

**STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION**

**In the Matter of the Interest Arbitration Between:**

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**NORTH HUDSON REGIONAL  
FIRE & RESCUE**

**Employer**

**Supplemental Award**

**NORTH HUDSON FIREFIGHTERS  
ASSOCIATION**

**Employee Organization**

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**Docket No. IA-2010-099**

**Before**

**Timothy A. Hundley  
Interest Arbitrator**

**For the Employer:**

Ramon E. Rivera, Esq.  
Scarinci & Hollenbeck, LLC  
Mr. Rivera and Christina Michelson, Esq.  
On the Briefs

**For the Association:**

Bruce D. Leder, Esq.  
Cohen, Leder, Montalbano & Grossman, LLC

The August 20, 2012 interest arbitration award in this matter was appealed to the Public Employment Relations Commission (“Commission). On October 1, 2012, the Commission remanded the award to the arbitrator to provide clarification and/or his findings with regard to the following issues:

- 1) the source of the base salary figure that he relied on, and, if necessary, recalculation of the step movement and salary increase for each year of the contract;
- 2) the evidence relied on in making the retiree health benefit change and the effective date for that change;
- 3) the Fire Officers Association agreement as a comparable with regard to the Regional’s proposals on terminal leave; and
- 4) consideration of *N.J.S.A. 11A:6-3(e)* in conjunction with the Regional’s proposal that vacation leave be excluded from terminal leave.

*North Hudson Regional*, P.E.R.C. No. 2013-25 (10/01/12)

Base Salary Figure

The Commission found that there was conflicting evidence in the record regarding base salary figures (*North Hudson, slip op. at 11*). As noted, it therefore asked for clarification on the source of the base salary figure used. The Commission further stated that, in the absence of reliable evidence with regard to the base salary calculation, the arbitrator should require the Regional to provide him with a scattergram.

The original record developed by the parties did not include information as to the unit's base salary during the year preceding the commencement of the new contract. The \$14 million base salary figure cited in the award was an estimate that the Regional had also used to calculate the cost of its proposed across-the-board salary increases. After the Commission's remand decision, I requested that the Regional provide a scattergram for the unit as of June 30, 2009 so that I could better calculate the cost of the award in conformance with *Cumberland County Prosecutor* and the Commission's remand decision.<sup>1</sup>

On October 19, 2012, the Regional submitted a scattergram showing that base salary costs for this unit as of June 30, 2009 were \$14,620,338.40. Accordingly, I have used this figure to re-calculate the dollar amount increases called for under the Regional's offer; the Association's offer; and the award.

The following chart supersedes that on page 50 of the August 20, 2012 award.

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<sup>1</sup>Neither Exhibit R-18 nor Exhibit J-6 contained a June 30, 2009 scattergram or provided salary information as of that date. Exhibit R-18 stated that the total unit salary as of July 1, 2009 was \$16,655,669. At the arbitration hearing, the Association argued that this figure should not be used for costing out the award because it represented the amount budgeted, not paid, and included step increases and longevity. Exhibit J-6 included total actual salary costs for calendar years 2009 through 2011 (as opposed to contract years 2009-2010 and 2010-2011), but did not state base salary costs as of June 30, 2009. In addition, Exhibit J-6 reflected the reduction in unit size as a result of retirements. I thus concluded that it did not provide an appropriate benchmark for costing out the award. See *Borough of New Milford* P.E.R.C. No. 2012-53 (stating that reductions in costs resulting from retirements, or increases in costs related to training, should not affect the costing out of an award).

