

NJ PERC SPECIAL INTEREST ARBITRATION

In the Matter of the Compulsory Interest
Arbitration

Between:

County of Burlington and Burlington County
Prosecutor's Office ("County")

And

Burlington County Prosecutor's Detectives PBA
Local #320 ("Union")

DOCKET: IA-2012-016

**REMAND FROM SUPERIOR COURT
OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0040-12T1**

DECISION AND AWARD

of

Joseph A. Harris, Ph.D., Arbitrator

APPEARANCES:

For the Employer

Carmen Saginario Jr., Esq.
Capchart Scatchard, P.A

For the Union:

David J. DeFillippo, Esq.
Klatsky Sciarabone & DeFillippo

Date of Arbitrator's Award

September 9, 2013

CASE HISTORY

This case assignment by the New Jersey Public Employment Relations Commission (PERC) originally was accepted by Arbitrator Harris on March 8, 2012. The Parties submitted final proposals on March 28; they met at hearing on April 2 and April 5, 2012. The Parties did not submit post-hearing briefs; the record was closed on April 5, 2011.

The Arbitrator submitted his award on April 21, 2012. It awarded across-the-board salary increases of 0.5% (2011); 1.25% (2012); and 2.0% (2013). The award did not adjust already-in-place step increases.

The County appealed the Arbitrator's award to NJ PERC on April 30, 2012. PERC issued its decision (No. 2016-61) on May 30, 2012. PERC affirmed the award but ordered Arbitrator Harris to issue a Clarification Award as to the meaning of the word "qualifications" in Article XXV, Paragraph B (seniority), "in light of the multiple positions and job functions within the Prosecutor's Office."

Arbitrator Harris issued his Clarification Decision and Award on July 31, 2012. This award was not appealed. However, on August 31, 2012, the County filed a Notice of Appeal of the original award. It also asked PERC and then the Appellate Division for a stay of Dr. Harris's award. The stay requests were denied. During the appeal, the County implemented the terms and conditions of Dr. Harris' initial Decision and Award.

On May 20, 2013, the Superior Court of New Jersey, Appellate Division (Judges Parrillo and Fasciale) remanded the County's appeal back to PERC "for further proceedings." Docket No. A-0040-12T1, p 1) The decision concluded: "We therefore remand to develop the record regarding the arbitrator's subsection 16g analysis consistent with this opinion. We leave this task

to the discretion of PERC. We do not retain jurisdiction.” (Id, p 13) PERC, in turn, remanded the case back to Joseph Harris.

The following quotations from the Superior Court’s decision describe the arbitration award’s shortcomings and task PERC to remedy them.

1. Here, the arbitrator did not address salary increases in comparable areas of private employment, as required by subsection 16g(2). Although he discussed the salaries and salary increases of similar detectives and investigators in other counties, a consideration that is certainly relevant, subsection 16g(2) also requires an analysis of private sector jobs. This analysis was not done.
2. Moreover, subsection 16g(6) requires an analysis of the financial impact on the governing unit, its residents and its taxpayers. “The terms of that factor do not equate with the municipality’s ability to pay.” Hillsdale, 137 N.J. at 85....Here, the arbitrator “inappropriately relied” on the County’s ability to pay instead of focusing on the financial impact on the county as required by subsection 16g(6). See id. At 86. He made no mention of the financial impact of the salary increases, and instead focused on current tax revenue and projected revenues from tax increases. This analysis is insufficient under subsection 16g(6). The arbitrator must demonstrate more than simply asserting that raising taxes would cover the increased cost of an arbitration award....Moreover, the arbitrator’s decision failed to give sufficient consideration to the factors identified in N.J.S.A. 34:13A-16g(6), such as

The impact of the award for each income sector of the property taxpayers of the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in a proposed budget.

