

P.E.R.C. NO. 2009-64

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF FORT LEE,

Appellant,

-and-

Docket No. IA-2007-087

PBA LOCAL NO. 245,

Respondent.

SYNOPSIS

The Public Employment Relations Commission remands an interest arbitration award to the arbitrator to address comparability to private and public sector employees in general, as well as the \$1 million the arbitrator projected in savings to the Borough from his award of a new salary schedule given the Borough's hiring freeze. The Commission stayed the implementation of the award until the arbitrator issues a supplemental decision addressing the projected savings from the new salary schedule and the comparability of public and private sector employees in general. The arbitrator must issue his supplemental decision 30 days from the date of the Commission decision. The Borough may file a supplemental brief within seven days of the arbitrator's decision and the PBA will have seven days to respond.

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, DeCotiis, Fitzpatrick, Cole &  
Wisler, LLP, attorneys (J. Sheldon Cohen, of counsel)

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

DECISION

On January 6, 2009, the Borough of Fort Lee appealed from an interest arbitration award involving a unit of approximately 109 police officers represented by PBA Local No. 245. 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). A conventional award is crafted by an arbitrator after considering the parties' final offers in light of nine statutory factors. We stay implementation of the award and remand it for the arbitrator to address comparability to private and public sector employees

in general, as well as the \$1 million in projected savings from the revised salary schedule given a hiring freeze.

Both parties proposed a four-year agreement to run from January 1, 2007 to December 31, 2010 and the arbitrator awarded it. Regarding disputed issues, the PBA proposed a 5% across-the-board salary increase on each rank, step and position in each calendar year; the inclusion of holiday pay in base salary; a medical opt-out provision of 50%; the establishment of a Section 125(b) Cafeteria Plan to allow for the voluntary allocation on a pre-tax basis of various covered costs; an increase in the current \$700 clothing allowance to \$800 in 2007, \$900 in 2008, \$1,000 in 2009 and \$1,100 in 2010; and a modification of Article XLII to provide that the Borough pay the PBA \$150 annually for the provision of legal defense insurance for unit members.

The Borough proposed a 3% annual increase on January 1 and an additional 1% increase on June 1 for 2007, 2008, 2009 and 2010; a change in health insurance carriers from the current Traditional and Direct Access plans to the civilian Traditional and Direct Access plans; an amendment of Article XLII to eliminate paragraphs 2 and 3 and add a Borough payment of \$150 per year per officer toward legal defense insurance; to update text to reflect current order numbers; and an amendment of

Article XXIII to provide the Borough with a copy of a lawful and applicable Demand and Return System.<sup>1/</sup>

The key aspect of the arbitrator's award was the granting of the PBA's proposal to fold holiday pay into base pay. The arbitrator stated that he was offsetting the cost of the holiday pay fold-in by awarding wage increases smaller than the Borough's proposal, accepting the Borough's health care proposal, and adding two steps to the salary guide to save the Borough \$1 million over the course of the careers of any new hires. As required by N.J.S.A. 34:13A-16d(2), the arbitrator costed out the increases and offsets for each year of the agreement given the evidence presented and found that the net economic changes for each year of the agreement were reasonable.

More specifically, the arbitrator awarded wage increases of 3% on January 1 and 1% on July 1 of 2007 and 2008 and 2.5% on January 1 and 1% on July 1 of 2009 and 2010. Also, as of January 1, 2009, he awarded the following: 1) holiday pay to be included

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<sup>1/</sup> The Borough asserts that the arbitrator unreasonably refused to accept into evidence four additional exhibits that it submitted with its April 2008 post-hearing brief. N.J.A.C. 19:16-5.7(k) expressly provides that "the parties shall not be permitted to introduce any new factual material in the post-hearing briefs, except upon special permission of the arbitrator." The arbitrator, relying on that regulation, noted that the Borough did not request special permission to introduce new factual material in its post-hearing brief. He also noted that the PBA did not have the opportunity to review such material before filing its post-hearing brief nor did it have an opportunity to offer argument in response to the new factual material submitted by the Borough.

in base salary as compensated time, paid with regular payroll and utilized for all computation purposes, resulting in increasing all steps and ranks by 5%<sup>2/</sup>; 2) the Borough's proposal to move unit members from the current PBA Traditional and Direct Access health care plans to the civilian Traditional and Direct Access plans; 3) new hires to be hired pursuant to a new salary schedule that would include two additional steps; 4) an opt out provision at 50% of the premium of health insurance costs; and 5) the Borough to make a \$150 annual contribution for each officer for the purchase of legal defense insurance.

