

P.E.R.C. NO. 2011-85

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

THE BOROUGH OF SPOTSWOOD,

Respondent,

-and-

Docket No. IA-2011-048

POLICE BENEVOLENT ASSOCIATION,  
LOCAL 225,

Appellant.

SYNOPSIS

The Public Employment Relations Commission affirms an interest arbitration award. The Police Benevolent Association, Local 225 appealed the award asserting that the arbitrator did not adequately apply the statutory factors; failed to separately determine whether the total net economic change for each year of the agreement was reasonable; the award is not based upon substantial credible evidence in the record; and the award violates N.J.S.A. 2A:24-9(d). The Commission holds that the arbitrator adequately applied the statutory factors and determined the total net annual economic change and was supported by substantial credible evidence in the record.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Respondent, Apruzzese, McDermott, Mastro & Murphy (Arthur R. Thibault, Jr. Esq., of counsel)

For the Appellant, Loccke, Correia, Limsky & Bukosky (Leon B. Savetsky, of counsel)

DECISION

The Police Benevolent Association, Local 225 appeals from an interest arbitration award involving a negotiations unit of police officers. See N.J.S.A. 34:13A-16f(5) (a). The arbitrator issued a conventional arbitration award. N.J.S.A. 34:13A-16d(2). A conventional award is crafted by an arbitrator after considering the parties' final offers in light of nine statutory factors. We affirm the arbitrator's award.

The PBA proposed a four-year contract from January 1, 2011 through December 31, 2014. It proposed a 3.5% across-the-board

wage increase effective on January 1 of each calendar year.<sup>1/</sup> It also proposed the following: increase the cap on terminal leave from \$12,000 to \$15,000; increase maximum compensatory time bank from sixty to eighty hours; increase extra duty rate for outside contractors to \$60 per hour and add a provision for a minimum of four hours for such contracted duty; and deletion of the current requirement for 72 hours of notice for vacation leave and replace it with the following provision: "employees may use accumulated compensatory time at any time at the Employee's sole option subject to prior Departmental approval. Prior Departmental approval, or requests made with less than three (3) day's notice shall all be subject to Departmental Discretion and not subject to grievance."

The Borough proposed a contract term of three years. It proposed the following wage increases: 0% for 2011, 1% for 2012 and 1.55% for 2013. It also proposed the addition of two new steps in the current salary range. The Borough also proposed to modify the provisions of the grievance procedure at paragraph J so that any grievance not presented for arbitration within 10

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<sup>1/</sup> On January 1, 2011, P.L. 2010, c. 105 became effective. This law imposes a 2% cap on base salary. This award was not subject to the base salary cap because the contract expired on December 31, 2010. However, because the petition for interest arbitration was filed after the effective date of the law, the interest arbitration proceedings and the appeal process are subject to the law's accelerated processing requirements.

days of response at Step 4 shall be deemed abandoned and a bar to arbitration. It also proposed to freeze longevity at the 2011 rate and convert it to a flat dollar amount for employees currently receiving longevity. Employees not receiving longevity in 2011 and new hires would not be eligible for longevity. With regard to overtime, it proposed that overtime for being called in to work for a holiday shall be at two times the member's regular rate of pay and also proposed a clarification that overtime will be paid to a member to attend a disciplinary hearing when requested/ordered to do so by the Borough, but not by the PBA. It also proposed to reduce holidays to eight by eliminating Martin Luther King's Birthday; Washington's Birthday; Good Friday; election day and the Day after Thanksgiving, and any snow day declared by the Borough will not result in a day off for the officers. The Borough requested sick leave for new hires to be reduced to ten days and to clarify that personal days must be used in the year earned or they will be forfeited. Regarding vacations, the Borough wanted vacation days for new hires to be as follows:

- 1-6 years: 10 vacation days;
- 7-15 years, 15 vacation days; and
- 16 years or more, 20 vacation days.

The Borough also wanted to cap the selling back of vacation days to five per year once an employee has used at least ten vacation

days. For health insurance, the Borough proposed that effective 1/1/11, all employees must contribute the greater of 2% of their salary or 10% of the actual costs of the health care plan they select. On 1/1/12 the 10% rises to 20% and on 1/1/13 the 20% rises to 30%, unless the 2% of pay is greater. All employees must select NJDIRECT 15 plan or pay the difference if a more costly plan is selected. For employees hired after 1/1/11 no medical benefits will be provided for spouses of retirees. The Borough also proposed the elimination of the education incentive, compensatory time off for an employee's birthday, and parts of the PBA Expenses provision.