3. Although he acknowledged that he had to address all nine factors, the arbitrator did not indicate which factors he deemed relevant nor did he explain why others were irrelevant as the statute requires. It is therefore unclear from the arbitrator’s opinion which factors he relied on in making his decision. “Without such an explanation, the opinion and award may not be a ‘reasonable determination of the issues.’ Hillsdale, supra, 137 N.J.

On July 2, 2013, PERC e-mailed Arbitrator Harris, assigning him to the case. The following day, Dr. Harris e-mailed the Parties and PERC: "I have been assigned by PERC to complete my reconsideration of my initial award within 45 days."

On July 9, 2013, the County asked PERC to stay the arbitration or, alternatively, to appoint a different arbitrator.

On July 15, 2013, the Union wrote to PERC, opposing the County's requests. On July 17, 2013, Mr. Horowitz, PERC Deputy General Counsel, responded negatively to County's request.

On July 19, 2013, Arbitrator Harris e-mailed the Parties (and PERC) about the scope of the remand and his decisions as to submissions from the Parties. The e-mail limited submissions to "documentation that I received at or prior to the arbitration." In full, the e-mail stated:

I look forward to promptly receiving the appeal documents that each Party submitted. Thank you for your cooperation.

The Court decision was: "We therefore remand to develop the record regarding the arbitrator's subsection 16g analysis consistent with this opinion."

I will limit my analysis and award to this instruction, to which PERC also directed me.

However, I accede to the County's request that the Parties be allowed to submit briefs to me – but only on the matter of Subsection 16g – and only relying on documentation that I received at or prior to the arbitration.

The DEADLINE for me receiving these brief in HARD COPY is July 26, 2013. I will not accept any documents after that date."

Two days later, on July 19, 2013, the County wrote to PERC, requesting an extension of the Arbitrator's 45-day deadline:

Please accept this correspondence as the County's request that the Commission extend Arbitrator Harris's deadline of 45 days to provide a revised award in this matter. Moreover, the County respectfully request that the parties have until August 16, 2013 to submit a brief to Arbitrator Harris regarding subsection 16g."

Lorraine Tesauro, Chair of PERC's Conciliation & Arbitration Section, responded: "I will pass your request to our General Counsel and abide by his guidance."

On July 22, 2013, Don Horowitz, PERC Counsel, responded: "I am in receipt of your letter of July 19, 2013. As this matter is presently before Arbitrator Harris any procedural requests must be made to him."

On July 23, after further exchanges of e-mails on this matter, Arbitrator Harris e-mailed the Parties and Ms. Tesauro that he accepted the County's request for additional time to submit its brief:

Since neither Party objects to a modest extension of time to submit briefs, and I am not aware of any legal barrier to the Arbitrator extending the 45-day limit (that applies to hearing and submitting original interest arbitration awards) to longer time periods in remand situations, I accept the Employer's request for additional time. I will accept the briefs on or before August 16, 2013. I will submit my award to PERC by September 9, 2013.

By or about August 16, 2013, the Arbitrator received briefs from each Party.

On August 26, 2013, the Union informed Dr. Harris that the County had violated his instructions of July 19, 2013 in that the County's Brief was laden with documents and arguments that had not been submitted at or before the arbitration. The Union wrote:

The PBA is vehemently objecting to the County's blatant disregard of your instructions to the Parties, as outlined in your e-mail of July 19, 2013. At that time, you granted the County's request to submit Legal Briefs to your attention. However, you plainly advised the parties that said briefs shall address and otherwise be directed to "only on the matter of subsection 16g – and only relying on documentation that I received at or prior to the arbitration...."

The County did not object or otherwise challenge the limitations set forth in your e-mail referred to above. Yet, beginning on page 8 of its Legal Brief, the County proceeded to discuss, rely upon and otherwise refer documentations which were never entered into the record during the arbitration hearings. Moreover, the exhibit list attached to its Legal Brief is replete with exhibits which were not produced during the arbitration hearings (many of which did not even exist as of April 2012!). Rather than list those exhibits which were not produced during the April 2012 interest arbitration proceedings, it is simpler to simply recite those

which were produced as either County exhibits or PBA exhibits: C-25 to C-27; and C-34 to C-35. All of the remaining exhibits have been submitted to your attention in violation of your instructions and limitations.

