



LABOR RELATIONS

Interest Arbitration After the 2% Hard Cap

By Joseph M. Hannon, Esq.,
Genova Burns LLC, NJLM Labor Counsel

Many public employers are in the process of negotiating collective negotiations agreements that expired on December 31, 2018. For collective negotiations agreements that expired on or before December 31, 2017, the interest arbitration law limited arbitrators to a 2% hard cap on awards. It is expected that 2019 will see a rise in interest arbitration petitions being filed due to the expiration of the 2% hard cap. This article will review important points regarding the interest arbitration law to provide awareness to the factors and timeframes that exist should you choose to file for interest arbitration, or an interest arbitration is filed by a police of fire union within your municipality.

First and foremost, the sunset of the 2% hard cap does not change any other issues concerning interest arbitration. The timeframes and the statutory standards all remain the same.

The timeframes are especially important when making the determination to file for interest arbitration and to ensure that you are properly prepared should one be filed against your municipality. The filing of an interest arbitration petition may occur after three negotiation sessions or after the expiration of the collective negotiations agreement. If a party filed the petition, the responding party has five days upon receipt to respond. It is vital that, when you either file or respond to the petition for interest arbitration, all issues you wish to submit to interest arbitration are listed in the petition, otherwise they are waived.

The next step in the process is the random appointment of an arbitrator by the Public Employment Relations Commission. Once that appointment is made, a decision shall be rendered within 90 days of the appointment. There is an initial mediation session with the interest arbitrator, but then mutually agreeable hearing dates will be scheduled shortly thereafter. The parties also need time to provide a written summation of the evidence presented at the hearing and the arbitrator is required to write a decision. Once an arbitrator appointment

is made, the 90 days will move very quickly. Preparation prior to the filing of a petition is essential to ensure that you are providing the arbitrator with the necessary information to advocate for the issues in your final offer.

Uncertain rulings

The statutory framework on the factors in interest arbitration remains unchanged. Interest arbitration under the 2% hard cap provided a different focus on these factors due to the inability of the arbitrator to exceed 2% on the aggregate for salary increases. For example, if the comparability evidence showed that a municipality was providing a below-average salary with comparable municipalities, the arbitrator could not ignore the 2% hard cap to seek to remedy that issue while balancing that issue for an employer need. Now, such discrepancies are not limited by the 2% cap. It is uncertain exactly how an arbitrator will rule on any issue in the future, but detailed evidence on each factor must be presented in support of your proposal. Employers will no longer be able to rely on the fact that the proposal will exceed 2%.

The nine statutory factors listed in *N.J.S.A. 34:13A-16g* must all be presented at the hearing. A few helpful hints regarding these factors should help in the preparation for interest arbitration. Further, your analysis on these issues may also assist in determining whether your municipality should file for interest arbitration.

Four of the nine factors concern economics and financial impact. Especially important in these factors is the ability of the municipality to comply with the tax levy cap and the appropriations cap. These items should be carefully analyzed regarding the municipality's ability to stay within these caps.

Of course, the caps are not the only important economic item. The public interest is of utmost importance. Any effective interest arbitration must provide the arbitrator with an understanding of what each proposal will do to the taxpayer. Additionally, a thorough analysis of the revenues and expenditures must be done to provide the arbitrator with an understanding of the municipality's budget, and the effects the award could have in what the municipality must do to continue to provide the services it needs and wants to provide.

As previously stated, comparability will again become a very significant part of the interest arbitration process. Any successful interest arbitration

Comparability can take several forms. The regulations provide parameters to consider as to the appropriate forms of comparison, i.e., geography,

ranks on various issues such as salary, leave, and benefits will help shape your presentation. As a practical matter, knowledge on these issues should also initially aid in your negotiations proposal.

Police and fire salaries and benefits comprise a tremendous amount of a municipality's budget. The ultimate resolution on police and fire negotiations, whether it is through voluntary resolution or an interest arbitrator's award, will have a significant impact. Thorough analysis of the statutory interest arbitration factors is necessary in the whole process. There are other factors and timeframes to be cognizant of and consultation of your professional staff must occur to ensure that all issues are being addressed.

The above provides some of the more vital issues and timeframes that you will need to know and analyze to give your municipality the most informed and successful negotiations and interest arbitration presentation possible. *✍*

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presentation must provide a persuasive presentation regarding comparability with other similar jurisdictions.

socio-economic, population, etc. A complete understanding of comparable municipalities and where your municipality

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