



## NEW JERSEY LAW REVISION COMMISSION

### Draft Tentative Report Relating to the Definition of Base Salary in N.J.S. 40A:10-21(b)

May 12, 2014

The New Jersey Law Revision Commission is required to “[c]onduct a continuous examination of the general and permanent statutory law of this State and the judicial decisions construing it” and to propose to the Legislature revisions to the statutes to “remedy defects, reconcile conflicting provisions, clarify confusing language and eliminate redundant provisions.” *N.J.S.* 1:12A-8.

This Report is distributed to advise interested persons of the Commission's tentative recommendations and to notify them of the opportunity to submit comments. Comments should be received by the Commission no later than **June 30, 2014**.

The Commission will consider these comments before making its final recommendations to the Legislature. The Commission often substantially revises tentative recommendations as a result of the comments it receives. If you approve of the Report, please inform the Commission so that your approval can be considered along with other comments. Please send comments concerning this Report or direct any related inquiries, to:

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## Executive Summary

- “Base salary” is not defined in N.J.S. 40A:10-21, which pertains to Employees Group Insurance Plans.
- N.J.S. 40A:10-21 requires, however, that “employees of an employer shall pay 1.5 percent of base salary [for] health care benefits coverage provided pursuant to N.J.S. 40A:10-17.
- In *Paterson Police PBA Local 1 v. City of Paterson*, 433 N.J. Super. 416 (App. Div. 2013), the Court determined that “the arbitration award must be enforced in a manner consistent with the definition of ‘base salary’ contained in N.J.S. 34:13A–16.7(a)”, which included base pay plus additional items of compensation.

## Background

This project resulted from the decision of the Appellate Division of the Superior Court in *New Jersey in Paterson Police PBA Local 1 v. City of Paterson*.<sup>1</sup> After collective negotiation agreements (“CNAs”) between the City of Paterson, (“the City”) and Paterson Police PBA Local 1 and the Paterson Police PBA Local Superior Officers Association (collectively, “the Union”) expired, the parties engaged in compulsory interest arbitration as required by statute. With no agreement between the Union and the City, their CNAs were sent to the New Jersey Public Employment Relations Commission (PERC) for arbitration.<sup>2</sup> The arbitrator issued an Interest Arbitration Decision and Award, which established the terms of their new CNA, pursuant to N.J.S. 40A:10-21(b). The award determined that the police officers would make contributions toward health insurance coverage in the amount of 1.5% of their base salary.<sup>3</sup> The award also set a new salary schedule and modified the longevity schedule, but continued the provisions of prior agreements regarding educational incentives, and night shift and detective differentials in pay.<sup>4</sup>

The appeal arose out of the parties’ dispute over the definition of “base salary” in the statute.<sup>5</sup> The City interpreted base salary as an officer’s *base pensionable salary* and made deductions accordingly. The Union opposed this action, arguing “base salary” meant *base contractual salary*<sup>6</sup> and excluded additional items of compensation such as the longevity incentives, educational incentives, and night shift and detective pay differentials. N.J.S. 40A:10-21(b) states, in relevant part:

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<sup>1</sup> *Paterson Police PBA Local 1 v. City of Paterson*, 433 N.J. Super. 416 (App. Div. 2013).

<sup>2</sup> *Id.* at 422.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 423.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 424.

upon the expiration of any applicable binding collective negotiations agreement in force. . .employees of an employer shall pay 1.5 percent of base salary [for] health care benefits coverage provided pursuant to N.J.S. 40A:10-17. . .This subsection shall apply to any agency, board, commission, authority, or instrumentality of a local unit.<sup>7</sup>

In light of its interpretation of “base salary”, the City began withholding 1.5% of each police officer’s “pensionable salary,” retroactive to the effective date of the statute. The City calculated pensionable salary as base salary wages plus additional items of compensation, identified above.<sup>8</sup> The Union filed a complaint pursuant to N.J.S. 34:13A–16(a) challenging the City’s calculation of base salary.<sup>9</sup> The City filed a counterclaim, arguing that it had rightfully withheld 1.5% of each employee’s “pensionable salary”. The trial judge agreed with the Union and entered judgment in their favor,<sup>10</sup> and the City appealed.

