overview of Arbitration Proceeding

The parties' salary proposals were the major focus of the proceeding and their arguments and evidence centered on the nature of sheriff's officers' duties; comparability issues - including the alleged internal settlement pattern - and the County's fiscal situation.

With respect to unit members' duties, the PBA stressed the range and potentially dangerous nature of assignments; asserted that the sheriff's officers were comparable to municipal police officers; and contended that the unit had the lowest salary of any comparable law enforcement agency - a group it defined as municipal police departments in Essex County and sheriff's officers in five other counties. It stated that its offer was intended to keep the unit from falling farther behind, and that true equity could not be achieved without far higher increases and an award of the longevity benefit that most police officers enjoy. With respect to the internal settlements, the PBA maintained that they were distinguishable from the offer to this unit and further, that sheriff's officers were not County employees and were instead appointed by the County Sheriff, an independent constitutional officer.

By contrast, the County contended that while sheriff's officers were law enforcement personnel, their work was distinct from that of municipal police officers. In terms of external comparisons, the County maintained that the sheriff's officers were most appropriately compared to sheriff's officers in other counties. It asserted that unit members were the third-highest paid sheriff's officers in the State; had the second-highest salary among Essex County law enforcement units - e.g., corrections officers, prosecutor's investigators, and County police - and had a far higher salary than non-law enforcement

County employees. It stressed that the unit had not suffered the layoffs experienced by other County units and many private sector employees. The County urged that award of its offer was required in light of what it maintained was a settlement pattern with nine negotiations units comprising one-third of its employees.[3/] It also urged that an award of its offer was compelled by its severe fiscal problems.

In that vein, the County emphasized that its bond rating was the lowest of any New Jersey county and reflected concern by bond rating agencies with its structural deficit; reliance on one-shot revenues; extremely low fund balance; and a $20 million deficit for calendar year 2002, which forced it to issue tax anticipation notes. The County noted that it had implemented a $14.2 million tax increase in 2003, the second highest in County history, which in turn had triggered interest by four municipalities in seceding from the County. It pointed to increased future expenses, including the reinstitution of the employer's share of pension contributions, beginning in 2004. It maintained that if its revenue-producing initiatives did not materialize, it would be compelled to reduce all executive agency budgets by 10%, including the Sheriff's office.

While the PBA acknowledged that the County was not wealthy, it maintained that it was strong, growing and in improving fiscal

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3/ On appeal, the County states that there are 20 other negotiations units, including eight law enforcement units.

condition. It highlighted that the County had not used all of its CAP flexibility in 2001 and 2003, and asserted that the Sheriff had access to monies from two law enforcement trust funds that were not part of the County's operating budget. It contended that the growth of the Sheriff's office budget since the 1990s - a point highlighted by the County - was in part attributable to the department's absorption of the County police and a two-person emergency management unit (T383). It also maintained that the 2002 deficit occurred because three transactions did not close at the end of 2002, as anticipated. However, those transactions were completed in early 2003 and the tax anticipation notes were paid off by the time of the arbitration hearing.

Summary of Arbitrator's Award

Against this backdrop, the arbitrator stressed that the public interest was an essential factor in arriving at an award and that neither the County's offer nor the PBA's offer was justified under this criterion. He found that awarding of the PBA's offer would undermine the County's efforts to regain its financial health, while awarding of the County's proposal would seriously reduce the salary base of sheriff's officers and erode their real earnings in future years. The arbitrator reasoned that the public interest required him to balance two interests: the need to provide fundamental fairness to employees who deliver services and the interest of the taxpaying public in the cost-

effective delivery of an appropriate level of services (Arbitrator's award, pp. 111-112).

The arbitrator concluded that the award's delayed increases in 2002, 2003 and 2004 would result in reduced annual salary costs that, while somewhat higher than the County's proposed costs, were significantly less than the costs of comparable salary increases received by other sheriff's officers, other law enforcement officers, and other public and private sector employees generally. The arbitrator gave considerable weight to the financial impact criterion; quoted extensively from the assessment of the County by Moody's Investor's Service; and found that Paul Hopkins, the County Treasurer, had testified convincingly as to the need for strict financial planning. The arbitrator explained that the deferred salary increases for the first three years of the agreement limited the County's retroactive obligations and he concluded that the net annual economic changes for each year of the agreement were reasonable. He determined that the award would have a minimal financial impact on the governing unit, its residents and taxpayers and would not conflict with the County's lawful authority (Arbitrator's award, pp. 112, 136-140).

The arbitrator concluded that the statutory factors as a whole supported increases well above the average annual 1.75% base salary increases proposed by the County and well below the more than 5% annual increases proposed by the PBA. He agreed

with the County that the job of a sheriff's officer was not comparable to that of a municipal police officer for maximum salary purposes and found that comparison with sheriff's officers in other counties was the most relevant subfactor under N.J.S.A. 34:13A-16g(2)(c). He considered the internal settlements but, as we detail later, declined to give them controlling weight (Arbitrator's award, pp. 115; 121-124).

In arriving at percentage salary increases, he noted that for 2002 through 2005, sheriff's officers statewide received average annual increases ranging from 4% to 4.23%, figures that did not include the much higher increases received by sheriff's officers in Passaic, Monmouth and Burlington counties due to circumstances unique to those locales. He cited our statistics for public safety officers statewide, which showed that settlements averaged increases of 4.05% and 4.01% for 2002 and 2003; awards averaged increases of 3.83% and 3.82% for the same years; and data as of August 1, 2004 had shown somewhat higher increases for both settlements and awards. He took notice of private sector wage figures showing increases of between 3% and 3.6% for 2002 through 2004 and referred to data showing that New Jersey public employees averaged 3% increases in 2000 (Arbitrator's award, pp. 125-127).

