

P.E.R.C. NO. 2010-74

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF BERGENFIELD,

Respondent,

-and-

Docket No. IA-2009-011

BERGENFIELD PBA LOCAL NO. 309,

Appellant.

SYNOPSIS

The Public Employment Relations Commission affirms an interest arbitration award involving the Borough of Bergenfield and PBA Local 309. The PBA appealed the award arguing that the arbitrator failed to apply and give due weight to the statutory factors and that the arbitrator's award of salary increases below the employer's financial offer was not supported by substantial credible evidence and violated N.J.S.A. 2A:24-8. The Commission holds that the arbitrator's award is supported by substantial credible evidence.

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, Eric M. Bernstein & Associates,
L.L.C., attorneys (Deborah J. Bracaglia, of counsel)

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

DECISION

On November 30, 2009, Bergenfield PBA Local No. 309 appealed from an interest arbitration award involving a unit of approximately 45 police officers employed the Borough of Bergenfield. See N.J.S.A. 34:13A-16f(5)(a).^{1/} 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). A conventional award is crafted by an arbitrator after considering the parties' final offers in light of nine statutory factors. We affirm the award.

^{1/} We deny the PBA's request for oral argument. The matter has been fully briefed by the parties.

The arbitrator awarded a four-year contract, effective July 1, 2008 through June 30, 2012, with a wage increase of 2.5% each July 1 at each rank and step of the salary guide. The arbitrator further awarded that to be eligible for retroactive pay, an officer must be on the payroll as of November 13, 2009, the date of the award. The arbitrator further determined that the "Maternity/Paternity Leave" language proposed by the PBA would not be awarded, but that the Borough shall codify its statutory obligations in the contract. Finally, the arbitrator determined that all other proposals and offers not specifically granted are denied and that the provisions of the existing contract not otherwise modified shall be carried forward.

On appeal, the PBA argues that the award:

failed to apply and give due weight to the statutory factors;

violated N.J.S.A. 2A:24-8 in that it was procured by undue means; and

was not supported by substantial credible evidence in the record as a whole.

With respect to the issues of contract duration and salary, the PBA proposed a four-year contract with increases of 4.5% each July 1 of the agreement. The Borough proposed a three-year contract with increases of 3% on July 1, 2008, 3.4% on July 1, 2009 and 3.4% on July 1, 2010. The PBA argues that the arbitrator inexplicably arrived at a salary award substantially lower than the final salary offer of not only the PBA, but also

substantially lower than the final salary offer of the Borough itself. The PBA further argues that the arbitrator failed to perform any required analysis of the evidence and failed to explain how or why he arrived at his award.

The following is a summary of the arbitrator's findings.

The record reveals an exemplary police department whose personnel enjoy a solid economic package of wage and benefit entitlements. The Borough manages the community with conservative fiscal restraint while providing citizens with quality services. The 2009 Anticipated Budget Surplus for the Borough is \$1,715,050, an increase from 2008, in which the Borough anticipated and realized a budget surplus of \$1,486,000.

In accordance with its philosophy of fiscal conservatism, the Borough has restrained debt; the percentage of net debt to equalized evaluations for 2008 was 0.74%.

The Borough has demonstrated an ability to keep debt and taxes low, efficiently collect taxes and maintain property values. It has also demonstrated a commitment to allocating funds toward public safety as nearly half of the salaries in 2008 were for the police department.

In addition to base wages, the Borough pays its officers longevity and a \$950 yearly clothing allowance.

The PBA's last offer, on its face, would yield wage increases approaching 20%, compounded over the four-year term of

the agreement. Local 309 not only falls within the range of top wage police salaries in Bergen County, but pays top step police salaries that exceed all but one municipality. Salaries for sergeants, lieutenants and captains exceed the salaries in similarly-situated municipalities.

The arbitrator found that the PBA relied heavily on contract comparisons achieved in times of stronger municipal and State economies; and relied on contract comparisons where "comparables" carried significant weight in awards and settlements.

The Borough submitted a salary guide proposal that differentiated between those employees hired before or after December 31, 2008. It also proposed the addition of two steps for police officers hired after January 1, 2008.

The arbitrator found that, in an environment where economic constraint and budgetary hurdles loom, a greater emphasis must be placed on the cost implications of salary increases and consideration of fiscal limitations on the municipal budget.

The arbitrator found that the 2007 top step police officer salary compared very favorably to the salaries of the population of the Borough. Base pay for municipal police officers greatly exceeds the median household and median family income of the Borough's residents.

The arbitrator stated that he had no intention of eliminating any contract benefit or previously earned language.

He then proceeded to apply the statutory factors with an emphatic accent on the public's demand for services, the impact of the economic increase on the taxpayer, and the results of the award on the general welfare of the community.

The statutory factors are as follows:

- (1) The interests and welfare of the public . . . ;
- (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 leaved, 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 arbitrator must also separately determine whether the total net annual economic changes for each year of the agreement are reasonable under the foregoing factors. N.J.S.A. 34:13A-16d(2).

