

NEW JERSEY ASSOCIATION OF COUNTIES

County Government with a Unified Voice!

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STATE HOUSE NEWS *June 20, 2014*

INTEREST ARBITRATION

Yesterday afternoon both houses passed **ASSEMBLY, NO. 3424** (*Prieto D-Hudson/Greenwald D-Camden*) as a fair and equitable compromise that revises certain laws governing police and fire interest arbitration, incorporates compounding in base salary calculations, and extends the 2% cap on binding interest arbitration awards through December 31, 2017. NJAC has been advocating to extend the 2% cap as a critical tool that will allow county governments throughout the State to continue delivering essential services in a cost effective manner. Importantly, NJAC's Board of Directors has the utmost respect and admiration for the police, firefighters, corrections officers, and sheriffs' officers that put their lives on the line every day to protect the communities in which they serve; and, commends Governor Chris Christie, Senate President Steve Sweeney, and Speaker of the General Assembly Vincent Prieto for their leadership and commitment to working together on this important and timely issue.

In summary, the bill extends the 2% cap until December 31, 2017 and makes the cap retroactive to April 2, 2014. The bill also makes changes to the calculation of the cap. Under current law, an arbitrator may not render an award, which on an annual basis increases base salary items by more than 2% of the aggregate amount expended by the public employer on base salary items for the members of the affected employee organization in the year immediately preceding the expiration of the agreement. Under the bill, after the first year of the agreement, the award could not exceed 2% of the base salary items as annually compounded at the end of each agreement year. The bill also extends the time in which arbitrators must render decisions from 45 day to 90 days; increases the time to file appeals from seven to 14 days; requires the Public Employee Relations Commission (PERC) to render appeal decisions in 60 days; and increases the maximum amount of compensation arbitrators may receive from \$7,500.00 to the Governor Christie has invited NJAC and county officials from across the State to join him, Senate President Steve Sweeney, and Speaker of the General Assembly Vincent Prieto at a public bill signing at Noon on June 24th.

PRE-ADJUDICATED INMATES

On June 11th, NJAC hosted a conference call with county officials from across the State to discuss the Department's proposed solutions for extending the 24-hour hospital stay exception to pre-adjudicated inmates housed in county jails. NJAC presented the Director of Medicaid Services with the following questions with the answers in italics.

1. When does the Department plan on implementing its proposed short-term solution to use its longstanding presumptive eligibility (PE) process? *The Department plans to implement the PE process and train all jail liaisons and hospital PE workers as soon as the Notice of Claim with Hudson County on this matter is resolved.*
2. Does the Department plan on including all twenty-one counties in its proposed short-term solution to use the PE process? *The Department plans to implement its proposed short-term solution to use the PE process for all twenty-one counties, but not until the Notice of Claim with Hudson County is resolved.*
3. Would the Department consider implementing its proposed short-term solution retroactive to January 1, 2014? *The Department is open to implementing its proposed short-term solution retroactive to January 1, 2014, but hasn't developed a process to make the solution retroactive as of this writing.*
4. Does the Department plan on developing a mechanism to suspend Medicaid eligibility as a long-term solution or is the permanent long-term solution to use a monthly incarceration file from the AOC and edits to Medicaid's claims processing system? *The Department believes that once implemented, the CASS system should have the capacity to suspend Medicaid eligibility, but may still use a monthly incarceration file from the AOC and edits to Medicaid's claims processing system.*

Although additional information will likely be limited until the Notice of Claim with Hudson County is resolved, this is positive news for county governments and we'll make sure to provide you with additional guidance as it becomes available. As you may recall, as an interim solution, "the Division of Medical Assistance and Health Services (DMAHS) is proposing to use the above noted PE process to allow a hospital to take a simplified application on an inmate, send it to the State for processing, and allow the hospital to get paid for the inmate's hospital stay that is over 24 hours. Training materials are being prepared and DMAHS is ready to launch training for county wardens or their designees and the PE hospital providers."