The arbitrator also evaluated actual salaries in conducting his comparability analysis. See Fox v. Morris Cty. PBA, 266 N.J. Super. 501, 518 (App. Div. 1993), certif. denied 137 N.J. 311

(1994) (statute contemplates a discussion of actual dollar figures). He noted that the maximum salary for unit members in 2001 was $59,238 - the sixth highest among the counties but $1,608 less than the average sheriff's officer salary in the top ten counties. He calculated that the average 2005 salary for officers in this top ten grouping would be $71,793 whereas, if the County's offer were awarded, unit members would receive a top salary of $63,480 and their "relative standing" would drop to tenth. By contrast, he reasoned that with the awarded increases the 2005 maximum salary would be $68,635; the unit would maintain its overall compensation package and relative ranking (although dropping from 6 to 7); and the Sheriff would be able to continue to attract and retain officers (Arbitrator's award, pp. 129-132). We describe the arbitrator's analysis of the cost of living, overall compensation and other criteria in addressing the County's challenges.

The County contends that the arbitrator simply awarded the "going rate" for other law enforcement officers; did not accord due weight to the public interest and the County's financial circumstances; and mistakenly focused on maintaining the high morale of unit members as a component of the public interest. It asserts that the arbitrator did not address how the County would pay for increases above its final offer and contends that the award contravenes the decisions in Hillsdale and Washington Tp. v. New Jersey PBA Local 206, 137 N.J. 88 (1994), as well as the

Reform Act's directive that the public interest and the taxpayers' interests be given paramount importance. The PBA counters that the County fundamentally misperceives interest arbitration when it asserts that an award conflicts with the public interest if it exceeds an employer's budget.

We conclude that the arbitrator duly considered the County's financial arguments; reached a reasonable determination of the issues; and issued an award supported by substantial credible evidence. We detail the considerations that underpin this conclusion. We start with these observations about the Reform Act.

The Reform Act reflects the Legislature's intent that arbitrators focus on the full range of statutory factors - not just public safety salaries in surrounding jurisdictions or the governing body's ability to pay the other party's offer. Hillsdale, 137 N.J. at 85-86; Washington Tp., 137 N.J. at 82; Fox v. Morris Cty., 266 N.J. Super. at 516-517; Cherry Hill. Accordingly, the Act expressly requires the arbitrator to indicate which of the statutory factors are deemed relevant, satisfactorily explain why the others are not relevant, and analyze each relevant factor. N.J.S.A. 34:13A-16g; Cherry Hill. It also expressly requires the arbitrator to consider the limitations imposed on the employer by the CAP law. Cf. New Jersey State PBA, Local 29 v. Irvington, 80 N.J. 271, 293 (1979) (inferring that obligation under predecessor statute). However,

while the Act directs that "due weight" be given to the taxpayers' interests, it does not automatically equate the employer's offer with the public interest. Middlesex Cty., P.E.R.C. No. 98-46, 23 NJPER 595 (¶28293 1997). The Legislature also recognized "the unique and essential" duties of law enforcement officers and found that an effective interest arbitration process was requisite to maintaining their "high morale," thereby ensuring the efficient operation of public safety departments and the protection of the public. N.J.S.A. 34:13A-14. Accordingly, arbitrators have viewed the public interest as encompassing the need for both fiscal responsibility and the compensation package required to maintain an effective public safety department with high morale. We have affirmed that analysis. Teaneck. 25 NJPER at 459.

We also reiterate that the Reform Act does not specify a formula for arriving at an award. Lodi; Allendale. The Legislature rejected proposals that would have amended the predecessor statute to limit increases to the statutory CAP rate, or otherwise set a numerical standard for arriving at an award.[4/]

4/ For example, Assembly Bill No. 336 (1992) would have limited awards to 5% or the index rate, whichever was less. Also, the recommendations included in Governor Whitman's conditional veto of Senate Bill No. 1144 (1995), would have required the arbitrator to make a preliminary determination as to the contract amount that the governmental entity could afford. The recommendations would also have provided specific direction as to the final award, depending on whether the offer of one, both, or neither of the parties was within the "range of fiscal prudence." The

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Instead, the Legislature directed that disputes be resolved by conventional arbitration, thereby vesting arbitrators with the responsibility and discretion to weigh the evidence and fashion an award.

In exercising that discretion, an arbitrator unquestionably must take into account financial constraints and budget caps, and determine that the net annual economic changes for each year of the agreement are reasonable. Hillsdale, 137 N.J. at 86; N.J.S.A. 34:13A-16d(2). However, the CAP law is only one of many factors an arbitrator must consider. Cf. Irvington, 81 N.J. at 296 (holding that an award that exceeded the CAP rate was reasonable, even though it would force the municipality to effect economies). Moreover, in enacting both the interest arbitration law and local finance statutes, we believe the Legislature understood that negotiations and interest arbitration would require public officials to consider and plan for settlements and awards that might require budget adjustments. A New Jersey textbook for municipal finance managers states as follows:

> Demands for improved wages and benefits will not always coincide with adopted budgets. Difficulties are often experienced in meeting statutory deadlines. Retroactivity of contract provisions may create financing problems. Finance officers have to develop flexible budget timetables, provide for operating reserve funds or contingencies, and make supplemental appropriations (with

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recommendations were not adopted and the Reform Act was enacted less than one month later.

> governing body approval) in order to finance increased salaries and benefits. [Robert Benecke, Municipal Finance Administration in New Jersey, I-18 (July 2004), prepared for Rutgers, The State Univ. of New Jersey, Center for Government Services][5/]

In sum, an arbitrator must consider the financial evidence and explain how he or she weighed the financial impact and lawful authority criteria, along with the other factors deemed relevant. However, the Reform Act does not require an arbitrator to award the amount the employer has budgeted. Middlesex. Further, an arbitrator does not have the statutory responsibility or the legal authority to direct an employer as to how to finance or comply with an award. See Irvington, 81 N.J. at 296 (in formulating how to pay for an award, municipal officials must determine whether appropriations for non-payroll costs should be reduced or whether and to what extent, public safety or other personnel should be laid off).