On May 23, 2011, the arbitrator issued a 12-page Decision and Award. The arbitrator initially noted that "the imposition of a 2% budget enlargement is effective in this matter but the 2% limit on the increase of police compensation was deemed not applicable in the case by PERC." After summarizing the parties' proposals and respective arguments on those proposals, the arbitrator compared the proposals and awarded a three-year agreement from January 1, 2011 through December 31, 2013. He awarded the following wage increases: 0% for 2011, 2% beginning on July 1, 2012, and 2% for 2013. The arbitrator granted the Borough's proposal regarding the freezing of longevity payments at current rates and conversion to flat dollars for employees receiving longevity. He also awarded the elimination of

longevity for employees not presently receiving longevity pay. He granted the Borough's proposal that any snow day declared by the Borough will not result in a day off for the officers. He rejected the Borough's proposal to reduce sick leave for new hires to 10 days. He determined that personal days granted must be used on the year in which they are earned except if extended by the Chief of Police, whose determination shall not become grievable. Regarding overtime, he found that overtime will not be paid for officers called in to attend a disciplinary hearing by the PBA without prior approval by the Chief. He granted the Borough's proposal on terminal leave. He granted the Borough's proposal regarding the modification of vacation allowances. Regarding health insurance, he awarded that as of July 31, 2011, the Borough shall provide the NJDIRECT 15 plan for health insurance with an employee contribution of 2% of base salary.<sup>2/</sup> Should an employee select another plan which has higher premium costs the difference in cost shall be paid by the employee making such choice. The arbitrator removed the education incentive and the provision concerning PBA expenses, and he eliminated compensatory time off for a birthday. He also raised the payment for extra duty for outside contractors from \$50 to \$55 with a minimum assignment of two hours for such duty.

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<sup>2/</sup> The arbitrator issued a corrected award clarifying that the 2% employee contribution is of base salary and not of the health insurance premium.

The PBA appeals and asserts that the arbitrator failed to adequately apply the statutory factors set forth in N.J.S.A. 34:13A-16g. The PBA also argues that the arbitrator failed to separately determine whether the total net annual economic change for each year of the agreement was reasonable. It further contends that the award is not based on substantial credible evidence in the record and violates N.J.S.A. 2A:24-8(d).

The Borough responds that the arbitrator adequately discussed the statutory criteria and why his award was reasonable thereunder and the award is supported by substantial credible evidence in the record.<sup>3/</sup>

N.J.S.A. 34:13A-16g requires that an arbitrator shall state in the award which of the factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor. The statutory factors are as follows:

- (1) The interests and welfare of the public  
. . . ;

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<sup>3/</sup> The Borough also asserts that the PBA's appeal should be rejected as untimely. FAQs on P.L. 2010, c. 105 are posted on PERC's website. FAQ #12 notes a change from prior practice in that a party appealing an interest arbitration award must now file its brief along with its Notice of Appeal. The PBA's Notice of Appeal was filed on May 31, 2011 without its brief. Since we have not yet engaged in formal rulemaking in response to P.L. 2010, c. 105, we permitted the PBA to file its brief by June 2. N.J.A.C. 19:10-3.1a.

- (2) Comparison of the wages, salaries, hours, and conditions of employment of the employees with the wages, hours and conditions of employment of other employees performing the same or similar services and with other employees generally:
  - (a) in private employment in general . . . ;
  - (b) in public employment in general . . . ;
  - (c) in public employment in the same or comparable jurisdictions;
- (3) the overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received;
- (4) Stipulations of the parties;
- (5) The lawful authority of the employer . . . ;
- (6) The financial impact on the governing unit, its residents and taxpayers . . . ;
- (7) The cost of living;
- (8) The continuity and stability of employment including seniority rights . . . ; and
- (9) Statutory restrictions imposed on the employer. . . .