	<b>Regional</b>	<b>Association</b>	<b>Award</b>
July 1, 2009-June 30, 2010	0	\$584,814	\$146,203
July 1, 2010-June 30, 2011	\$292,407	\$456,155	\$295,330
July 1, 2011-June 30, 2012	\$447,382	\$469,839	\$263,582
July 1, 2012-June 30, 2013	\$153,601	\$483,934	\$191,568
<b>Total:</b>	<b>\$893,390</b>	<b>\$1,994,742</b>	<b>\$896,683</b> <b>(\$974,268</b> <b>including \$77,585</b> <b>flow through)</b>

For each contract year, the figures for the Regional and the Association assume that the total base salary for the preceding year was enhanced by an amount equal to the percentage increase (payout) that it has proposed; the same method was used to calculate the cost of the award. During the term of the contract the payout required under the award is \$3,293 more than under the Regional's offer. In addition, the first-year cost is higher and there is a flow-through of \$77,585 into the next contract term. Overall, the across-the-board increases attributable to the

award are \$80,878 more than under the Regional's proposal and \$1,020,474 less than sought by the Association.<sup>2</sup>

Also on October 19, 2012, the Regional advised that the increment and related salary costs were \$92,269.83 for year three of the award and \$150,618.08 for year four. The original award had attributed \$157,505 in increment and related costs for 2011-2012 and an additional \$157,505 for 2012-2013. These figures were in addition to the increment and related salary costs already paid out in 2009-2010 (\$128,059) and in 2010-2011 (\$186,951). Accordingly, increment and related costs are \$72,122 less than originally assumed.

I have carefully reviewed and considered these figures and they do not change my decision to give substantial weight to the financial impact criterion and to award across-the-board rate increases of 2% for 2009-2010; 2.0% for 2010-2011; 1.5% for 2011-2012 and 1.0% for 2012-2013. For the reasons outlined in my award, I conclude that the Regional has sufficient budgetary flexibility to accommodate these increases. Also for the reasons set forth in the August 20, 2012 award, I find that higher across-the-board rate increases are not warranted in view of the overall economic climate and the financial constraints facing the Regional. This latter conclusion is not changed by the new information concerning increment and related costs for the last two years of the award. Those

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<sup>2</sup> These figures are very close to those arrived at using the \$14 million base salary figure, where I had concluded that the across-the-board increases attributable to the award were \$77,448 more than under the Regional's proposal and \$977,173 less than sought by the Association.

obligations are still substantial and do not materially change my analysis of the Regional's overall budgetary picture.

### **Retiree Health Coverage**

I awarded the Regional's proposal that unit members who retire shall receive the same health benefits as active employees, albeit I made this change effective June 30, 2013 rather than a date closer to the issuance of the award or July 1, 2011 (as originally proposed by the Regional). The Commission directed that I clarify the rationale for awarding this provision and explain the reason the June 30, 2013 effective date was chosen.

In urging adoption of its health benefits proposals, including that pertaining to retirees, the entire thrust of the Regional's argument was that its proposals would allow the Regional to save money on health benefit premiums. The Association did not question this premise and the Regional's insurance broker testified that the employer's proposal for a plan modeled on the SHBP would cost less than that currently in effect. *Award, p. 104; P.E.R.C. No. 2013-25, slip op. at 13.*

Retiree health coverage is one facet of employee health benefits, which in turn is one element of this unit's total compensation package. My overall objective in arriving at an award was to recognize and give weight to the Regional's budgetary constraints — and the unfavorable economic climate— while at the

same time retaining a reasonably competitive salary and benefit structure for unit members. The retiree health benefit portion of the award flowed from my balancing of these interests.

Thus, I concluded that award of the Regional's health benefits proposal for active employees was not warranted in light of the award as a whole, which included lower salary increases than would likely have been awarded in better economic circumstances. Nevertheless, in an effort to afford the Regional the opportunity for future health benefits cost savings (in addition to those attributable to statutory changes), I determined that, in the event health benefits changes were negotiated for active employees, those same changes should be extended to unit members who retired after June 29, 2013. The award stated:

To the extent that new negotiated health care provisions reduce costs to the employer, this provision will decrease employer costs for retirees as well. *Further, in an evolving health care environment, it will also eliminate potential difficulties in securing coverage that tracks requirements that were negotiated many years in the past.*

[Award, p. 106, emphasis added]

The primary rationale for the retiree health coverage change is stated in the first sentence: the potential for health benefits cost savings. The second sentence was based on the insurance broker's testimony that he received only one bid for the health coverage that is now included in the contract. However, the language was not essential to my decision on this proposal.