The Borough appeals the following: 1) the roll in of holiday pay into base salary; 2) the additional two salary steps added to the salary schedule; and 3) the \$150 annual contribution for each officer for legal defense insurance. The Borough contends that the arbitrator erred:

1. In permitting the fold-in of holiday pay and ignoring statutory criteria and the bottom-line value and cost-out of the award;

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2/ On February 8, 2008, the Borough filed a scope of negotiations petition seeking a determination that the PBA proposal to include holiday pay in base salary is an illegal subject and may not be considered by an interest arbitrator for inclusion in a successor contract. On June 26, we dismissed the Borough's petition as untimely. P.E.R.C. No. 2008-70, 34 NJPER 261 (¶92 2008). We stated that the placement of holiday pay into base salary is mandatorily negotiable and that only the Division of Pensions may determine whether that form of holiday pay is creditable for pension purposes.

2. By awarding substantial increases in pension entitlements in violation of N.J.S.A. 34:13A-8-1 and -18;
3. By ignoring the Borough's "ability to pay" and by failing to discuss Borough evidence including evidence about the tax levy CAP, a hiring freeze, Borough wage reductions, and the pension contribution increase;
4. By including two new salary steps and finding that it would save money;
5. By ignoring evidence that the Borough's health insurance plan provides more and better coverage and that premiums would rise 17% in 2008;
6. By failing to give due weight to the Borough's pattern of settlement and its record of working well with the PBA;
7. By providing double legal coverage; and
8. By failing to consider Borough evidence.

However, the Borough's brief organizes its argument along nine point headings. We will respond to each of those points in the course of this decision.

The PBA responds that the arbitrator considered and discussed the evidence and the parties' arguments in light of the N.J.S.A. 34:13A-16(g) factors. It contends that each of the factors was considered, although the weight that the arbitrator gave to each factor varied. The PBA has not cross-appealed.

N.J.S.A. 34:13A-16(g) 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 . . . ;
- (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 leave, 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-16(g)]

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 judgement 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 begin with the folding in of holiday pay into base salary. Some background on the current structure and payment of holiday pay is necessary. Police officers must work on holidays since they do not work a traditional Monday to Friday schedule and are required to provide police services on a 24/7 basis. This results in police officers working more days than traditional schedule employees. Fort Lee police officers currently receive 13 paid holidays pursuant to Article VII and Appendix B of the parties' 2003-2006 agreement. The current practice is that officers are paid for their unused holidays in December. While the language of the agreement gives officers an option to receive time off or pay, the vast majority of officers elect to receive 13 days of pay. Police officers may or may not actually work on all 13 holidays. They do not get the time off

unless they are scheduled off on the holiday. (Arbitrator's decision at 85).

The value of holiday compensation is calculated by dividing an officer's annual salary by the required annual hours to determine the hourly rate. The 13 holidays equal 104 hours. This is equal to 5% of the annual work year of 2080 hours. (Arbitrator's decision at 86).

The Borough asserts that in awarding that holiday pay be folded into base salary, the arbitrator ignored:

the outrageous and unconscionable increase, the Borough's almost flawless pattern of settlement with the non-police unions; ignored the issue of the Borough's ability to pay, ignored massive State mandated pension contribution increases, ignored the actual economic cost-out of the holiday pay and its effect on overtime, longevity and compounding costs, ignored Borough evidence, and failed to provide a reasonable and consistent explanation of the basis of the award. (Brief at 18)<sup>3/</sup>

We are unpersuaded by the Borough's argument that the arbitrator ignored the economic cost of the holiday pay fold-in. The arbitrator acknowledged that folding holiday pay into base pay involved increased overtime costs and pension contributions. Using one of the Borough's exhibits (B-11), the arbitrator

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3/ We deny the Board's request to include a February 20, 2009 letter from the Division of Pensions and Benefits that could not have been considered by the arbitrator, whose record closed on April 23, 2008. With regard to the Borough's position that the Commission and the Division should jointly decide this appeal, see footnote 2.

calculated the additional cost of overtime over the course of the contract, both with and without the holiday pay fold-in. The arbitrator used the Borough's own calculation to confirm that the increase in the hourly rate is 5%, and the arbitrator assumed that with the holiday fold-in, the increase in holiday pay is 5%. (Arbitrator's decision at 84, 87-88).

The arbitrator identified the initial increase to overtime costs as being 5%, the value of the increase in base salary. He acknowledged that the actual increase will be above 5% because of the compounding of holiday pay on an officer's longevity pay, and estimated the range to be between 3% and 15%. While the arbitrator acknowledged that the total cost of overtime calculations, based on 20,000 annual overtime hours (as estimated by the Borough) could not be confirmed, he balanced the impact of the inclusion of holiday pay in base salary on overtime by awarding below average salary increases; by reducing the annual cost of the increases by "split" raises; by awarding a significantly less costly salary schedule for new hires; and by awarding the Borough's health care proposal. (Arbitrator's decision at 88-89).