[N.J.S.A. 34:13A-16g]

The standard for reviewing interest arbitration awards



is well established. We will not vacate an award unless the appellant demonstrates that: (1) the arbitrator failed to give "due weight" to the subsection 16g factors judged relevant to the resolution of the specific dispute; (2) the arbitrator violated the standards in N.J.S.A. 2A:24-8 and -9; or (3) the award is not supported by substantial credible evidence in the record as a whole. Teaneck Tp. v. Teaneck FMBA, Local No. 42, 353 N.J. Super. 298, 299 (App. Div. 2002), *aff'd o.b.* 177 N.J. 560 (2003), citing Cherry Hill Tp., P.E.R.C. No. 97-119, 23 NJPER 287 (¶28131 1997). Because the Legislature entrusted arbitrators with weighing the evidence, we will not disturb an arbitrator's exercise of discretion unless an appellant demonstrates that the arbitrator did not adhere to these standards. Teaneck, 353 N.J. Super. at 308-309; Cherry Hill.

Arriving at an economic award is not a precise mathematical process. Given that the statute sets forth general criteria rather than a formula, the treatment of the parties' proposals involves judgment and discretion and an arbitrator will rarely be able to demonstrate that an award is the only "correct" one. See Borough of Lodi, P.E.R.C. No. 99-28, 24 NJPER 466 (¶29214 1998). Some of the evidence may be conflicting and an arbitrator's award is not necessarily flawed because some pieces of evidence, standing alone, might point to a different result. Lodi. Therefore, within the parameters of our review standard, we will

defer to the arbitrator's judgment, discretion and labor relations expertise. City of Newark. However, an arbitrator must provide a reasoned explanation for an award and state what statutory factors he or she considered most important, explain why they were given significant weight, and explain how other evidence or factors were weighed and considered in arriving at the final award. N.J.S.A. 34:13A-16g; N.J.A.C. 19:16-5.9; Lodi.

The PBA contends that the arbitrator made his salary increase determinations, as well as the other economic determinations, without any reasonable analysis of the evidence. However, the award sets forth that the arbitrator comprehensively analyzed the statutory factors and primarily placed emphasis on the interests and welfare of the public and comparability to public employment in the same jurisdiction. N.J.S.A. 34:13A-16g (1) and (2)(c). With regard to the interests and welfare of the public, the arbitrator found, in pertinent part, as follows:

The reasons for the fiscal conservatism of the employer are deep seated concerns for the needs of its residents and of the fiscal health of the Borough. While the PBA may legitimately challenge the efficacy of those convictions its expression of such challenges does not confirm that they are inaccurate or improper. The long range view of the Borough's leadership is that the future is increasingly dim from a financial view point. It has estimated imbalance in its 2012 budget forecast of more than \$600,000. Much of the increases are beyond its control and if realized or extended will have the effect of the need to raise property taxes more drastically than the 7% applied in 2010.

The Borough has viewed this as a major problem for its citizens many of whom are seniors whose lifestyle and ability to absorb tax hikes is limited by dependence on income supported by Social Security. It is also concerned that higher taxes may not survive challenges to tax levies by citizens and has experienced resistance from the business sector already. There are also concerns as to the possible impact of the reduction of credit rating should the Borough not maintain acceptable levels of fiscal stability and reserves.

[Award at 8].

With regard to comparability to public employees in the same jurisdiction, the arbitrator placed substantial weight on the Borough's negotiated agreement with Local 888, which represents blue and white collar Borough employees. Local 888 agreed to the demand for Borough's announced program of zero wage increases for 2011. Local 888 also made concessions of four holidays and five to seven personal days. In response to the PBA's argument that there are only four steps to maximum pay in the salary guide for the Local 888 contract while there are seven in the PBA contract, the arbitrator compared the salary ranges and incremental movement of the contracts. He noted that the "range increases in the police unit at the lowest level are greater than the total lifetime change provided for non-police personnel." He found that "it serves no justifiable end to treat all who have sacrificed in their negotiations of give backs and very modest contractual terms or those in the non-represented

group of employees who also endured a year of no increases to the obvious disparity of treatment requested by the PBA.” (Award at 8). The arbitrator went on to note:

While there is expected resistance from the PBA it must be noted that there was a great deal of financial analysis by competent, well-trained personnel who provided the basic information upon which the decision to institute rigid fiscal controls was arrived. That all managerial, professional personnel and members of Local 888 were convinced of the need for this posture including a no increase in pay for a year and some substantial modifications of terms and conditions of employment speaks convincingly as to the universally perceived need for such action. Part of the underlying concerns of the Borough are a reflection of the taxpayers resistance to paying more for services but more importantly is the loss of revenue attributed to the reduction of the value of taxable real estate properties as well as the loss of tax income from what was the largest manufacturer in the Borough and the threat of further claims for tax relief including one from the now highest tax payer which has indicated its assessment will likely be appealed, jeopardizing the \$300,000 tax income from that source. Coupled with this is the fact that there are very few available areas for development of new taxable properties and a recent record of that source dwindling even as improvements to some properties have provided a modicum of relief.

