

P.E.R.C. NO. 2008-7

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF RINGWOOD,

Appellant,

-and-

Docket No. IA-2005-082

RINGWOOD PBA LOCAL 247,

Respondent.

SYNOPSIS

_____The Public Employment Relations Commission affirms an interest arbitration award issued to settle successor contract negotiations between the Borough of Ringwood and Ringwood PBA Local 247. The arbitrator issued a conventional award that awarded salary increases, significant health insurance cost containment measures, and health benefits for retirees. The Borough argues that the arbitrator did not adequately consider the cost impact of a preexisting retiree prescription benefit; improperly considered the savings associated with the elimination of a retiree medical stipend; and failed to render a final and definite award concerning the retiree prescription benefit. The Commission finds that the arbitrator calculated the cost of the retiree insurance benefit over 15 years, subtracted the savings the Borough will achieve by not paying the \$2000 stipend and then balanced those costs with the cost containment achieved by changes to the health plan he awarded for active employees and a salary increase rate at the lower end of the range. The Commission also finds that the retiree prescription benefit was not a disputed issue before the arbitrator and the arbitrator was not required to consider its proposed elimination as part of the parties' unratified memorandum of agreement. Nor was the arbitrator required to separately address the cost of that benefit as part of his award. The Commission holds that the Borough has not presented a basis for disturbing the arbitrator's judgment, discretion and labor relations expertise.

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 Appellant, Laufer, Knapp, Torzeqski, Dalena & Sposaro, L.L.C., attorneys (Fredric M. Knapp, of counsel; Fredric M. Knapp and Lauren M. Walter, on the brief)

For the Respondent, Loccke, Correia, Schlager, Limsky & Bukosky, attorneys (Leon B. Savetsky, of counsel and on the brief)

DECISION

_____ On January 17, 2007, the Borough of Ringwood appealed from an interest arbitration award involving a unit of approximately 20 police officers represented by Ringwood PBA Local 247. See N.J.S.A. 34:13A-16f(5) (a). The arbitrator issued a conventional award, as he was required to do absent the parties' agreement to use another terminal procedure. N.J.S.A. 34:13A-16d(2). He awarded salary increases, significant health insurance cost containment measures, and health benefits for retirees. The Borough argues that the arbitrator did not adequately consider the cost impact of a preexisting retiree prescription benefit;

improperly considered the savings associated with the elimination of a retiree medical stipend; and failed to render a final and definite award concerning the retiree prescription benefit. After considering its arguments and the PBA's responses, we affirm the award.

The parties' final offers in arbitration were as follows:

The PBA proposed a four-year contract from January 1, 2005 through December 31, 2008 with 5% salary increases in each of the four years. It also proposed that 13 paid holidays be added and that retirees be provided with lifetime medical insurance paid by the Borough. The medical plan would be the plan provided to employees on the retiree's last day of service.

The Borough proposed a three-year contract from January 1, 2005 through December 31, 2007 with 3.0% salary increases in each of the three years. It also proposed that employees in the Aetna Health Plan or those joining that plan in the 2006 open period receive an additional one-half percent increase effective January 1, 2006; and that employees joining the Traditional Plan pay the difference between the Select 20 and Traditional Plans.

The Borough opposed the PBA's holiday and retiree health benefit proposals. It did not propose eliminating the retiree prescription benefit. The PBA opposed the Borough's health benefit proposal for active employees.

The arbitrator awarded a four-year contract with 3.8% salary increases in each year. He rejected the PBA's holiday proposal, but awarded retiree health benefits for those who retire after January 1, 2007, without cost to retirees choosing the Aetna Plan. He also required active employees who choose a plan other than the Aetna Plan to make premium contributions. Finally, the arbitrator ordered that any prior agreements intended to be implemented independent of the issues in interest arbitration be incorporated in the new contract and that the prior contract remain in effect except as modified by the award.