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, 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-16g; N.J.A.C. 19:16-5.9; Lodi.

We next review the arbitrator's application of the statutory factors.

The arbitrator found that the community demands an effective police force and that police department members provide many other voluntary and charitable community-oriented services. He

also found that any wage increase has a significant impact on the financial operation of the Borough.

With respect to the interests and welfare of the public, the arbitrator considered the PBA's proposal to be beyond the parameters of the Borough's budget and the economic limitations under the local Cap law. He viewed the Borough's proposal as an attempt to award present officers increases while at the same time implementing cost-savings, specifically a proposal to change the prescription drug plan.

With respect to comparability issues, the arbitrator found that the PBA enjoys a contract generally more economically rewarding than the vast majority of similarly-situated communities in Bergen County.

The arbitrator found overall compensation to be significant in scope and financial terms. He considered the officers' salary, longevity, holidays, vacation days, personal days, medical and hospitalization insurance, clothing allowance, overtime payments, minimum call-in time, and sick leave. The arbitrator also found that the officers' average annual wages exceed a large segment of the private sector economy.

There were no stipulations of the parties.

With respect to the lawful authority of the employer, the arbitrator concluded that the PBA's proposal would result in the Borough exceeding the Cap limit.

With respect to the cost of living, in light of the economic climate of the nation and the State, the arbitrator found that both proposals exceed the rise in the cost of living.

As a result, and placing particular emphasis on the interests and welfare of the public and the Cap limitations, the arbitrator determined that reasonable wage increases would be 2.5% across the board on July 1 of each contract year. He recognized that the wages increases are dramatically below the PBA's proposal and "perceptibly less" than the Borough proposal. However, he found a clear justification for his decision, when the interests and welfare of the public and the budgetary constraints facing the Borough are considered. He noted that the majority of police personnel now receive between \$104,149 and \$134,731 in annual base salary, with the added considerations of benefit entitlements and longevity payments. He further noted that considering the increases over the course of the agreement, to be paid retroactively to July 1, 2008, officers will be receiving substantial new money; and that these figures are not insignificant, whether taken alone or in comparison to the household incomes and family incomes in Bergenfield and to police departments in similarly-situated municipalities.

As for the cost of the award, he found that total wage increases over the four-year period will exceed \$489,000.

Despite the cost of the award, the arbitrator found that the wage increase will assist in maintaining continuity and stability of employment. The Borough had contended that its proposal would guarantee continuation and stability of employment and the arbitrator found that an award with less economic impact would further guarantee continuation of employment for all police officers.

The arbitrator stated that under his award, officers will be receiving two simultaneous and immediate increases exceeding 5% in their base wages (as a result of the July 1, 2008 and July 1, 2009 increases). Soon after, the officers will be receiving another 2.5% increase. When adding the intention of relief for the Borough's budget and respite to the taxpayer, the arbitrator concluded that his award was both justified and responsible. He granted the Borough's proposal to limit eligibility for retroactive pay to officers on the payroll at the time of the award, but denied the Borough's request for elimination of the senior officer differential.

He denied all other economic and non-economic proposals of the Borough, including the Borough's request to change the prescription plan and for health insurance premium contributions. The arbitrator stated that these matters have merit in the face of economic realities, but found that the Borough's post-hearing evidence supporting its positions was untimely.

Finally, the arbitrator rejected the PBA's proposal to add a "Personnel Files" clause and granted, in part, its "Maternity/Paternity Leave" proposal.

The PBA argues that the arbitrator failed to apply and give due weight to the statutory factors. We disagree.

With respect to the comparability factor, N.J.S.A. 34:13A-16g(2), the PBA argues that the arbitrator arbitrarily became fixated on the comparison between Bergenfield's top level patrol officer salary and the median household or family income in Bergenfield. We find that the arbitrator considered both the PBA and the Borough's suggested comparable police departments and also looked at the private sector. While more or less weight could have been given to a particular comparison group, there is no single comparison that is required under the Act. To be sustained, there must be substantial credible evidence in the record to support an arbitrator's conclusions. We have no doubt that the arbitrator's comparison's meet that test.

As for the overall compensation factor, the PBA asserts that the arbitrator focused almost exclusively on salary and wages and did not address the various indicia of overall compensation set for in 16g(3). However, the arbitrator did consider longevity, holidays, vacation days, personal days, medical and hospitalization insurance, clothing allowance, overtime payments, minimum call-in time, and sick leave.

The PBA objects to the arbitrator's mentioning that officers will immediately be receiving more than 5% in retroactive payments and another 3% eight months from the date of the award. However, we do not read that as a justification for the 2.5% annual increases, but as a recognition of the increases that officers will see in their paychecks right away.