With regard to the Borough's assertion that the arbitrator ignored the effect of the fold-in of holiday pay on pension

contributions, the award proves otherwise.<sup>4/</sup> Relying on a Borough exhibit (B-11), the arbitrator identified the additional cost of increased pension costs with the holiday pay fold-in for 2009 and 2010. He set forth the awarded salary increases for 2008, and noted that the new base salary was the same under the awarded salary increases as it was under the Borough's proposal.<sup>5/</sup> He acknowledged that in 2009, base salary would increase by 5%, and noted that the amount of the increase, with the 3.5% increase awarded in 2009, would be the same amount of holiday pay that the Borough would be obligated to pay under the terms of the 2003-2006 contract. Factoring in the higher pension contributions, based on data from the Division of Pensions and Benefits website, the arbitrator noted the Borough's annual pension contribution rate, and the increase in the rate that would occur on April 1, 2009. Using those figures, he calculated the additional cost in pension contributions to the Borough for

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4/ Although the arbitrator factored in the increased cost to the Borough for pension contributions, he unequivocally stated that he made no finding that holiday pay is creditable for pension purposes, since only the Division of Pensions and Benefits can make such a determination. The arbitrator, however, felt obligated to cost out the impact given the long history of holiday pay being considered creditable in the form that he awarded.

5/ Although the Borough argues that the arbitrator failed to consider the effect of the fold-in of holiday pay on longevity and the compounding costs, the arbitrator noted several times in the award that neither party submitted salary data on step movement and longevity.

holiday pay, calculated the total cost to the Borough in 2009 for increased pension contributions, and noted that it was consistent with the Borough's own calculations. The arbitrator acknowledged that the figures were approximate since the calculations do not take into account resignations, retirements, promotions or additional new hires. The arbitrator again stressed that he balanced the financial impact of the inclusion of holiday pay in base salary by awarding below-average salary increases; reducing the annual costs of such salary increases by "split" raises; awarding a significantly less costly salary schedule for new hires; and awarding the Borough's health care proposal. He found that all of those components of the award would offset the increased cost of higher pension contributions. (Arbitrator's decision at 89-90).

The arbitrator applied the traditional arbitration principle that a party seeking a change in an existing term or condition of employment has the burden of showing a need for such change. We are unpersuaded by the Borough's assertion that the PBA did not meet its burden in showing a need for holiday pay to be folded into base salary. As acknowledged by the arbitrator in his award, the inclusion of holiday pay into base salary was supported by the exhibits in the record that showed that a large number of municipalities in Bergen County include holiday pay in base salary. A review of the PBA and Borough exhibits shows that

75% of the jurisdictions cited include holiday pay in base salary. (Arbitrator's decision at 84).

We are also unpersuaded by the Borough's assertion that the arbitrator did not consider the overall compensation factor. The arbitrator noted that this factor was given considerable weight in his analysis of the Borough's health care proposal and the PBA's holiday pay proposal. He found the terms of the award were consistent with other external settlements in Bergen County and throughout the State, and maintained a consistent level of benefits.

The Borough also asserts that the arbitrator failed to consider the financial impact on the governing unit, its residents and taxpayers. However, the arbitrator provided a reasoned analysis on this factor, noting that his findings with regard to the lawful authority of the employer also apply to the financial impact on the governing unit. The arbitrator highlighted that his awarded salary increases cost less than the Borough's proposed salary increases in all four years of the contract. He also noted that the Borough proposed a 16% salary increase over four years, whereas his award provides for a 15% increase over four years. Based on the new salary schedule for new hires, effective January 1, 2009, the arbitrator projected savings to the Borough of nearly \$80,000 in cumulative earnings as each new officer progresses through the steps of the salary

schedule to the maximum step. The arbitrator estimated, based on past hiring patterns, that with the new salary schedule the Borough could save nearly \$1 million in cumulative earnings as new officers move through the salary guide with the two extra steps. The arbitrator also noted that he awarded the Borough's health care proposal, which he found would save the Borough \$125,000 annually in 2009 and 2010. He concluded that the combination of reduced salary increases and reduced salary payouts and the award of a new salary schedule will offset the impact of the inclusion of holiday pay in base salary. The arbitrator found no evidence that the terms of the award will cause the Borough to approach the limits of its financial authority or violate the constraints in N.J.S.A. 34:12A-16g(1), (5) and (9). (Arbitrator's decision at 98-99).