MADE IN AMERICA

On June 12th, the Senate passed **SENATE, NO. 1811** (*Sweeney D-Gloucester*)(*O'Toole R-Bergen*) and the Assembly Labor Committee favorably reported **ASSEMBLY, NO. 3059** (*Egan D-Middlesex*)(*Rible R-Monmouth*) in identical forms and of which would require the use of goods made in the United States for all public contracts. Although NJAC certainly supports the intent of this legislation to promote the use of American made products, we proposed three recommendations to address our general concerns that this legislation would impact county procurement operations and increase the cost of doing business with local governments.

In summary, NJAC and the New Jersey State League of Municipalities (NJSLOM) recommended expanding the waiver provision for purchasing products manufactured in the United States to include a presumption of unreasonableness defined as a cost of 20% above the fair market value for such products. The sponsors accepted this language as it will make the legislation's applicability to county governments consistent with the requirements imposed on State agencies and public institutions of higher education as included in other relevant sections of the bill. We also recommended deleting language that would have required counties to work with other affected contracting units to ensure the domestic supply of American made products under certain circumstances. The sponsors accepted this recommendation as well as this requirement would have imposed a process and procedure that is beyond the scope of county governments. We finally recommended changing the notice and public comment period on proposed waivers from 30 to seven days to avoid delays in awarding contracts and to minimize potential administrative costs, but two out of three isn't so bad.

HOT ASPHALT PURCHASES

As promised by Assemblyman John Wisniewski (*D-Middlesex*), on May 16th the General Assembly amended **ASSEMBLY, NO. 2229** to require that any bid specification issued by a local contracting unit for the provision of goods or performance of services under the "Local Public Contracts Law" that includes the purchase or use of 1,000 or more tons of hot mix asphalt must include a pay item for an asphalt price adjustment reflecting changes in the cost of asphalt cement. The measure as introduced would have lowered the applicability threshold to 100 tons; and, NJAC recommended to maintain the current threshold at 1000 tons as county projects typically require between 750 to 5,000 tons of asphalt. A Senate companion version of this bill does not exist at this time.

PRIVATIZATION CONTRACTS

On June 16th, both houses passed along partisan lines **SENATE, NO. 770/ASSEMBLY NO. 2873** (*Weinberg D-Bergen*)(*Vainieri-Huttle D-Bergen*), which would establish procedures and standards concerning public services privatization contracts.

NJAC is primarily concerned with the fact that this legislation would effectively prohibit the use of privatization contracts by requiring counties to pay new employees' wages and benefits at a rate not less than the wages and benefits paid to displaced employees. As noted below, counties enter into privatization contracts to recognize substantial cost savings in salary, wage, and health benefit costs that comprise up to 60% of overall operating budgets. NJAC is also concerned that this legislation would create an overly burdensome and unnecessary level of bureaucracy by requiring the Office of the State Ombudsman to review and approve privatization contracts. Moreover, elected county officials should retain the autonomy to enter into privatization contracts that they believe are in the best interest of their local constituents.

As a means to deliver often mandated services in a more cost effective and creative manner, and without impacting the level of service provided, several counties have chosen to privatize various services and functions that may include: dietary and laundry services at county jails and juvenile detention facilities; maintenance services at county administrative, judicial, and prosecutorial facilities; home health services, risk management services, and much more. Importantly note that several counties have considered privatizing welfare services and transportation services for the aged and disabled, but ultimately decided against it after conducting comprehensive feasibility studies. As was the case with identical legislation last session, NJAC is optimistic that Governor Christie will veto the measure and we have asked him in a letter to do so accordingly.

BERGEN COUNTY CASE

Prepared by NJAC's Labor Counsel Joe Hannon with Genova, Burns, Giantomasi & Webster

In a decision which changes the landscape of negotiations involving Sheriff's departments, in [Bergen County PBA Local 134 v. Donovan](#), Docket No. A-1810-12T1 (App. Div. May 30, 2014), the Appellate Division determined that a County Sheriff has the exclusive statutory authority to negotiate economic benefits such as salary payments and other increases with Sheriff's Department employees.