Within this framework, we find that the arbitrator carefully evaluated all the statutory criteria; explained why he gave more weight to some factors and less to others; and issued a comprehensive award that reasonably determined the issues and is supported by substantial credible evidence. We find no grounds to disturb his conclusions about the financial evidence or the internal settlements, the primary focus of the County's

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5/ This publication is the text for the Center's "Municipal Finance Administration" course, one of the requirements for obtaining a municipal finance officer certification. See www.policy.rutgers.edu/cgs/finance.php

objections. We turn first to the County's challenges to the arbitrator's financial impact and lawful authority analysis. N.J.S.A. 34:13A-16g(5) and (6).

Financial Impact of Award and Lawful Authority

The arbitrator gave considerable weight to the financial factors the County highlighted and, in light of those factors, deferred the effective date of the 2002, 2003 and 2004 increases. He also awarded rate increases for 2002 and 2003 that were lower than those proposed by the PBA or those included in public safety settlements and awards statewide.

The linchpin of the arbitrator's analysis was that while the County had both long and short-term financial concerns, those concerns were more severe in 2002 and 2003, the first years of the award, and would be ameliorated somewhat by 2004 and 2005, the final two years of the award. Substantial evidence supports that conclusion including, in particular, the Moody's analysis quoted extensively by the arbitrator.

While the County stresses that it had to issue tax anticipation notes to cover a deficit in 2002, those notes were paid off in 2003 after the consummation of financial transactions that had been expected to close in 2002. Hopkins testified that a new County Executive took office in January 2003 and Moody's noted approvingly the County's "new commitment" to fiscal health (Aa369).

In that vein, Hopkins explained that, shortly after the new administration took office, officials met with representatives from the bond rating agencies who, among other things, expressed frustration at the prior executive's refusal to raise taxes during the past eight years (T261-T263).[6/] The new administration took that step and Moody's analysis of the County's "fiscal 2004 and 2005 budgetary pressures" led it to conclude that the tax increase, together with a bond restructuring, savings from the opening of a new county jail, and continued vigilance on the expenditure side, "should enable the county to return to near structural balance." The assessment also stated that a pension refunding bond issue would provide the County with $2.5 million in expenditure relief in 2003. A 2003 newspaper article submitted by the County quoted Hopkins as stating that, with continued vigilance, the fund balance would "at the very least" double in three years (Aa368; Aa431).

With respect to the County's overall financial status, Moody's noted such items as the County's low fund balance, low bond rating, and the tax anticipation notes issued in 2002. However, it also highlighted the County's substantial and diverse tax base of $51 billion - the fifth largest in the State; its moderate debt burden; and its wealthy suburbs. The 2002 financial audit showed that property valuations had increased

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6/ The only increases implemented were those initiated by the Board of Freeholders (T261-T263).

each year from 1998 through 2002 and that the tax rate had declined each year during that period.[7/] Hopkins certified that property taxes accounted for 53.5% of County revenues, a lower percentage than all but two other counties (Aa243; Aa1246).

Given these positive financial indicators, the arbitrator reasonably viewed the County as an entity that was moving towards fiscal stability. However, he did not disregard the County's financial problems and did not award the union's offer based on the County's alleged ability to pay it. Contrast Hillsdale. Nor did he simply award the average increases included in public safety settlements and awards. Instead, based on financial and other factors, he awarded what he found to be lower than average increases. Thus, out of an annual budget of approximately $570 million, or more than $2.2 billion over the contract term, the award for 358 officers exceeded the County's offer by: $506,755 for 2002 and 2003 combined; $1,451,491 in 2004; and $1,721,823 in 2005.[8/] The arbitrator structured the award to limit the

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7/ The record does not indicate the impact of the 2003 tax increase on the County's tax rate.

8/ These figures indicate the cumulative differences between the County's offer and the award. Further, the figure for 2002 and 2003 reflects the County's calculations and assumes that the 3% bonus effective July 1, 2002 amounts to $296,781. By contrast, the arbitrator reasonably interpreted the County's final offer as 3% of the total annual payroll figure, or $593,563, payable on July 1, 2002. This calculation issue does not require a remand given that the arbitrator accurately calculated the cost of the award. In this vein, while the County at one point contends that the arbitrator overstated the cost of his award for 2002 and

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County's retroactive obligations, and awarded its prescription co-pay proposal to offset a portion of the 2004 and 2005 salary award. Hopkins estimated that the prescription drug proposal, if implemented for all County units, would save the County $1 million per year. By contrast, the PBA's proposal would have exceeded the County's offer by: $1.4 million in 2002; almost $1.35 million in 2003; $2.6 million in 2004; and $3.15 million in 2005 (Arbitrator's award, p. 135).

The County contends that the same data that it highlighted in arguing against the award of the PBA's offer - e.g., the 2002 deficit, low fund balance, and low bond rating - also weigh against affirming the award. However, we are satisfied that the arbitrator gave due weight to these factors, as well as more positive financial markers, in arriving at his award. While the County objects to the arbitrator's analysis of such matters as its CAP situation and tax rate, it has not shown that the evidence on these points either compelled the award of its own offer or rendered the award unreasonable.

For example, the County maintains that the arbitrator did not analyze the CAP law; did not address the July 1, 2004

8/ (...continued)
2003, at another point it seems to concede that his figure of $1,397,099 is correct. We are satisfied that it is. It represents the cost of the deferred 2002 increase ($346,245), the recurring cost of that increase in 2003 ($692,490), and the cost of the deferred 2003 increase ($358,364). Moreover, even if the arbitrator had overstated the costs of his award, such an error in its favor would not prejudice the County or justify a reversal or remand.

amendments to that statute; and assumed that because the County had not exceeded its CAP, it did not have budgetary problems. With respect to the latter point, the arbitrator found that the award would not require the County to exceed its statutory spending limitations, but he also separately analyzed the parties' evidence concerning the County's overall fiscal situation (Arbitrator's award, pp. 135-140). He did not equate lack of a CAP problem with fiscal health.