For the above reasons, I must request that the County's entire Legal Brief and all of the exhibits attached thereto which have been submitted to your attention in defiance of your instructions be suppressed.

On August 28, 2013, the County sent a 3-page letter defending the legitimacy of its Brief. The letter acknowledged that the County had received Dr. Harris's instructions disallowing new evidence, but it provided two reasons for why it had ignored the instructions. First, it cited Dr. Harris' award in which he had written that the "record is insufficient" as justification for including new material for the record. The County wrote that it was "compelled, so that you can render a fully informed award, to provide additional information to you." Second, it claimed that "the submission of additional information to ensure that a complete record is before you is necessary" because the Arbitration had been conducted without a stenographer, the Arbitrator no longer had his notes from the two hearing days, the parties had not submitted post-hearing briefs, and the hearing was so long ago (17 months) that the Arbitrator's memory likely needed jogging.

The letter cited Fox v. Morris County Policemen's Ass'n, 266 N.J. Super. 501, 514 (App. Div. 1993) as stating: "N.J.A.C., 19:16-5.7(d) specifically authorizes arbitrators to request additional evidence necessary to arrive at a reasonable determination of the issues." And, it cited Fox, regarding the necessity for a complete record:

Paramount public interest makes it inequitable to order the governing unit (and in turn the residents and taxpayers) to be bound to an award and expend public funds merely because the arbitrator and parties failed to adequately comply with and address the statutory criteria beyond simply comparability with other law enforcement units and the non-statutory and abstract concept of the public employer's "ability to pay."

On August 28, 2013, Arbitrator Harris issued his ruling on the County's submission of new documents:

I have received an e-mail of August 26, 2013 from Mr. DeFillippo protesting the County's submission in its Brief of "exhibits which were not produced during the April 2012 interest arbitration proceedings" and the Union's request that "the County's entire Legal Brief and all of the exhibits attached thereto which have been submitted to your attention in defiance of your instructions be suppressed."

I also have the County's two replies (August 26 and 28) to the Union's August 26, 2013 letter, requesting that I accept the County's new documentation.

The two appeals to my ruling of July 19, 2013, were made after the deadline for submission of materials and after the Parties submitted their Briefs. They are not timely. I will ignore new documents (documents that were not submitted before or during the April 2012 arbitration) and arguments based on those materials. I will send my award by the September 9, 2013 deadline.

Lastly, on August 28, 2013, the County appealed the June 10 Superior Court's decision to remand to PERC "to develop the record regarding the arbitrator's subsection 16g analysis." It asked the NJ Supreme Court to "review the final judgment."

EVIDENTIARY ISSUE

Before proceeding to the merits of this case, it is necessary to put to rest the County's defense of its intentional submission of exhibits that I had barred on July 19, 2013, and, obviously, its analyses and conclusions that were based on those exhibits.

First, the County had adequate time to appeal my ruling of July 19, 2013 before both Parties submitted their Briefs, but it did not do so. This makes its appeal untimely.

Second, even if it were timely, the County's defense of its actions has no merit. It is not true that the record is so incomplete that the Arbitrator requires additional documentation in order to fulfill the mandate set before him by the Superior Court and by PERC. The County's letter of August 28, 2013 lists seven (7) instances from Arbitrator Harris' original award in which he protested various deficiencies in the record. However, none of them is vital or even important to the specific issues that the Superior Court remanded for further consideration. I note

also that no record dealing with economic issues is ever "complete," in that there are multitudes of economic data series dealing with multitudes of economic indexes in multitudes of geographic areas.