The Borough criticizes the arbitrator for failing to take into account the recent downturn in the economy and its impact on the State and local governments. It has included in its appendix copies of numerous newspaper articles and Bureau of Labor Statistics reports from December 2008 and January 2009, many of which were published after the arbitrator issued his award. The arbitration hearing in this case took place on February 14, 2008. The record closed on April 23, 2008. We will not fault an arbitrator for failing to consider evidence not in the record, particularly evidence that did not exist before he issued his

award. Nothing in our rules prohibits a party from seeking special permission of the arbitrator to introduce new factual material should circumstances change significantly after a record closes. N.J.A.C. 19:16-5.7(a) and (d) (conduct of proceeding under exclusive control of arbitrator; arbitrator may grant special permission to introduce new factual material in post-hearing briefs). On August 27, 2008, the arbitrator denied the Borough's request to introduce four rebuttal exhibits and evidence. However, the Borough did not seek special permission to appeal that determination. Nor has it explained what those exhibits were, their relevance, or whether they bear on the state of the economy.

Next, we turn to the Borough's assertion that the arbitrator "ignored uncontroverted evidence that the Borough's health insurance plan provides more and better coverage to PBA members." The arbitrator provided a comprehensive analysis and comparison of the plans and the resulting cost savings to the Borough. The award set forth the history of the provision of health benefits for Borough employees, and noted that until July 2006, health benefits for Borough employees were provided by the New Jersey State Health Benefits Program ("SHBP"). The Borough then moved from the SHBP to Horizon Blue Cross Blue Shield of New Jersey, where unit members elected to enroll in a Traditional Plan or a Direct Access Plan. Civilian employees were enrolled in a

similar Traditional Plan or Direct Access Plan. Since the Borough proposed that unit members move to the civilian plans, the arbitrator compared the PBA Direct Access plan to the civilian Direct Access plan, and noted that the comparison shows nearly identical plans, except the civilian plan covers 80% of out-of-network expenses and the PBA plan covers 70% of out-of-network expenses, and the prescription co-pays are higher in the civilian plan. He also found the PBA Traditional Plan to be nearly identical to the civilian Traditional Plan, but noted the following differences: under the PBA Traditional Plan, the out-of-pocket maximum is \$400 for an individual and \$800 for a family; under the civilian Traditional Plan, the out-of-pocket maximum is \$1000 for an individual and \$2000 for a family; the deductibles are \$100/\$200 under the PBA Traditional plan and \$300/\$600 under the civilian Traditional Plan. The arbitrator also noted that movement from the PBA Traditional Plan to the civilian Direct Access plan would involve cost saving measures for the member. The Borough rejects the notion that the award of its health benefits proposal was a "give back" from the PBA. Whether it was or was not, a certification from David J. Voza, President of the Voza agency, an insurance and consulting company retained by the Borough, states that movement of the PBA members to the civilian plans would generate \$124,558 annualized savings for the Borough based on the current enrollment of the

members. (Vozza Certification at 4, ¶12). The arbitrator used that figure in offsetting the costs of the inclusion of holiday pay in base salary.<sup>6/</sup>

The Borough also asserts that the arbitrator failed to consider the continuity and stability of employment. However, the award shows that this factor was assigned considerable weight in the awarding of a new salary schedule for new hires. The arbitrator found the cumulative salary savings generated by the new salary schedule to the Borough also benefits the negotiations unit as a whole. He found police officer salaries in Bergen County to be very competitive, and that Bergen County police officers are the highest in the state. Considering that, he found that the current salary schedule that allows movement to the maximum step in four to five years will eventually undermine the ability of the parties to negotiate salaries for maximum step police officers since a significant expenditure of available funds will be needed to pay less experienced officers high salaries. The arbitrator crafted the salary schedule in an effort to avert problems for the parties in future negotiations and to ensure that experienced officers continue to receive competitive salary increases. The arbitrator found that the

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<sup>6/</sup> Even though the cost of health benefits continues to rise, the award of the Borough's proposal means that the Borough will have to spend \$124,588 less annually than it would have had to without the award of its proposal.

modifications to the salary schedule will give the Borough considerable savings that will offset the cost of senior police officer salaries, maintaining a competitive salary and the continuity and stability of employment that is essential to a productive and effective police department. These changes will not impact the Borough's ability to recruit and retain police officers since the maximum salaries will remain the same on both salary schedules. (Arbitrator's decision at 101).