“Base salary” is not defined in N.J.S. 40A:10-21, which pertains to Employees Group Insurance Plans (specifically, “Payment of premiums; deduction of employee contributions”) and was amended in 2010. “Adding to the resulting ambiguity is the fact that the employee's contribution is made ‘through the withholding of the contribution from the *pay, salary or other compensation.*’ ”<sup>11</sup> “No administrative regulations defining the term ‘base salary’ were promulgated under the amended statute.”<sup>12</sup> “Moreover, it is susceptible to multiple interpretations”<sup>13</sup> and the Appellate Division turned to extrinsic evidence, including legislative history and statutory context, in order to “glean” the intent of the Legislature.<sup>14</sup>

The Court considered that Black’s Law Dictionary defines salary as “an agreed compensation for services . . . usually paid at regular intervals on a yearly basis,”<sup>15</sup> and that Webster’s Dictionary defines “base pay” as “an amount or a rate of compensation for a specified job or activity, excluding any other payments or allowances.”<sup>16</sup> The Court also considered that the New Jersey Department of Community Affairs, Division of Local Government Services (DLGS) issued informal guidelines months before the arbitrator’s award and that while those guidelines “were informal in nature and not the

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<sup>7</sup> N.J.S. 40A:10-21(b) (2013).

<sup>8</sup> *Paterson Police PBA Local 1*, at 423.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> N.J.S. 40A:10–21(b) (emphasis added).

<sup>12</sup> *Paterson Police PBA Local 1*, at 421.

<sup>13</sup> *Id.* at 426.

<sup>14</sup> *Id.* at 426-427.

<sup>15</sup> *Paterson Police PBA Local 1*, at 426; Black’s Law Dictionary (9th ed. 2009).

<sup>16</sup> *Paterson Police PBA Local 1*, at 426.

equivalent of an administrative agency's interpretation of a statute it is empowered to enforce, which would warrant our 'substantial deference'. . . [they] . . . merit our consideration because they represent the practical interpretation of the statute by the agency charged with instructing local governmental units on how they were to comply with the new law."<sup>17</sup>

Ultimately, the Appellate Division determined that "the arbitration award must be enforced in a manner consistent with the definition of 'base salary' contained in N.J.S. 34:13A-16.7(a)", which included the base pay plus additional items of compensation.<sup>18</sup> The statute referenced by the Court, the Police and Fire Public Interest Arbitration Reform Act<sup>19</sup>, defines "base salary" as:

the salary provided pursuant to a salary guide or table and any amount provided pursuant to a salary increment, including . . . longevity or length of service. It also shall include any other item agreed to by the parties, or any other item that was included in the base salary as understood by the parties in the prior contract. Base salary shall not include non-salary economic issues, pension and health and medical insurance costs. 'Non-salary economic issues' means any economic issue that is not included in the definition of base salary.<sup>20</sup>

As currently written, the statute is subject to more than one interpretation and the Appellate Division noted the ambiguity. See the Appendix on the following page for the proposed change to the statute consistent with the determination of the Court in *Paterson Police PBA Local 1 v. City of Paterson*.

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<sup>17</sup> *Id.* at 429.

<sup>18</sup> *Id.* at 430.

<sup>19</sup> N.J.S. 34:13A-14-19 (2013).

<sup>20</sup> N.J.S. 34:13A-16.7 (2013).

## Appendix - Proposed Change to Statute

The text of N.J.S.40A:10-21, including the proposed modification to subsection b. (shown with underlining), is as follows:

a. Any employer entering into a contract pursuant to this subarticle is hereby authorized to pay part or all of the premiums or charges for the contracts and may appropriate out of its general funds any money necessary to pay premiums or charges or portions thereof. The contribution required of any employee toward the cost of coverage may be deducted from the pay, salary or other compensation of the employee upon an authorization in writing made to the appropriate disbursing officer.

The employer may reimburse an active employee for his premium charges under Part B of the Federal Medicare Program covering the employee alone.

Nothing herein shall be construed as compelling an employer to pay any portion of the premiums or charges attributable to the contracts.

b. Commencing on the effective date of P.L.2010, c. 2 and upon the expiration of any applicable binding collective negotiations agreement in force on that effective date, employees of an employer shall pay 1.5 percent of base salary, as “base salary” is defined in N.J.S. 34:13A-16.7, through the withholding of the contribution from the pay, salary or other compensation, for health care benefits coverage provided pursuant to N.J.S.40A:10-17 notwithstanding any other amount that may be required additionally pursuant to subsection a. of this section for such coverage. This subsection shall apply also when the health care benefits coverage is provided through an insurance fund or joint insurance fund or in any other manner. This subsection shall apply to any agency, board, commission, authority, or instrumentality of a local unit.