Third, of necessity, no arbitration award can be informed by evidence that does not exist when the hearing occurs, or exists but has not been presented by either side. This rule is the A, B, C of arbitration. I note that the County's Brief was accompanied by 11 new exhibits (C-28 through C-32, and C-36 through C-41), nine of which one are data series, economic reports, and arbitration awards that did not yet exist at the time of the original arbitration award.

The County's Exhibit C-38 (Bureau of Labor Standards: December 2011. Consumer Price Index) is the BLS news release of January 19, 2012 for national changes in the CPI. However, the Union had earlier submitted the similar, but more geographically relevant release of the "New York-New Jersey Information Office" of the BLS. It had been included as Exhibit K of its expert witness's large packet of exhibits.

The only newly-submitted exhibit that actually existed at the time of the original arbitration is C-31, which is the Compensation article of the CWA Local 1086 and Burlington County Board of Social Services Agreement for 2009-2012. It was signed on December 28, 2010.

Clearly, the County's improper submissions did nothing to "further develop" the record (*that could have existed at the time of the original arbitration award*), which was the County's rationale for willfully violating the Arbitrator's instructions. Rather, its improper submissions were ex post facto materials, and arguments based on those materials, that would improperly influence the Arbitrator (as well as PERC and/or the court system).

ARBITRATOR'S ANALYSIS

The County's Brief (CB) states that the 3-year arbitration award granted "actual gross salary increases" amounting to "25.56% increase in base salaries from the 2010 base salary year." (p. 2) The County's figures are based on its cost-out (C3) of the award, which calculated the three increases as totaling \$424,763, including "the full cost of 4 new hires during 2011-2012" and "cost savings for 2 retirees."

The Union's Brief (UB) calculated that "the salary increases awarded by Dr. Harris" (0.5% in 2011, 1.25% in 2012, and 2.0% in 2013), created a total cost increase to the County of \$392,537. (p. 5) This increase amounts to 19.7%. The Union states that its calculations are based solely on the 26 employees who were on the payroll on December 31, 2010, and it assumes they remain on the payroll for the life of the contract. (This analysis follows the guidelines set out by PERC in Borough of New Milford, 38 NJPER (2012).

I. Comparable areas of private employment, as required by subsection 16g(2)

I note that the Superior Court's requirement is that I compare the bargaining unit employees' wages with "comparable areas" of private employment, not with private employment as a whole. Regarding the public sector, the County argues that "there is no evidence before you demonstrating a legitimate comparison between the Burlington County prosecutor's detectives and any other county." (BC, p. 10) However, for the "private sector in general," the County found it useful to provide statewide private wage levels and also to present regional BLS data for

"protective service occupations" in the geographic area of Philadelphia-Camden, Vinland, PA-NJ-DE-MD. Thus, the County referred to its arbitration Exhibit C18, consisting of two tables from the BLS "National Compensation Survey" for January 2010. The closest "comparable area" of employment is for "Police and sheriff's patrol officers," within the larger category of "Protective service occupations." Table 13 is for full-time state and local government workers; Table 9 is for full-time civilian workers, which includes government and private sector employees.

As the table below indicates, the BLS data do not provide a breakout of private sector employees within "Protective service occupations" or within its subcategory "Police and sheriff's patrol officers" - either for wage rates or for annual earnings. Nonetheless, the County wrote in its Brief:

As demonstrated by Exhibits C-18 and C-19, for 2009 and 2010, not only do the salaries in the Award vastly exceed those for "protective service occupations" in the private and public sector, but the existing salaries (prior to the implementation of the Award) of the investigators here vastly exceed those averages.

Additionally, the County chose an category of workers for its comparison, "protective service occupations," that includes lower skilled security guards. The proper BLS subcategory is "Police and sheriff's patrol officers." The median hourly wage in 2010 for "Police and sheriff's patrol officers" in the "civilian" category was \$27.98; in the "state and local government" category, it was \$28.18. If there is a meaningful difference between these wage rates, the County has not demonstrated it. Also, after the County stated that the average salary of the prosecutor's

investigators in Burlington County was \$63.153 in 2010 (prior to any wage increases), and after it presented BLS data that gave \$62.357 as the average 2010 wage for state and local "police and sheriff's patrol officers" for the immediate surrounding area (and \$60.311 for the larger category of "protective service occupations"), it is difficult to understand how the County concluded: "the existing salaries (prior to the implementation of the Award) of the investigators here vastly exceed those averages."