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. 289, 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 package is not a precise mathematical process. Given that the statute sets forth general criteria rather than a formula, crafting a package of economic benefits necessarily involves judgment and discretion and an arbitrator will rarely be able to demonstrate that an award is the only "correct" one. Borough of Lodi, P.E.R.C. No. 99-28, 24 NJPER 466 (¶29214 1998); Borough of Allendale, P.E.R.C. No. 98-123, 24 NJPER 216 (¶29103 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, P.E.R.C. No. 99-97, 25 NJPER 242 (¶30103 1999). 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-16(g); N.J.A.C. 19:16-5.9; Lodi. Once an arbitrator has provided a reasoned explanation for an award, an objection will not be entertained unless an

appellant offers a particularized challenge to the arbitrator's analysis and conclusions. Cherry Hill; Lodi; Newark.

We begin with an overview of the arbitrator's award. In crafting that award, the arbitrator explained how he balanced the long-term cost of retiree health benefits with substantial immediate cost containment provisions and salary increases at the lower end of the range. He also noted that the cost of retiree health benefits was not all new because the Borough had previously given retirees a stipend of about \$2000. The arbitrator stated:

Although there are other factors under the statutory criteria that suggest somewhat higher salary increases, those factors have been balanced to . . . keep the costs within the bounds of fiscal responsibility for this jurisdiction and therefore, within the public interest.

* * *

Additionally, the Arbitrator has carefully considered the Borough's position as to increasing health insurance costs and the PBA's position as to the lack of competitive retiree insurance, in crafting changes to both the contractual health benefits for active employees and future retirees. These changes seek to address the retiree insurance shortfall, recognizing the significant long term cost implications, while providing the Employer with substantial immediate cost containment.

* * *

In all, the health benefit package is balanced and reasonable; it addressed the stated needs of both parties and is clearly

in the public interest in its design to offset future costs with current and future cost containment. [Award at 31-33]

The arbitrator stated that due to his awarded changes in health insurance for active employees, the long-term cost of the benefit for future retirees would be substantially below the cost of the benefit proposed by the PBA. The arbitrator recognized that the Borough had previously provided an annual stipend of about \$2000 toward the purchase of insurance and the prescription coverage for those retiring after 30 years service, but he noted that the five other jurisdictions in the regional (contiguous) comparison group provided retiree health insurance. In looking at the overall compensation received by police officers and comparing the retiree coverage with other jurisdictions, he concluded that the coverage offered retirees was not good or substantial by comparison and should be significantly expanded (Award at 42-44, 51). He also found that the Borough's costing mechanism with respect to retiree insurance was substantially flawed. The arbitrator calculated the cost of the benefit over 15 years, subtracted the savings the Borough will achieve by not paying the \$2000 stipend, and then balanced those costs with the cost containment achieved by changes to the health plan he awarded for active employees and a salary increase rate at the lower end of the range. The Borough has not disputed the arbitrator's economic analysis in part or in whole.

Although the Borough does not directly challenge the award of retiree health benefits, it does argue that the arbitrator did not adequately consider the cost of a non-contractual retiree prescription benefit for employees with over 30 years of service and improperly considered the savings associated with the elimination of a retiree stipend. In particular, the Borough argues that the arbitrator did not give due weight under N.J.S.A. 34:13A-16g(3) (overall compensation) and g(6) (financial impact) to the issue of retiree prescription coverage. The material facts concerning the prescription benefit follow.

In 1979, the Borough Council enacted a resolution approving retiree prescription benefits for employees with over 30 years' service. In April 2006, the Borough eliminated the benefit, but the PBA filed an unfair practice charge. The parties settled that dispute with an agreement that the benefit would be continued unless changed through negotiations. In reciting the parties' negotiations history in the instant case, the arbitrator noted that the parties had entered into a memorandum of agreement that was not ratified. That memorandum included retiree health benefits, but stated that the "[r]etiree prescription benefit for persons with 30 years is not included in the benefit package." While noting the memorandum, which was placed in evidence by both parties, the arbitrator did not accord it dispositive weight.