Turning to the substance of the arbitrator's CAP analysis, we note that the arbitrator cited Hopkins' testimony that there was no CAP problem in 2003 (T396), and commented that the County's arguments with respect to the CAP centered on its inability to fund the PBA's offer (Arbitrator's award, p. 135). On appeal, the County does not state what further evidence the arbitrator should have considered or explain how the terms of the award would create a CAP problem. We add that at the hearing, Hopkins stated that he had not done the 2004 CAP calculation and the appellate record includes no information on the County's 2004 budget cap situation.

Nor has the County shown that the July 1, 2004 amendments to the statute - enacted two months before the award was issued - require a remand. These amendments limit the amount by which a county tax levy may be increased each year to the lesser of 2.5% or a bi-annually established "cost of living adjustment" (CLA). N.J.S.A. 40A:4-45.1a; N.J.S.A. 40A:4-45.2. Prior to July 1, the

cap was the lesser of 5% or the CLA (then termed the "index rate"). For 2004, the index rate was 2.5%.

Preliminarily, it does not appear that the County asked to supplement the record so that it could explain how the new legislation would affect the County. Thus, the arbitrator cannot be faulted for not addressing an issue that was not raised to him. In any case, the amendments take effect for budget years beginning on or after July 1, 2004, and thus first pertain to the County's budget for calendar year 2005, the last year of the award. In terms of the increase in salary costs from 2004 to 2005, the County proposed split increases for 2005 totaling 4% and effective January 1 and July 1 while the arbitrator awarded a 4% increase effective January 1. The County has not shown either that the difference in cost between its proposal and award, or the CAP law changes, will impede its ability to fund the award within its legal authority. Compare Irvington, 80 N.J. at 282 (CAP law pertains to the budget as a whole; individual components may be increased by more than the CAP rate). Indeed, Hopkins stated that the County was unable to raise taxes to the pre-2004 maximum CAP rate of 5% (Aa244) and, for 2003, the County used only 2% of the available 5% (Arbitrator's award, p. 45).

The County also objects that the arbitrator did not specify the effect of the award on the County's tax rate or on residents at various income levels. N.J.S.A. 34:13A-16g(6) requires an arbitrator to consider the impact of an award on such items "to

the extent that evidence is introduced."[9/] Middlesex. Before the arbitrator, the County maintained that any offer higher than the County's would require the County to raise taxes. However, it did not offer any projections as to how various levels of potential awards would affect either the tax rate or particular categories of residents. Absent such projections, the arbitrator was not required to specify the effect his award would have on the tax rate or various income levels. Middlesex.

Similarly, the County maintains that the arbitrator erred by not considering the impact of his award on the 20 other County negotiations units that have not reached an agreement, including eight law enforcement units. The County does not point to evidence or arguments that the arbitrator did not consider in this vein and it appears that, before the arbitrator, the County primarily focused on the number of units that had already settled, as opposed to the number of units still working under expired contracts. Absent particularized arguments and evidence concerning the payroll costs of other units, the arbitrator could not have meaningfully weighed how the award would affect other units, even were he to assume that they would receive the same

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9/ This statutory language reflects the Supreme Court's decision, which held that an arbitrator need not require the production of evidence on each factor. The Supreme Court rejected the Appellate Division's contrary holding, 137 N.J. at 84, and reasoned that the lower court's mandate would have undermined the purpose of interest arbitration as an expeditious means of resolving contract negotiations. Ibid.

increases in settlements or interest arbitration. Middlesex. Accordingly, the County's argument in this vein provides no grounds to disturb the award.

In addition, the County contends that the arbitrator did not consider such circumstances as the County's renewed pension costs; the increased number of pay periods in 2004; potential cuts in Medicaid and Medicare reimbursements to County facilities; the possibility that several wealthy municipalities could try to secede from the County; and the County's potential obligation to take over the City of Newark's general assistance welfare program. These items were described in Hopkins' certification and testimony. We are satisfied that the arbitrator gave some weight to them, given that he found Hopkins' testimony "convincing" as to the need for strict financial planning and issued an award that cost considerably less than the PBA's proposal. However, the County has not explained why these factors require us to disturb the award, given the positive financial indicia we have reviewed and the non-financial evidence, discussed later, that the arbitrator found weighed in favor of an award above the County's offer.

In any case, the foregoing eventualities are, except for the pension obligation, speculative. Hopkins explained that the process for municipalities trying to secede from a County was not clear and that they might be required to assume a portion of the County's debt (T294-T295). A County exhibit indicates that the

State reimburses counties for every general assistance client served, whereas municipalities are not similarly reimbursed (Aa416-Aa417). The Medicaid and Medicare cuts described would take effect only if the County does not correct deficiencies in its facilities (Aa247).

Finally, the County maintains that it does not have the funds to pay the award, particularly the retroactive costs. It objects that the arbitrator did not explain how it could fund the retroactive payments required by the award without using its minuscule fund balance, especially since 2002 and 2003 have elapsed and it does not have cash on hand to pay the increases.

With respect to the increases for 2004 and 2005, the August 2004 award gave the County some time to make adjustments to the 2004 budget to implement the 2004 increases and to plan for those in 2005 - a year in which the County had proposed an increase close to that awarded.[10/] While the County's arguments center on its resources in 2002, particularly its low fund balance, the record shows that financial analysts expected that, by 2004 and 2005, the County's finances would improve.