The Burlington County detectives unit had an average hourly rate of \$34.83 in 2010, which is definitely higher than the \$30.12 per hour average rate that the BLS category government "Police and sheriff's patrol officers" earned. It is even slightly higher than the \$33.76 per hour that the 75th percentile of civilian officers earned. However, it is not "out of line," especially given the high cost of living and generally high wages in Burlington County.

The County did not prove that the Union's 2010 wages were higher than those of comparable workers in the private sector. It also did not prove that the wage increases I granted were higher than those that *comparable workers* in the private sector received. It is clear that *overall* private sector wage rate increases were smaller than the increases I granted (including step guide increases), but it takes a large leap to conclude that this was also the case for private sector "police and sheriff's patrol officers" or similar professional law enforcement categories. Additionally, a comparison with *overall* private sector wage rate increases is among the *least useful* comparisons.

BLS Pay Comparisons, January 2010, for Phil.-Camden-Vineland, PA-NJ-DE-MD C'SA Comparison of Full-time Civilian vs. State and Local Government "Police and Sheriff's Patrol Officers"						
Full-Time Employees	Hourly \$ earnings Mean (Average)	Hourly \$ earnings (Median or 50th Percentile)	Hourly \$ earnings (75th Percentile)	Hourly \$ earnings (90th Percentile)	Annual \$ Earnings Average (Mean)	Annual \$ Earnings Average (Median)
State and Local government workers: Protective Service Occupations (T-13)	29.61	27.98	--	--	60,311	58,410
State and Local government workers: Police and sheriff's patrol officers (Table 13)	30.12	28.18	--	--	62,359	58,610
Civilian workers: Protective Service Occupations (T-9)	--	25.25	31.49	38.50	--	--
Civilian workers: Police and sheriff's patrol officers (Table 9)	--	27.98	33.66	38.50	--	--

BLS. "Phil.-Camden-Vineland, PA-NJ-DE-MD National Compensation Survey," January 2010. Tables 9 and 13.

The Union Brief (UB) alleges that "the salary increases awarded by Dr. Harris in the instant matter (2011: 0.5%; 2012: 1.25%; and 2013: 2.0%) are in line with, and in many cases below, the private sector wage increases in 2010, especially in Burlington County." (p. 5) However, the Union actually received an increase of 5.2% in 2011 (and 8.5% in 2012, and 4.9% in 2013) because many employees moved up in the step guide to higher wage rates as well. Based on the Union's cost-out of my original award, the table below shows the increases in

payroll costs occurred (assuming a constant staff of the 26 employees who were on the payroll at the end of 2010):

COST-OUT OF ARBITRATION AWARD (based on analysis in Union Brief)				
Year	Total Salaries (\$) (for the 26 employees on payroll on Dec. 31, 2010)	Increase in Total Salaries (26 Ee's) Over Previous Year (\$)	Average Wage Rate Increase Granted Over Previous Year (%)	Actual Wage Rate Increases, Including Moving Up Along Salary Guide (%)
2010	\$ 1,991,652			
2011	2,094,766	\$ 103,114	0.50%	5.2%
2012	2,273,015	178,249	1.25	8.5
2013	2,384,189	111,174	2.00	4.9
Total Increases: 2010 - 2013		392,537	4.25	19.7

The Union notes that private sector wages in Burlington County rose 3.0% (to \$48,967) in 2010 over 2009 (Exhibit I-25) while the state-wide average private sector increase was 2.2% (Exhibit I-24). Within the overall average of 2.2%, there was a substantial dispersion by broad industry and job description. Thus, these higher averages occurred: Utilities (4.3%), manufacturing (3.9%), finance/insurance (7.2%), management of company/enterprises (6.4%). In all of the above, it is not clear to what extents these various increases included movements along guides. I note that the Union's actual rate increase of 5.2% in 2011, while above most of the 2010 data shown above, is below the 7.2% that finance/insurance company employees received, and it is below the 6.4% increase that private sector "management of company/enterprises" received. The Union's increase was not an "outlier."