The PBA argues that the arbitrator failed to provide any specific backup for several of his statements suggesting that wage increases for police officers have a significant impact on the Borough's finances. The Borough allotted nearly half the salaries of Borough employees in 2008 for police department salaries. It increased the amount appropriated for police department funding for 2009. There can be little dispute that wage increases for police officers have a significant impact on Borough finances. This is not to say that the Borough could not have paid somewhat higher increases without jeopardizing public safety. That, however, is not the question. The question on appeal is whether the arbitrator's award is supported by substantial credible evidence. The PBA has not shown that it was not.

With respect to 16g(5), the PBA asserts that the arbitrator did not provide a reasoned explanation for his conclusion that the PBA's proposal would result in the Borough's exceeding the Cap limit. The Borough responds that while this may not have

been the factor most emphasized by the arbitrator, the opinion and award clearly addresses it. We agree that the arbitrator did not cite the portions of the record that would support his conclusion that the PBA proposal would result in the Borough's exceeding the Cap limit. However, the arbitrator did not award the PBA's proposal and provided ample and substantial other justification for the economic terms of his award.

With respect to 16g(6), the PBA argues that the arbitrator's opinion contains no analysis of any evidence or any explanation for his salary award. It suggests that the award will adversely affect police officer morale. We repeat that there is substantial credible evidence in the record to support the arbitrator's salary award. We note that the Borough was also seeking changes in other economic benefits including two additional salary steps, longevity, holidays, health insurance, vacations, terminal leave, and sick leave. Those proposals were denied. Our point is that the net increase resulting from the Borough's overall proposal, if its other proposals were accepted, would have been lower than the Borough's proposed salary increases alone.

With respect to 16g(7), we agree with the PBA that the arbitrator appears to have given the cost of living little weight.

With respect to 16g(8), the PBA argues that the arbitrator did not explain why a salary award lower than the Borough's final offer would help guarantee continuation of employment. We believe that he did. He stated that if the Borough could be taken at its word that its proposal would guarantee the continuation and stability of employment, then a lesser award would further guarantee the continuation of employment for all police officers.

Finally, with respect to 16g(9), we repeat what we said about 16g(5). The spending and tax levy Caps did not appear to have played a major role in the arbitrator's decision making process.

The PBA argues that an award substantially lower than the Borough's last offer was not supported by substantial credible evidence and violated N.J.S.A. 2A:24-8. That statute provides that an arbitration award may be vacated:

- a. Where the award was procured by corruption, fraud or undue means;
- b. Where there was either evident partiality or corruption in the arbitrators, or any thereof;
- c. Where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause being shown therefor, or in refusing to hear evidence, pertinent and material to the controversy, or of any other misbehaviors prejudicial to the rights of any party;

- d. Where the arbitrators exceeded or so imperfectly executed their powers that a mutual, final and definite award upon the subject matter submitted was not made.

The PBA contends that under Hudson Cty. Prosecutor, P.E.R.C. No. 98-88, 24 NJPER 78 (¶29043 1997), the arbitrator should not have determined an issue outside the boundaries of the parties' positions on the issue. In Hudson Cty. Prosecutor, we stated that we were not deciding whether, if confronted only by competing proposals for across-the-board salary increases, an arbitrator would be prohibited from awarding increases lower (or higher) than proposed by either party. As in Hudson Cty Prosecutor, we need not decide that question because this is not a case where the only proposals involved salary increases.

Finally, the PBA argues that the arbitrator violated N.J.S.A. 2A:24-8 by conditioning eligibility to receive retroactive pay on the requirement that an officer be on the Borough's payroll as of the date of the award. It asserts that three police officers have retired since July 1, 2008 and that the arbitrator's failure to give a reasoned explanation for this aspect of his award also violated N.J.S.A. 34:13A-16g. In addition, it asserts that the arbitrator did not explain why he reduced the retirees' vested retirement benefits.

Nothing in N.J.S.A. 2A:24-8 or N.J.S.A. 34:13A-16g requires that salary increases be paid retroactively to retirees.

Although the impact on the three officers may be significant, the cost of retroactive compensation is part of the overall cost of the economic package. The arbitrator's decision to preclude retroactive compensation for employees no longer on the payroll does not affect vested retirement benefits and is not reversible error. The cases cited by the PBA involve changes in health benefits already being received by current retirees, not retroactive wage increases not yet received by current retirees. See Policy v. The Powell Pressed Steel Co., 770 F.2d 609 (6th Cir. 1985); International Union v. Yard-Man, Inc., 716 F.2d 1476 (6th Cir. 1983), cert. den. 465 U.S. 1007 (1984).

ORDER

The arbitrator's award is affirmed.

BY ORDER OF THE COMMISSION

Commissioners Eaton, Fuller and Watkins voted in favor of this decision. Commissioner Krengel voted against this decision. Commissioner Voos abstained. Commissioner Colligan recused himself.

ISSUED: April 29, 2010

Trenton, New Jersey