The Borough also contends that the arbitrator failed to consider the cost of living. However, the arbitrator acknowledged that while the awarded base salary increases are moderately higher than the increases in the cost of living in 2007 and 2008, he found that they provide for an acceptable increase in real earnings that must be measured against the continued delivery of quality services by the Borough's police officers. The arbitrator also highlighted that the Borough's final offer was above the Consumer Price Index in 2008. He found that the award provides for base salary increases that over the full term of the award will allow for a modest increase in real earnings consistent with historical trends. (Arbitrator's decision at 100).

With regard to the legal representation plan, the decision finds that while the PBA and the Borough may disagree about the contract language for the benefit, the parties appear to agree on

the major component of providing a \$150 payment for each unit member annually for the purchase of legal defense insurance. The arbitrator awarded such a payment effective January 1, 2009. He noted that this issue has been the subject of grievances and arbitrations in the past and that the parties desire to avoid disputes on the issue in the future. The arbitrator remanded the issue to the parties for development of the procedures for implementation of the legal defense insurance. He retained jurisdiction to issue a final and binding decision in the event the parties fail to agree on the final language within 30 days of receipt of the award. Given the arbitrator's willingness to give the parties an opportunity to resolve the issue, and his clear statement that he retained jurisdiction in the event attempts failed, the Borough's argument that the award should be vacated because it does not comply with N.J.S.A. 2A:24-8 is unavailing.

We are unpersuaded by the Borough's objection that the revised salary schedule was not proposed by either party. An award is not invalid if the arbitrator goes outside the parties' proposals on an issue in dispute. Hudson Cty. Prosecutor, P.E.R.C. No. 98-88, 24 NJPER 78 (¶29043 1997). Salary, and therefore salary schedules, was an issue in dispute. The Borough also asserts, however, that award incorrectly projects \$1 million in savings to the Borough from the revised salary schedule and that the decision incorrectly states that the new salary guide

balances, in part, the fold-in of holiday pay into base wages. Using evidence submitted into the record establishing that 12 police officers were hired between January 2005 and January 2007, the arbitrator approximated that the Borough could realize nearly \$1 million in cumulative savings if the same number of officers was hired between January 2009 and January 2011 (assuming an approximate savings of \$80,000 in cumulative earnings as each of the 12 new officers progresses through the steps of the salary schedule to maximum). The savings result from a lower starting salary and lower incremental costs resulting from the additional years it takes to get to maximum. (Arbitrator's decision at 92). The arbitrator projected a \$1 million savings based, in part, on the Borough's hiring 12 new officers during the last two years of the award. However, the Borough correctly argues that the evidence indicated that a hiring freeze began in 2008. The arbitrator determined that the holiday pay fold-in was offset by the new salary schedule, below-average and delayed wage increases, and the award of the Borough's health insurance proposal. However, the arbitrator's decision did not address the impact of the hiring freeze. Accordingly, we will remand this issue to the arbitrator to address the projected savings of the new salary steps in light of the Borough's hiring freeze.

The Borough asserts that the arbitrator failed to consider comparability of the wages, salaries, hours and conditions of

employment. A review of the award shows that the arbitrator provided an analysis of comparability of salary increases to other police officers in similar jurisdictions. The arbitrator found that all of the data on annual salary increases in 2007, 2008, 2009 and 2010 was supportive of the Borough's salary proposal and the awarded salary increases, and not the PBA's salary proposal. The arbitrator also highlighted that the awarded salary increases are 1/2 of 1% less than the Borough's settlement with other organized employees, noting that the Borough achieved a settlement with a negotiations unit representing blue collar, white collar, and department heads that provided for 3% salary increases on January 1, 2007 followed by a 1% increase on July 1, 2007. (Arbitrator's decision at 91-92). However, the arbitrator did not provide an analysis of comparability to private and public sector employment in general, or explain why such a comparison is not relevant. Accordingly, we will also remand the award for a more thorough analysis on the issues of comparability to private and public sector employment in general.

We direct the arbitrator to issue a supplemental decision addressing the remanded issues and, where appropriate, to modify his award no later than 30 days from the date of this decision. The Borough shall have seven days to file a supplemental brief

addressing the supplemental decision. The PBA shall have seven days to file a response to any supplemental brief filed.

ORDER

\_\_\_\_\_The award is remanded to the arbitrator to issue a supplemental decision addressing the projected savings from the new salary schedule and comparability to private and public sector employment in general and, if appropriate, to modify his award no later than 30 days from the date of this decision. The parties may file briefs in response to the supplemental decision consistent with this opinion. The award is stayed pending issuance of the arbitrator's supplemental decision.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Branigan, Buchanan, Fuller and Joanis voted in favor of this decision. None opposed. Commissioner Colligan recused himself. Commissioner Watkins was not present.

ISSUED: May 28, 2009

Trenton, New Jersey