However, for two reasons, the Union's industry and job category comparisons above are not particularly applicable. First, the data are for the wage rate changes from 2009 to 2010, while the years of concern in this case are annual changes for 2011 over 2010, plus the two years following. (The Union's data was the most current available. Its source was the January 2012 "Biennial Report of the New Jersey Public Employment Relations Commission on the Police and Fire Public Interest Arbitration Act As Amended by PL. 2-10 c. 105.")

Second, none of the broad areas is a good "comparable" to detectives and investigators. It is possible to extrapolate from such data, but such extrapolation is not very useful in the instant case. In an industry and/or job category in which the large majority of the employees are public employees, which I believe characterizes detective and investigative work, public sector wage rates and wage changes will tend to set industry and job category standards (and thus private sector wage rates and wage changes). Thus, even if appropriate data were available, comparison with the private sector, *for this category of work*, is not an important factor for public sector interest arbitration.

II. The financial impact on the governing unit, its residents and its taxpayers ((g)(6))

N.J.S.A. 34:13A-16(g)(6) states in its entirety:

The financial impact on the governing unit, its residents and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators **shall take into account, to the extent that evidence is introduced, (Emphasis added – JH)** how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element or, in the case of a county, the county purposes element, required to fund the

employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers of the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local program and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in a proposed local budget.

The County's Brief gave no data or other information apropos the arbitration award's "financial impact on the governing unit, its residents and its taxpayers." It merely stated the sizes of the award's wage increases and complained that they were out of line with later arbitration awards and settlements, and with inflation trends. Additionally, it claimed that the increases were not necessary to promote stability of employment because most detectives have considerable seniority and would not seek employment elsewhere if a smaller settlement were made.

The County's Brief did not claim that the County did not have the ability to pay, or that it could not raise taxes to pay the increases. It made no mention of the award's financial impact on the county, its property taxpayers as a whole, any income sector of its property taxpayers, or its residents. Furthermore, the County's Brief made no mention of the following requirements, also listed by the Superior Court as incorporated in N.J.S.A. 34:13A-16g(6), which are necessary factors for an Arbitrator to address, "to the extent that evidence is introduced":

the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in a proposed budget.

The Union Brief stressed that the award would have "minimal financial impact upon the County, its residents, and taxpayers." (p. 7) The Union's financial expert, Mr. Petrucelli, "demonstrated that in the 2 years preceding the interest arbitration hearing (2009 and 2010) alone, the County amassed \$722,000 in reserves relative to Prosecutor's 'Salaries and Wages'

and "other expenses." Thus, in 2010, the County budgeted \$9,028,358 for their wages and salaries but paid out only \$8,789,942, leaving an increase in reserves of \$253,990. In 2009, the increase in reserves was \$468,127. (p. 9)

Thus, each of these two *annual increases* in reserves from the *Prosecutor's Office wage bill* (2008 and 2009) was sufficient to completely pay for any of the three annual increases prescribed in the Arbitration award: \$103,114 (2011); \$178,249 (2012); \$178,249 (2013).