The Borough argues that the arbitrator did not discuss the economic impact of the retiree prescription benefits plan as it applied to his award on retiree medical insurance despite testimony and evidence of the plan and its cost.

The retiree prescription benefit was not a disputed issue before the arbitrator. It was a long-standing benefit that neither party sought to change through the interest arbitration process. The arbitrator was not required to consider its proposed elimination as part of the parties' unratified memorandum of agreement. Had that agreement been ratified, there would have been no need for an arbitration award. Nor was the arbitrator required to separately address the cost of that benefit as part of his award. In performing his analysis under the "comparability" factor found in N.J.S.A. 34:13A-16g(2), the arbitrator explained that his salary rate increases were lower than those found in the comparison group and reflected the balancing process warranted under several of the statutory factors and the balancing involved in structuring an economic package significantly expanding retiree insurance coverage (Award at 42-43). This specific reference to 16g(2) and general reference to several other statutory factors shows that the arbitrator carefully balanced the costs associated with expanding retiree insurance coverage beyond the preexisting stipend and prescription plan.

The Borough also argues that the award regarding the prescription benefit is unclear. Noting that the arbitrator ordered that any prior agreements between the parties intended to be implemented independent of the issues in dispute at interest arbitration shall be incorporated in the new contract, the Borough suggests that the arbitrator may have adopted the provision of the unratified memorandum of agreement eliminating the retiree prescription benefit. We disagree.

Although the record does not indicate what prior agreements the parties may have reached, it does make clear that they did not reach a final agreement on eliminating prescription benefits. While elimination of the benefit was an element of the failed memorandum of agreement, so was a 4% wage increase for 2006 and 2007. We also note that in settling an unfair practice charge, the parties agreed that the prescription benefit would continue unless changed through negotiations. There was no change through negotiations because the parties' memorandum of agreement eliminating the benefit was not ratified. The arbitrator described both the prescription benefit and a retiree medical stipend and explained that the stipend and the new cost-containment measures would offset the cost of the significantly expanded retiree insurance coverage. The prescription benefit was not in issue, was not disturbed, and was not treated as a

cost offset as it surely would have been had the arbitrator meant to eliminate it.

Finally, the Borough argues that the arbitrator erroneously gave weight to the retiree medical stipend that had been found to be not mandatorily negotiable in a prior scope decision. See Borough of Ringwood, P.E.R.C. No. 2006-96, 32 NJPER 232 (¶96 2006). The arbitrator stated that the existing retiree medical stipend would be replaced by the retiree health insurance coverage he was awarding. He also stated that the full premium cost of the retiree coverage would not be a new or added cost because retirees with more than 25 years of service currently receive a stipend of about \$2000 annually. The Borough argues that the arbitrator erred because the Borough was not required to continue providing the stipend and thus the arbitrator incorrectly issued an award on a matter not submitted to him.

We agree that the Borough was not required to continue the stipend into a new agreement. See P.E.R.C. No. 2006-96. But in calculating the new cost of the retiree health benefit, it was permissible for the arbitrator to consider that the Borough had been paying approximately \$2000 per year per retiree under the old contract and that the amount of the former stipend could effectively be deducted from the new cost of the retiree health insurance plan. The arbitrator did not issue an award concerning

that stipend. He just recognized that the Borough would be going into the new contract with a \$2000 savings per retiree.^{1/}

The Borough has not presented a basis for disturbing the arbitrator's judgment, discretion and labor relations expertise. Accordingly, we affirm the arbitrator's award.

ORDER

The arbitrator's award is affirmed.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Buchanan, DiNardo, Fuller and Watkins voted in favor of this decision. None opposed.

ISSUED: August 9, 2007

Trenton, New Jersey

^{1/} In its reply brief, the Borough asserts that continuing the prescription benefits program would force the Borough to pay for two prescription benefits plans for each retiree, because the retiree health benefits plan awarded by the arbitrator also contains a prescription plan. The PBA has since clarified its understanding that the retiree health benefit awarded by the arbitrator does not include prescription benefits. Duplicate benefits, therefore, does not appear to be an issue.