Finally, I chose to make the retiree health coverage change effective June 30, 2013, in order to provide ample notice to unit members who are now eligible for retirement (or who will soon be eligible). The delayed effective date allows time for these firefighters to plan for retirement if they decide that maintenance of existing health benefits is a high priority for them. Unit members retiring on June 30, 2013 or later will be subject to any health benefits changes that pertain to active employees, although of course any such changes must be negotiated or awarded by an interest arbitrator.

### **Terminal Leave**

The August 20, 2012 award denied the Regional's proposal to freeze existing accumulated terminal leave benefits over \$15,000 at the value fixed and calculated as of January 1, 2012. My analysis of this proposal discussed the terminal leave benefit in several comparable jurisdictions highlighted by the Regional. However, the Commission directed me to address the Regional's assertion that the Fire Officers Association has accepted a terminal leave provision that was identical to the one proposed for this unit.

The Regional's post-hearing brief reiterated the terms of its final offer. A footnote appended to the terminal leave section of its proposal stated that, in February 2012, the Regional and the Fire Officers had reached a tentative agreement on the payment of terminal leave benefits, "which was based on the



same terms as set forth above” (*Award*, p. 7, n.3). However, I was unable to locate a copy of the settlement in the record.<sup>3</sup> Nevertheless, I have re-examined the Regional’s terminal leave proposal under the assumption that such an agreement has been achieved. This circumstance does not alter my original analysis and conclusion.

A settlement with the firefighters’ own supervisors constitutes strong internal comparability evidence. However, terminal leave is but one component of a unit’s compensation structure and, as such, any proposal to adjust the benefit should be evaluated in light of a unit’s overall salary and benefit package. Viewed through this lens, two factors militate against freezing accumulated terminal leave benefits for this unit, even if the fire officers have agreed to such a change.

First, I declined to award this unit the 4% across-the-board salary increase that the fire officers received for 2009-2010. My reasoning was that the fire officers’ agreement was negotiated in a significantly different legislative and budgetary environment than that which currently pertains (*Award*, p. 88).

The Commission has not asked me to re-examine that portion of the award and I decline to follow a fire officer settlement that freezes terminal benefits over \$15,000, while departing from an agreement with the same group that, for 2009-2010, includes an across-the-board rate increase that is 2% higher than that which I

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<sup>3</sup> The terminal leave article in the July 1, 2004 through June 30, 2010 fire officers agreement is virtually identical to that in the firefighters July 1, 2004 through June 30, 2009 contract (Association Binder 1). Both agreements state that all unused accumulated sick and vacation days shall be placed in a terminal leave bank.

awarded. Such a decision would diminish firefighter compensation vis-à-vis that of the fire officers, a result that is not warranted by the compensation levels of the two units. Fire officers already enjoy much higher salary levels than firefighters. The July 1, 2009 top step salary for a Fire Officer 1 (the lowest superior officer rank) was \$113,759, compared to a July 1, 2009 top-step firefighter salary of \$81,012 under the award.

Finally, the Commission directed me to address the relevance of N.J.S.A. 11A 6-3(e) in relation to the Regional's proposal that "vacation leave be excluded from terminal leave."<sup>4</sup> The statute states:

Vacation not taken in a given year because of business demands shall accumulate and be granted during the next succeeding year only; except that vacation leave not taken in a given year because of duties directly related to a state of emergency declared by the Governor may accumulate at the discretion of the appointing authority until, pursuant to a plan established by the employee's appointing authority and approved by the [civil service] commission, the leave is used or the employee is compensated for that leave, which shall not be subject to collective negotiation or collective bargaining.<sup>5</sup>