Additionally, the Union noted that the County adopted a 0.0% increase in the spending cap for 2010 (\$169,768,849.29) although state law allowed a 2% increase (\$3.4 million). And, Mr. Petrucelli's report to the arbitration hearing "revealed that the County still underutilized its spending cap by 'forgoing \$9,596,751.29...of available spending in the 2010 budget.'" (UB, p. 10; Petrucelli Report, p. 23)

The Union reported similar figures for 2011, based on Mr. Petrucelli's report. In this case, however, the County did not utilize \$6,058,349.29 "of available spending in the 2011 budget." It also did not utilize "\$12,251,820...of available tax levy in the 2011 budget." UB, p. 11; Petrucelli Report, p. 13) The County did not challenge any of these figures in its Brief.

The Union's Brief reminded the Arbitrator that the County sold Buttonwood Hospital a few weeks before the original arbitration hearing, realizing \$15 million while eliminating "taxpayers' dollars [of] more than \$3.7 million in Buttonwood's \$24 million operating budget." (Exhibit E-1: UB, p. 12)

Finally, it is important to recognize that the Prosecutor's Office is a tiny part of the County Government, and the County budget is only 17% of the "total tax bill of Burlington County residents." (The County tax bill is for school taxes, municipalities, and county government). Thus, Mr. Petricello wrote: "the Prosecutor's Department and all related services

account for roughly 0.9% of the total tax bill or an estimated \$54.45 a year based on the average tax bill." (UB P. 11; Petrucelli Report, p. 13) And, "it costs the average Burlington County taxpayer just 15¢ a day for the vital services rendered by the members of the Prosecutor's Office!" (Id) Therefore, it would be unreasonable to conclude that a wage increase for this small bargaining unit, of practically any size, would have a noticeable financial impact on the County's finances, or those of any sector of its taxpayers, or of its residents. As for local programs, no evidence was presented about the award's impact.

III. The Nine Factors that Arbitrators Must Consider

The Superior Court, in its Decision to Remand to PERC, wrote:

Although he acknowledged that he had to address all nine factors, the arbitrator did not indicate which factors he deemed relevant nor did he explain why others were irrelevant as the statute requires. It is therefore unclear from the arbitrator's opinion which factors he relied on in making his decision.

In brief, the nine factors are, as per Arbitrator Frank A. Mason in PERC Docket IA-2011-0048. (The quotation below is from my original award):

1. "The interests and welfare of the public...[including] the limitations imposed upon the employer by P.L. 1976, c.68(C.40A:4-45.1 et seq.)."
2. "Comparison of the wages, hours and conditions of employment...with other employees performing the same or similar services and with other employees generally."
3. The overall compensation presently received including wages and benefits and all other economic benefits.
4. "Stipulations of the parties."
5. "The lawful authority of the Employer [including] the limitations imposed upon the employer by P.L. 1976, c. 68(C.40A:4-45.1 et seq.)"
6. The financial impact on the governing unit, its residents, and taxpayers, including "the limitations imposed upon the employer by P.L. 1976, c.68(C.40A:4-45.1 et seq.)." It should include, to the extent that evidence is

introduced, the impact on taxes, the change in percentage of the governing body's budget required to fund the employees' contract, the ability of the county or municipality to maintain existing programs and services, as well as the governing body's ability to expand these and to initiate new programs and services, etc. It also states: "Each party is now required by statute to submit evidence of this factor."

7. The cost of living.

8. "The continuity and stability of employment including seniority rights and such other factors not confined to the foregoing which are ordinarily or traditionally considered" in collective negotiations and collective bargaining.

9. Statutory restrictions imposed on the employer, including "limitations imposed upon the employer by section 10 of P.L. 2007, c. 62(C.40A:4-45.45)." (This refers to the 2% Property Tax Levy Cap Law that prevents counties and municipalities from raising property taxes more than 2% per year. The law provides five exceptions to the 2% Cap: (1) money raised for capital expenditures, (2) increases in pension contributions above 2%, (3) increases in health care costs above 2% (but no more than increases in the State Health Benefits Program), (4) extraordinary costs resulting from a declared emergency and (5) amounts approved by voters in special elections.)