With respect to the retroactive payments for 2002 and 2003 and part of 2004, an employer must plan for potential retroactive

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10/ Transfers between appropriations are permitted during the last two months of the fiscal year and during the first three months of the succeeding year. Benecke, Municipal Finance Administration, III-28.

payments under an interest arbitration award, just as it must anticipate other potential expenses in the budget planning process. This is particularly so given that it would have had an obligation to pay negotiated salary increases that might have been agreed to earlier. North Hudson Reg. Fire & Rescue, P.E.R.C. No. 2004-17, 29 NJPER 428 (¶146 2003). The County's own offer would have cost $890,344 in new money in the first two years and the County has not given us a particularized description of how it intended to fund it. Without such a context, the County has not shown that the retroactive payments ordered by the arbitrator are per se unreasonable, particularly since, in light of the County's financial arguments, the arbitrator awarded below average deferred increases for 2002 and 2003.

Moreover, while it is not our role or that of the arbitrator to direct an entity as to how to fund an award, Irvington, we stress that because settlements and awards do not always coincide with adopted budgets, the planning process for salary increases includes budgeting for reserves and contingencies within the current operating fund. Benecke, Municipal Finance Administration, at I-18. An employer has an obligation to use such standard budget practices and to anticipate that the interest arbitration statute might result in an award above its offer.

Finally, while the arbitrator recognized and gave weight to the County's low fund balance during 2002 and 2003, the arbitrator reasonably concluded, based on the testimony and budget documents before him, that the County had some flexibility within its annual budget of approximately $570 million to fund an award approximately $500,000 above its offer for those years. He also reasonably concluded that the County had the flexibility to fund the 2004 increase. The record shows that, in addition to the current operating fund, the County has numerous other funds and accounts that, consistent with accepted budget practices, could be used either as a direct source of funds for retroactive or current year salary increases or as a resource for non-salary expenses, thereby allowing other monies to be used for salaries. In that vein, Hopkins acknowledged that the Sheriff could draw on the law enforcement trust funds for non-recurring expenses (T382). See also Benecke, Municipal Finance Administration at V-3 (many local governments depend on investment income to support the budget).

For these reasons, the arbitrator reasonably concluded that the County had the capability to fund an award above its offer for 2002 and 2003, as well as for 2004 and 2005. And while this circumstance does not automatically entitle this unit to draw on those resources, we find that the awarded increases are supported by the record and by the arbitrator's analysis of the non-

financial statutory criteria. We turn next to the County's challenge to that analysis.

Arbitrator's Analysis of Comparability, Overall Compensation, Cost of Living, and Continuity and Stability of Employment

The rationale underlying the awarded increases was that they would accommodate the County's financial situation while also providing officers with reasonable, but lower than average, salary increases over the four-year contract term, thereby maintaining the current high morale in the Sheriff's office (Arbitrator's award, p. 113). In reaching this conclusion, we are satisfied the arbitrator gave due weight to the comparability, overall compensation, cost of living and continuity and stability of employment criteria and that the County has shown no basis to disturb the arbitrator's discretionary judgment in arriving at the increases he did after considering all of the statutory factors and the evidence presented.

We start with the County's contention that, in considering the internal settlements, the arbitrator did not adhere to our decisions in Union Cty., P.E.R.C. No. 2003-33, 28 NJPER 459 (¶33169 2002) and Union Cty., P.E.R.C. No. 2003-87, 29 NJPER 250 (¶75 2003).

The arbitrator acknowledged the importance of maintaining an established pattern of settlement and stated that such a pattern promotes harmonious labor relations, provides uniformity of

benefits, maintains high morale, and fosters consistency in negotiations. While the arbitrator considered the County's settlements with nine of its 29 negotiations units, he declined to give the settlements controlling weight.[11/] He reasoned that even if the settlements constituted a pattern among those units, the County's offer would result in lower increases than those received by sheriff's officers and public safety employees statewide and by employees in public and private employment in general. He also observed that none of the settlements involved any of the eight other County law enforcement units. In addition, he commented that he would have given greater weight to the County's offer if awards or settlements involving the County's law enforcement units had included the same terms (Arbitrator's award, pp. 128-129; 134-135).

The arbitrator's analysis comports with the Reform Act and our case law, including Union Cty.

11/ The arbitrator made no finding concerning the PBA's contention that the County's pattern argument was flawed because some of the settlements cost more than the County claimed. However, the arbitrator did properly find that any pattern did not encompass one of the nine units cited, the 130-member assistant prosecutors' unit. As the arbitrator noted, for that unit the record included an agreement for 2002 and 2003 only. (Arbitrator's award, p. 133). Thus, the County did not show that the assistant prosecutors were subject to the pattern for either 2004 - where the other settlements included a 0% increase - or 2005. We add that the terms of the assistant prosecutors' agreement are also different for 2002. The assistant prosecutors received a 3% increase in base salary effective July 1, 2002, instead of the 3% bonus outside of base included in the other settlements (Aa604).

As contemplated by that decision, the arbitrator recognized that, in appropriate cases, arbitral adherence to settlement patterns fosters labor relations stability and encourages future settlements. However, Union Cty. did not require that an arbitrator follow internal settlements in all instances. Instead, it underscored that the arbitrator should specify the reasons for adhering or not adhering to a pattern and should consider the impact of deviating from a pattern on the continuity and stability of employment. P.E.R.C. No. 2003-33, 28 NJPER at 461-462. The arbitrator followed these principles when he concluded that the settlements were out of line with all of the other comparability data submitted and that award of the County's offer would erode officers' real earnings and undermine the continuity and stability of employment by impairing the County's ability to attract and retain sheriff's officers (Arbitrator's award, pp. 128, 134).