Civil service statutes and regulations are incorporated in a negotiated agreement and Article 26 must be read in a manner that conforms to *N.J.S.A.* 11A 6-3(e). As noted in conjunction with the discussion of vacation leave, this

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<sup>4</sup> This was the phraseology used in the Award. The Regional's actual proposal was to amend Article 26, Section A to state in pertinent part that "payment for vacation time shall be consistent with two (2) year cap as per Civil Service Rules" (*Award*, p. 7). The Regional did not propose to amend Article 14.J which states that the prohibition against banking vacation time for more than one year "shall not prevent the banking of vacation time for the purposes of placing such time in the terminal leave bank."

<sup>5</sup> The statute pertains to civil service jurisdictions. The Regional is such an entity (2010 Annual Financial Statement, p. 30).

statute prohibits employees from banking vacation time, for future vacation use, for more than one year. The implication of the Regional's proposal is that *N.J.S.A.* 11A:6-3(e) also limits any terminal leave payments for vacation time to two years.

The Regional has offered one plausible interpretation of the statute and if it is in fact the controlling one, Article 26 does not need to be amended to embody it. Article 26 speaks to all unused "accumulated" vacation time being placed in the terminal leave bank. If vacation leave cannot be accumulated, for purposes of a terminal leave bank, for more than two years, then Article 26 must be read in light of that understanding.

However, *N.J.S.A.* 11A:6-3(e) does not expressly state whether vacation time not taken during the year earned or the succeeding year must be forfeited; whether the employee may be compensated for the leave; or whether it may be placed in a terminal leave bank and paid out, as here, at a maximum rate of \$120 per day. Nor does the statute state that the employer must in all cases allow for the scheduling of accumulated vacation leave to prevent its loss.

Since the parties have not provided me with any decisions that address these issues, and because the record is unclear on whether firefighters have difficulty scheduling accumulated vacation leave, I decline to grant the Regional's proposal to cap terminal leave payments for vacation at two years. If *N.J.S.A.* 11A:6-3(e)

does allow for the possibility of terminal leave payments for vacation beyond two years, I decline to remove that benefit in view of the unit's overall compensation package and the salary increases included in the award.

### **CONCLUSION**

The foregoing supplemental award is intended to address the issues identified in the Commission's October 1, 2012 decision. The terms of the award remain as originally stated, and are set forth below.

### **AWARD**

**1. Term of Agreement**

July 1, 2009 through June 30, 2013.

**2. Salaries**

2.0% across-the-board increase effective January 1, 2010.

2.0% across-the-board increase effective January 1, 2011.

1.5% across-the-board increase effective January 1, 2012.

1.0% across-the-board increase effective January 1, 2013.

Each increase applies to all steps of the existing salary guide and is retroactive to its effective date.

**3. Article 31, Health Insurance**

Effective June 30, 2013, all current Firefighters (including dependents) who retire shall receive the same level of health benefits as active employees and those benefits in retirement are subject to change as the benefits of active employees change.

**4. Article 14, Vacation**

Effective January 1, 2013, delete the first two sentences of Article 14, Section D and replace with the following:

Effective January 1, 2013, the number of firefighters permitted off on all holidays is seven (7). On all summer days seven (7) firefighters can be off and on all other days 5 firefighters can be off.

- 5. All proposals of the Regional and the Association not awarded herein are denied and dismissed. All provisions of the existing collective negotiations agreement shall be carried forward except for those provisions modified by the terms of this Award.

Dated: November 5, 2012  
Princeton, N.J.

Timothy A. Hundley  
Timothy A. Hundley  
Arbitrator

State of New Jersey }  
County of Mercer }ss:

On this 5<sup>th</sup> day of November 2012, before me personally came and appeared Timothy A. Hundley to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same.

Virginia G. Hundley  
Virginia G. Hundley  
Notary Public of New Jersey  
My Commission Expires 6/22/2015