In this case, the Bergen County Executive requested to participate in negotiations to represent interests relative to the economic terms and conditions of

employment for bargaining unit members. However, the Union refused to allow the County Executive to intervene in negotiations with the Sheriff because N.J.S.A. 40A:9-117 suggested that the Sheriff is the sole employer for Corrections Officers and Sheriff's Officers. The Law Division issued a decision directing the County Executive to implement a memorandum of agreement reached between the Union and the Sheriff. The judge found that under N.J.S.A. 40A:9-117, the Sheriff had the sole "power to fix the compensation in accordance with the prescriptions of the statute for its officers" without the intervention of the County Executive.

On appeal, the Appellate Division found that it had jurisdiction to decide the matter and examined the statutory provisions at issue. N.J.S.A. 40:41A-36 vests the County Executive with power to sign all contracts requiring the consent of the county and negotiate contracts on behalf of the county subject to board approval. Additionally, N.J.S.A. 40:41A-38 gives the Board of Chosen Freeholders the ability, by resolution, to approve contracts presented by the County Executive. In reviewing the legislative history of N.J.S.A. 40A:9-117, the court noted that the statute used to state that the Sheriff would recommend compensation for Sheriff's Officers which had to be approved by the Board of Chosen Freeholders, and was later amended to require approval by the governing body. However, the statute was again amended in 1984 to its current form, which states that the "sheriff shall fix the compensation they shall receive in accordance with the generally accepted county salary ranges and within the confines of the sheriff's budget allocation set by the governing body" See also N.J.S.A. 40A:9-117.10 (same).

Applying principles of statutory construction, the court found the language of N.J.S.A. 40A:9-117 was clear that the Sheriff fixed the compensation subject only to budgetary and salary range requirements. It therefore held that the Sheriff, and not the County Executive, was the exclusive employer and hiring authority for Sheriff's Office employees and can solely negotiate the agreement for such employees. It then found that even if the statutory history were considered, the same result would be reached based on the progression of amendments with respect to the approval needed in order to fix the compensation of Sheriff's Officers. In fact, the court noted that the Statements accompanying the Senate Bill stated that the bill would transfer the power to fix compensation of such employees from the county governing body to the Sheriff, who would have to fix compensation in accordance with the county budget. In reaching its conclusion, the court rejected the conclusion of the Law Division in Prunetti v. Mercer Cnty. Bd. of Chosen Freeholders, which focused on N.J.S.A. 40:41A-36(i) at the expense of addressing the conflicting effect of N.J.S.A. 40A:9-117 in finding that the Sheriff and the County Executive were deemed joint employers.

Providing additional support for its position, the Court found that the Legislature should be presumed to have been aware that the County Executive had the right to negotiate contracts for the county under N.J.S.A. 40:41A-36(i), but nevertheless passed N.J.S.A. 40A:9-117 without an intention to create a conflict between them. Moreover, it invoked the maxim that specific laws should prevail over inconsistent general laws. Finally, the Court rejected the notion that a County Executive must present all county contracts to the Board of Freeholders for approval under N.J.S.A. 40:41:-38(n). Instead, it held that the statute only provides that when the County Executive presents a contract to the Freeholders, the Board can approve it by resolution instead of by ordinance.

Therefore, based on the court's decision, the Sheriff has the exclusive statutory authority to negotiate economic benefits such as salary payments and other increases with Sheriff's Department employees, subject only to budget and salary range requirements. Thus, the County Executive could not insist on participating directly in negotiations. Although this case dealt with a County under the Optional County Charter Law, the findings by the court on the specific nature of N.J.S.A. 40A:9-117 makes it likely that this decision would affect all counties.

MARK YOUR CALENDARS FOR THESE UPCOMING EVENTS

- NJAC Board of Directors Meeting - *June 27th*
- PERS Retirement Planning Workshop - *July 10th*
- NJAC Night at the Ballpark - *July 24th*

The Retirement Planning Workshop and Night at the Ballpark are free for county officials, but space is limited so please visit our website at www.njac.org or contact our office at (609) 394-3467 for additional details.

STATE HOUSE TRIVIA

Did you know that New Jersey has more horses per square mile than any other state and that it has more race horses than Kentucky?

"Remember these two things: play hard and have fun." Tony Gwynn