Moreover, the arbitrator did not err in stating that he would have given more weight to the internal settlements if they had also involved law enforcement units. Union Cty. did not address the distinction between settlements involving uniformed units vis-a-vis those involving non-uniformed employees, given that the alleged pattern in that case involved both types of units - as well as a majority of the County's employees. 28 NJPER at 460-461. However, interest arbitrators have traditionally found that internal settlements involving other

uniformed employees are of special significance, a position set forth in one of the awards cited by the County, where the arbitrator, in arriving at an award for a police unit, gave significant weight to a fire settlement. He reasoned that there is often a direct relationship between police and fire negotiations and found that a settlement with a white collar unit did not provide as meaningful a comparison.

This arbitrator's comment that pattern bargaining is most appropriate among units with a common relationship - e.g., rank and file and superior units; police and fire units; and multiple county public safety units - reflects the common arbitral view that settlements are of particular significance when they involve units that traditionally have been aligned for negotiations purposes (Arbitrator's award, p. 133). See Anderson, Krause and Denaco, Public Sector Interest Arbitration and Fact Finding: Standards and Procedures, 48.05[2], contained in Bornstein and Gosline, Ed., Labor and Employment Arbitration (Matthew Bender 1999) (in assessing comparability, one of the most common factors considered by arbitrators is the relationship between police and firefighters). Since interest arbitration is an extension of the negotiations process, Clifton, the arbitrator's articulation of this approach provides no basis to disturb the award. In addition, we note that interest arbitrators have also considered that public safety settlements reflect the parties' own

distillation of the statutory factors. That analysis is also consistent with the arbitral view that public safety settlements are particularly significant.

In a similar vein, the award is not undermined by the arbitrator's comment that, in an extreme case, interest arbitration would be rendered meaningless if it required the imposition of very low wage increases that were agreed to with units that did not have the right to have those terms evaluated against statutory standards. The Reform Act requires an analysis of a range of statutory factors and expressly mandates comparisons with other County employees eligible for interest arbitration - e.g., "employees performing the same or similar services" in the same jurisdiction. N.J.S.A. 34:13A-16g(2) and g(2)c). These components of N.J.S.A. 34:13A-16g(2) would be read out of the statute if the interest arbitrator were necessarily compelled to follow settlements involving only non-uniformed employees - especially if, as here, those settlements pertained to at most one-third of the jurisdiction's employees and only eight out of its 20 civilian units.

At the same time, we stress that we would not endorse an analysis that automatically disregarded internal settlements because they had not been tested in interest arbitration or did not involve public safety units. That approach would negate the requirement to compare employees involved in the proceeding with

"other employees generally" in the same jurisdiction, see N.J.S.A. 34:13A-16g(2) and g(2)c; and, to the extent it emphasized interest arbitration awards, would also run counter to the overall importance of settlements in labor relations. In this case, however, the arbitrator did consider the settlements and did not automatically discount them. Indeed, he awarded the prescription drug component of that pattern.

Finally, the arbitrator was not required by Union Cty. to make more extensive findings about the settlements in the eight units. In Union Cty., the arbitrator had stated that internal settlements covering a majority of County employees were "supportive but not persuasive" and it was unclear whether he had decided not to follow a settlement pattern or whether he had concluded, as the union had urged, that the settlements were different from the offer to the corrections officers' unit. Therefore, we asked the arbitrator to make findings as to whether the settlements differed from the offer to the corrections unit; the significance of any differences; and whether in fact there was a pattern. However, the essence of our Union Cty. decisions was that an arbitrator should carefully consider evidence and arguments concerning internal settlements and explain the reasons for adhering or not adhering to any alleged internal settlement pattern. We add now that Union Cty.'s requirement pertains whether or not an alleged settlement pattern involves other

uniformed units. While an arbitrator may articulate the view that internal settlements are of special significance if they involve other public safety units, he or she must carefully weigh the terms of any civilian settlements and may not presume that they should not be extended to public safety units.

The Reform Act requires a careful balancing of multiple factors and establishes no rigid formula or test as to how to weigh internal civilian settlements, internal public safety settlements, external comparables, and financial considerations. Thus, an arbitrator may ultimately decide, after an analysis of the statutory factors and a range of comparability considerations, see N.J.A.C. 19:16-5.14, that internal civilian settlements are entitled to comparatively little weight in one case. In another, he or she may find that civilian settlements, perhaps coupled with financial and other considerations, outweigh external public safety comparisons. The key is that the arbitrator's analysis should be free of any improper presumptions that a civilian settlement pattern should never - or always - be extended to public safety units. Cf. Cherry Hill.

Within this framework, we find that the arbitrator complied with his obligations under Union Cty. The arbitrator in this case reasonably found that the assistant prosecutors' unit should not be considered part of the pattern of civilian settlements, but also reasonably assumed for purposes of analysis that a

pattern did exist in eight other units of civilian employees and did cover the four contract years in question. Given this finding and assumption, the arbitrator then reasonably explained why, based on the record as a whole and his balancing of the statutory factors, he decided not to award the wage increases included in the pattern encompassing the eight units. He also explained the basis for awarding the prescription drug component of that pattern. Given these reasonable assumptions and explanations, no purpose would be served by remanding for more specific findings about the actual settlements and overall pattern in the eight units. For the reasons we have stated, we also conclude that there was no error in the arbitrator stating that he would have given the wage settlements stronger consideration if they had involved uniformed units.

The County also objects that the arbitrator did not properly consider the cost of living; the continuity and stability of employment; its private sector comparability evidence; data showing 0% increases in several public sector jurisdictions; and the overall compensation of unit members. It further contends that, given the financial status of the County and its residents, the arbitrator overemphasized the importance of maintaining the unit's relative standing and placed too much weight on the percentage increases received by municipal police officers. For

the reasons stated below, none of these challenges warrants disturbing the award.