[Award at 7].

The arbitrator found the factor of comparability to other employers inconsequential given the Borough's unique financial

circumstances. However, the arbitrator did note that the wage distinctions between Borough officers and officers in comparable jurisdictions "are not huge and there is no exact replication of the conditions or demands placed on officers in various locations." (Award at 7). He went on to find "that the fiscal conditions and actions of its management in Spotswood require more consideration than matching the pay increases in other communities. . . ."

The PBA argues that there was absolutely no showing of any adverse financial impact on the Borough, its residents and taxpayers. N.J.S.A. 34:13A-16g (6). However, the arbitrator found this statutory factor to be an important consideration. He noted that a large portion of the Borough's budget is directly tied to police function and that the levy cap is expected to be exceeded by \$623,000 for 2012 with factoring in the Borough's proposals only. He noted that the total appropriations requirement for the Borough for 2012 is higher than 2011 because of anticipated increases in salary and wages of \$154,000, much of which involves commitments as to negotiated increases, as well as a \$77,000 increase in pensions and an increase of \$218,000 related to anticipated costs of health care insurance. (Award at 10). With regard to the Borough's surplus, the arbitrator noted as follows:

The Borough provided details demonstrating the steep reduction of its surplus accounts

in recent years where year end surplus of \$1,677,714 in 2008 fell to \$1,538,175 in 2009 and again fell in 2010 to \$1,341,431. Further, the 2011 figure is reduced to \$1,058,931 and the expectation for the 2012 year is a further reduction to \$913,937. These figures represented a dangerous trend and limited actual resource from an accounting perspective which could have substantial negative impact on the fiscal stability of the Borough and which very well would result in higher borrowing costs as well.

[Award at 6].

The arbitrator also considered the overall compensation received by the officers. N.J.S.A. 34:16A-16g (3). Regarding this statutory factor he found as follows:

I feel it to be of interest to note that an officer in Spotswood, in the middle of those who are at maximum salary structure, is receiving a salary and benefits package exceeding \$140,000 without overtime and as much as \$178,000 with overtime; and there are ten of the officers at the rank of patrolman who are of the maximum salary step, nine of whom earned, inclusive of overtime and benefits, total compensation in excess of \$165,000 in 2010. The one who earned less has total income costs of \$143,986.52.

[Award at 9].

The PBA also contends that the arbitrator completely failed to consider the effect of the officer's 1.5% health insurance contribution as a part of the monetary package. However, the arbitrator specifically noted that if he automatically increased base salary to cover the required 1.5% payment for health

insurance contributions it would be contrary to the legislative intent of the law imposing the contribution. (Award at 7).

Although the PBA asserts that the arbitrator failed to consider the lawful authority of the employer, the arbitrator engaged in a discussion of this factor with respect to the constraints imposed by the Local Government Cap Law. The arbitrator also considered the statutory factors of cost-of-living and continuity of employment, and provided analysis as to why he placed minimal emphasis on these factors. (Award at 9 - 10).

Finally, the PBA asserts that, as required by N.J.S.A. 34:13A-16d (2), the arbitrator failed to "separately" determine whether the total net annual economic changes for each year of the agreement are reasonable under the nine statutory factors. However, in the recently enacted revisions to the interest arbitration law set forth by P.L. 2010, c. 105, the requirement to "separately" make such a determination was deleted. The award discusses the economic aspects of the award and the proposals put forth by the PBA and the Borough. The arbitrator's comprehensive analysis on the statutory factors, particularly with respect to the interests and welfare of the public and internal comparability, provides clear evidence as to why he found the economic changes set forth by the award to be reasonable.

For the reasons discussed above, we reject the PBA's assertions that the award was not based on substantial, credible evidence in the record and should be vacated pursuant to N.J.S.A. 2A:24-8(d). The award is affirmed.

ORDER

The arbitrator's award is affirmed.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Eskilson, Krengel and Voos voted in favor of this decision. None opposed. Commissioner Colligan recused himself. Commissioner Wall was not present.

ISSUED: June 30, 2011

Trenton, New Jersey