Less relevant factors

1. *"The interests and welfare of the public... [including] the limitations imposed upon the employer by P.L. 1976, c. 68(C.40A:4-45.1 et seq.)."* This is a budget increase cap law that states, in part: "For local budget years beginning on or after July 1, 2004 municipalities and counties shall be prohibited from increasing their final appropriations by more than 2.5% or the cost-of-living adjustment, whichever is less, over the previous year, except within the provisions set forth hereunder..." This factor has little relevance since the arbitration award did not threaten the County's budget cap for any year within the contract. Additionally, neither Party introduced evidence showing that the award would have any significant impact on the budget – and, therefore, on the "interests and welfare of the public" that relate to the size of the budget.

3. *The overall compensation presently received including wages and benefits and all other economic benefits.* This has little relevant because neither Party raised overall

compensation questions, with the exception that the Employer, without adequate documentation, raised the issue of changing the health plan.

4. *"Stipulations of the parties."* This has little relevant inasmuch as the Parties made no significant stipulations that affected the award.

5. *"The lawful authority of the Employer [including] the limitations imposed upon the employer by P.L. 1976, c. 68(C.40A:4-45.1 et seq.)"* This is a budget increase cap law that states, in part: "For local budget years beginning on or after July 1, 2004 municipalities and counties shall be prohibited from increasing their final appropriations by more than 2.5% or the cost-of-living adjustment, whichever is less, over the previous year, except within the provisions set forth hereunder..." This factor has little relevance since the arbitration award did not threaten the County's budget cap for any year within the contract.

9. *Statutory restrictions imposed on the employer, including "limitations imposed upon the employer by section 10 of P.L. 2007, c. 62(C.40A:4-45.45)."* (This refers to the 2% Property Tax Levy Cap Law.) This factor has little relevance since the cost increases mandated by the arbitration award did not threaten the property tax levy cap.

More relevant factors

The four factors below were the more relevant factors in this arbitration. The Parties submitted documentation about each and made arguments about each, although to varying degrees. I gave due consideration and weight to each in my original award, and I expanded my analysis of numbers 2 and 6 in this Remand Award, in accord with the Superior Court's instructions, as shown above.

2. *"Comparison of the wages, hours and conditions of employment...with other employees performing the same or similar services and with other employees generally."*

6. *The financial impact on the governing unit, its residents, and taxpayers, including "the limitations imposed upon the employer by P.L. 1976, c.68 (C.40A:4-45.1 et seq.)." It should include, to the extent that evidence is introduced, the impact on taxes, the change in percentage of the governing body's budget required to fund the employees' contract, the ability of the county or municipality to maintain existing programs and services, as well as the governing body's ability to expand these and to initiate new programs and services, etc. It also states: "Each party is now required by statute to submit evidence of this factor."*

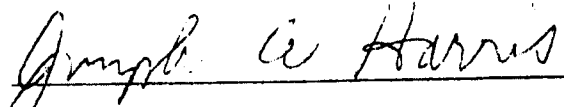
7. *The cost of living.*

8. *"The continuity and stability of employment including seniority rights and such other factors not confined to the foregoing which are ordinarily or traditionally considered" in collective negotiations and collective bargaining.*

AWARD

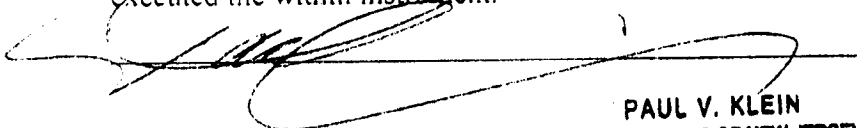
I reaffirm my arbitration award of April 21, 2012.

September 7, 2013


Joseph A. Harris, Ph.D., Arbitrator

STATE OF NEW JERSEY) ss.:
COUNTY OF BERGEN)

On this 7 day of September, 2013, before me, the subscriber, personally appeared Joseph A. Harris who, I am satisfied, is the person named in and who executed the within instrument.



PAUL V. KLEIN
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires 4/7/2016