With respect to the cost of living, the County does not point to any evidence that the arbitrator did not consider, but argues generally that the arbitrator did not state the weight he gave to this criterion. In analyzing the evidence on this factor, the arbitrator explained that the awarded increases would afford some increase in real earnings over the contract term but that, consistent with his financial analysis, would not match the rate of inflation in the award's first two years. Thus, he noted that the CPI was 2.6% for 2002 and 3.1% for 2003; stated that the 3.5% rate increases for those years were somewhat higher than these figures; but commented that the actual payout generated by the deferred increases was lower than the CPI statistics. He found that the CPI for the first half of 2004 was 4.3% but noted that most of that increase was attributable to a one-month surge. He found it unlikely that the CPI would continue to trend upward, and concluded that the awarded increases for 2004 and 2005 would probably slightly exceed the CPI, thereby resulting in an increase in unit members' real earnings (Arbitrator's award, p. 140-141). The arbitrator thus explained how the cost of living shaped and supported the award, Union Cty., P.E.R.C. No. 2003-33, and, accordingly, satisfied his obligation under N.J.S.A. 34:13A-16g(7).

Similarly, the arbitrator agreed with the County that the unit's overall compensation was competitive, thus rejecting the PBA's position that the unit's salary and benefit structure was "the lowest of all compared." Again, the arbitrator explained how his award was shaped by this criterion when he reasoned that the award would maintain the unit's overall compensation and would come close to maintaining its relative standing vis-a-vis other sheriff's officer units (Arbitrator's award, p.135).

The latter objective is an appropriate one. Relative standing is one of the concepts traditionally considered by arbitrators, N.J.S.A. 34:13A-16g(8) and, absent unusual circumstances, they aim not to significantly change it, given that a salary and benefit structure has been negotiated over time and with consideration to the overall compensation received by comparable units.

We will not second-guess the arbitrator's decision not to sharply decrease the unit's relative standing among other sheriff's officers units, particularly where that decision was intertwined with the arbitrator's conclusion, urged by the County, that sheriff's officers were not comparable to municipal police officers for purposes of maximum salary comparisons. While the County contends that the arbitrator placed too much weight on relative standing, that was not the only factor that drove his analysis. He considered the County's financial

problems; declined to award the increases the PBA sought; denied the PBA's proposals to add new benefits; awarded the prescription drug benefit adjustments sought by the County; and, in fact, slightly decreased the unit's relative standing vis-a-vis sheriff's officers in other counties.

Finally, while the County stresses that the per capita income of its residents is less than half the pre-award maximum salary for this unit, it does not state why this statistic should have been given particular prominence in considering overall compensation. As discussed earlier, the arbitrator gave due weight to the County's financial circumstances.

The arbitrator also fully considered various components of the County's comparability evidence, including three items it highlights on appeal. For example, the arbitrator noted this unit's high education allowance, but observed that it was unclear how many officers received it (Arbitrator's award, p. 132 n.15). He therefore reasoned that the allowance did not change the unit's ranking for maximum salary purposes. Similarly, the arbitrator noted that several multi-year interest arbitration awards and settlements had included 0% increases for some contract years before 2002. However, he reasoned that they did not justify awarding the County's offer, because the average annual increase in the awards and settlements were well above the 1.75% average annual base salary increase in the County's offer.

The County does not point to additional information in the record on these points, or offer particularized challenges to the arbitrator's analysis.

In evaluating private sector data, the arbitrator reasoned that a sheriff's officer is a uniquely public position and that there was no data that would allow him to compare unit members with "private employees performing the same or similar services." Accordingly, he gave that subfactor no weight and the County does not challenge that conclusion. While the arbitrator stated that the wages, hours, and working conditions of sheriff's officers could be compared to individuals in "private employment in general," he found that neither party had provided sufficient data to make such comparisons. Therefore, he took notice of the well-established BNA and Labor Relations Reporter statistics and we find no error in his doing so.

While the County contends it should have been offered the opportunity to comment on the data, it does not indicate what objections it would have made or suggest that these standard sources of labor relations data contain unreliable statistics. In a similar vein, we decline to disturb the arbitrator's judgment that the approximately 15 private-sector New Jersey settlements that the County cited were "anecdotal at best" (Arbitrator's award, p. 114). The County does not explain how

these settlements could provide insight into the average salary increases received by private sector employees in general.

We also find that the arbitrator did not err in his consideration of the percentage increases received by municipal police officers in the County. The arbitrator weighed this data along with that pertaining to the increases received by private and public sector employees in general, sheriff's officers, and all public safety employees statewide. While the County asserts that the arbitrator gave undue weight to the municipal increases, we find that the arbitrator considered them as one of several pieces of salary data that pointed to percentage increases above the County's offer and below the PBA's. This limited reliance on the municipal data is not inconsistent with his finding that the sheriff's officer position was distinct from that of a municipal police officer for purposes of comparing maximum salaries.

We are also satisfied that the arbitrator complied with the Reform Act when he concluded that his award would maintain the continuity and stability of employment for sheriff's officers and enable the Sheriff to continue to recruit and retain officers. The County objects that the arbitrator disregarded evidence of layoffs suffered by other County employees - and employees generally - as well as the unit's comprehensive compensation package and guaranteed pension benefit. The arbitrator acknowledged the County's arguments in this vein and agreed with

the County that the unit had stable employment and competitive compensation. He also found that it was not necessary to award the PBA's offer to maintain the unit's stability, but concluded that the County's offer would undermine it. While the County challenges this latter judgment as speculative, it was rooted in the arbitrator's concern that a sharp decrease in unit members' maximum salaries vis-a-vis other sheriff's officers could lead to turnover, which could ultimately prove more expensive to the County and result in a deterioration in services. That concern was grounded in part in the arbitrator's experience with another sheriff's officers unit, where comparatively low salaries led to officers leaving the department for municipal police forces (Arbitrator's award, pp. 141-142).

Given that arriving at a salary award is not a precise mathematical process, we will not disturb the arbitrator's labor relations judgment that his award would maintain continuity and stability of employment while an award of the County's offer could jeopardize it.

Evidentiary Issues; Overtime Proposals

The County urges that the arbitrator's treatment of several evidentiary points demonstrates that the arbitrator imperfectly executed his powers, and did not issue a mutual, final and definite award. N.J.S.A. 2A:24-8. It also challenges the arbitrator's denial of its overtime proposal.

For example, the County contends that the arbitrator erred in taking arbitral notice of a newspaper article describing a settlement for 2004 and 2005 involving the Essex County assistant prosecutors' unit, in which the increases agreed to were allegedly greater than those that the County proposed for this unit. The County argues that neither party presented evidence on the settlement and, therefore, it contends that the arbitrator improperly relied on the article to find that a settlement pattern did not exist.

We need not address the propriety of noticing the article, given that the arbitrator did not rely on it as comparability evidence to support the salary increases he awarded, but instead to support his point that the civilian settlement pattern did not encompass the assistant prosecutors' unit. That point was evident from the record, which included an agreement for that unit for 2002 and 2003 only.

With respect to the County's other evidentiary objections, we are not persuaded that the arbitrator should have found inadmissible the PBA's PowerPoint presentation and contracts. The Rules of Evidence are not strictly applied in arbitration proceedings. Fox, 266 N.J. Super. at 515 n.7. In any case, the PowerPoint presentation appears to have been designed to provide an overview of the diverse functions of the Sheriff's office, including some officers' surveillance and investigative duties,

and was thus relevant to the PBA's contention that unit members' maximum salaries should be compared to those of police officers. We need not resolve the County's objection that it was an improper outline of testimony, given that the arbitrator agreed with the County that unit members' maximum salaries should not be compared to those of municipal police officers. Cf. Cherry Hill, 23 NJPER at 290 (appellant should focus on deficiencies that resulted in those aspects of the award adverse to its position).

Finally, the County maintains that of the sixteen law enforcement contracts submitted by the PBA, most are irrelevant because they are from jurisdictions that are not comparable. Further, it contends that eight of the documents are unsigned and were not authenticated.

The County's relevance objections are unfounded. The various law enforcement contracts from the State, counties and municipalities were admissible for the purpose of allowing the arbitrator to evaluate the parties' competing comparability arguments. One of an arbitrator's tasks is to determine what jurisdictions or units are comparable. A final determination of comparability is not a condition of admissibility. With respect to the authentication issue, the County does not state which contracts are unsigned or contend that it has obtained official copies of the documents that indicate that the submissions were

inaccurate. In this posture, we find no basis to disturb the award.

Similarly, the County has not shown that the arbitrator's ruling on its overtime proposal warrants a remand. The County proposed the following:

> At the request of the Sheriff the contract may be reopened to negotiate changes in the existing work schedule as required by operational need. Such negotiations may include weekend work as part of regularly scheduled work days and work schedules covering a fourteen day cycle with straight time and overtime as authorized by law. This provision shall not infringe or change the Sheriff's managerial prerogative regarding manpower, work schedules, staffing or manning. [Emphasis supplied]

The arbitrator denied the proposal. He reasoned that the County had not proposed specific work schedule changes and that there was no basis to permit the reopening of a 2002-2005 contract that would, at the time of the award, expire in less than eighteen months.

The County objects that it presented testimony that the opening of the new county jail might require steady shifts or other work schedule changes and it maintains that the above-noted paragraph constitutes a concrete proposal.

The arbitrator reasonably found that the County's proposal listed illustrative changes that the Sheriff might seek, but no specific work schedule modifications. We will not second-guess his discretionary judgment that it was not advisable to include a

reopener in a contract that was finalized after two and one-half years of negotiations and interest arbitration and which is now due to expire in less than one year. We add that an employer has a non-negotiable managerial prerogative to make work schedule changes where negotiations over such changes would substantially limit governmental policy. Maplewood Tp.; P.E.R.C. No. 97-80, 23 NJPER 106, 113 (¶28054 1997); see also City of North Wildwood, P.E.R.C. No. 97-83, 23 NJPER 119 (¶28057 1997) (restraining arbitration over work schedule change effected to provide a "command presence" on weekends).

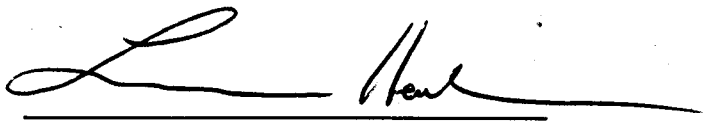
For all these reasons, we hold that the arbitrator duly considered the County's financial arguments; reached a reasonable determination of the issues; and fashioned an overall award supported by substantial credible evidence. In so holding, we stress that while the Reform Act may have been triggered in part by a concern about increases in public safety salaries, the process the Legislature ultimately enacted does not establish a defined formula based solely on an employer's financial data; it requires consideration of employee interests as well. Stated another way, the CAP law and other financial statutes are not the only expression of public policy. Our Act in general, and the interest arbitration process in particular, also further the public policy of promoting labor peace and stability and improving the efficiency of police and fire departments by

maintaining high morale. N.J.S.A. 34:13A-14. See also State of New Jersey, Department of Corrections v. IFPTE, Local 195, 169 N.J. 505, 537 (2001) (citing this public policy). While implementation of the award could require the County to adjust its budgetary plans, that circumstance does not render the award unreasonable. Irvington. Accordingly, we affirm the arbitrator's award.

ORDER

The arbitrator's award is affirmed.

BY ORDER OF THE COMMISSION



Lawrence Henderson
Chairman

Chairman Henderson, Commissioners Buchanan, Fuller and Watkins voted in favor of this decision. Commissioner Mastriani abstained from consideration. Commissioners DiNardo and Katz were not present.

DATED: January 27, 2005
Trenton, New Jersey
ISSUED: January 27, 2005