

P.E.R.C. NO. 2012-1

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF NORTH ARLINGTON,

Appellant,

-and-

Docket No. IA-2011-050

POLICE BENEVOLENT ASSOCIATION  
LOCAL 95,

Respondent.

SYNOPSIS

The Public Employment Relations Commission vacates an interest arbitration award and remands it to the interest arbitrator to issue a new decision within 45 days. The Borough appealed the award to the Commission asserting that the arbitrator relied on an inaccurate exhibit in making his award on economic issues. The Commission agrees that the exhibit introduced into evidence at the arbitration hearing was inaccurate and misled the arbitrator who performed his duties diligently and in a timely manner. Thus, the circumstances require that the interest arbitration award be set aside.

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, Pearce Law, LLC, attorneys (Randy T. Pearce, of counsel and on the brief, Gregory A. Randazzo, on the brief)

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

DECISION

The Borough of North Arlington appeals from an interest arbitration award involving a negotiations unit of approximately 28 police officers. See N.J.S.A. 34:13A-16f(5)(a). On June 13, 2011, the arbitrator issued a conventional arbitration award within 45 days of his appointment, as he was required to do for all interest arbitration cases filed after January 1, 2011, the effective date of P.L. 2011, c. 105.

On June 20, 2011, the Borough appealed the award to the Commission and submitted a supporting brief and exhibits. On June 27, the PBA filed a brief and affidavit opposing the

Borough's appeal.<sup>1/</sup> For the following reasons, we vacate the award and remand the case to the arbitrator to issue a new decision because it appears that he relied on information contained in an exhibit that did not accurately reflect the contents of the actual document. Accordingly, the award must be set aside.

In arriving at his award on salary increases and several other issues in dispute, the arbitrator referred to part of a purported contract between the Borough and the Chief of Police that set his working conditions from December 31, 2009 through December 15, 2015. The contract has 21 separately numbered articles, some of which contain handwritten modifications, accompanied by the initials of each party.

The Borough asserts that the PBA gave the arbitrator a doctored version of the agreement (Exhibit P-34) that removed Article 20 (Continuation of Benefits) and substituted a chart entitled "Borough of North Arlington, Chief of Police Costout for the years 2010 through 2015."<sup>2/</sup> The Borough has submitted both

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1/ As part of its Notice of Appeal, the Borough requested oral argument. We deny that request.

2/ For each year, the chart purports to show the amount or value of Base Salary, Longevity, Holiday Pay, Clothing Allowance, Personal Car, Sick Pay Allowance. It totals these amounts and after the first year shows the annual increases expressed both in dollar amounts and percentage increases. It also shows a potential payout on retirement for unused vacation leave.

the doctored contract with the chart and what it asserts to be the actual contract.

The PBA does not directly address whether the document it introduced at the arbitration hearing accurately reflects, in all respects, the actual contract between the Borough and the Chief. It argues that the Township was given a copy of P-34 at the arbitration hearing, did not object to it being moved into evidence and had from the May 31, 2011 arbitration hearing to the submission of briefs on June 6 to object to it and/or respond.<sup>3/</sup> It also asserts that the Borough has not submitted a certification or affidavit questioning the accuracy of the figures on the page in dispute or in support of its assertions.

In his award, the arbitrator made these observations about the working conditions enjoyed by the Chief:

There is an added consideration as to a choice between 3.5% increases each year and 0% as offered.<sup>4/</sup> The Borough entered an Agreement with the Chief of Police for a six year term in which he is granted 2.8% increase in salary in 2010 and 3% annual increases each year from 2011 through 2015. In addition he is to receive 12% of salary as longevity pay and 36 vacation days, as well as other benefits equivalent to those

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3/ The PBA does not assert that any witness presented testimony focusing specifically on the "Borough of North Arlington, Chief of Police Costout for the years 2010 through 2015," that was part of Exhibit P-34.

4/ The Borough offered no salary increases for the term of the agreement with the PBA. The arbitrator awarded a contract covering the years 2011, 2012 and 2013.

negotiated by PBA Local 95. This Agreement went into effect as of December 31, 2009 and expires on December 31, 2015. There is a special benefit which the Chief also enjoys. That is an unmarked automobile to be used for work and personal use. The Borough agreed to pay all costs associated with this grant including insurance, maintenance, fuel and any repairs. On the report of his salary this is listed at a value of \$4500 per year which I feel is an understatement.

[Award at 7-8].

\* \* \*

One of the key considerations I believe should be made is that any employees, particularly those doing related work, should be considered with some sense of equity. This will preclude the development of poor or disrespectful relationships and strengthen the cooperative working partnership of such personnel. To do otherwise would have the opposite effect. This does not mean they must be in lock-step, but given reasonably comparable consideration. A hand-out of a six year salary plan to the Chief does not measure up to the proposed three or four year plan the Borough has suggested for the corps of police under the Chief's control and leadership. This is especially pertinent at a time when the officers have been asked to do much with fewer and fewer personnel. It can only be seen as unfair to them and would most likely be reflected in their diminished commitment to succeed in their service to the public. I do not translate this reasoning into a mandate for precisely equivalent consideration but it certainly leads me away from a determination that no increase in pay for the duration of the new Agreement is reasonable or defensible.

[Id. at 8]

\* \* \*

The demand for elimination of clothing allowance is another story. In the first place it has been a staple element of all police Agreements for many years. In the second place the Borough saw it to be appropriate, for the higher paid with less likelihood of clothing damage than are the patrolmen, when it gave the Chief a six year contract which included same. I therefore reject that demand.

As to the terminal leave demand there is ample evidence that this type of compensation is endemic in police contracts and this Employer has made the attempt to have the allowance reduced substantially in this procedure. The key argument presented has to do with the costs involved at a time when the Borough is trying to find ways to economize in order to avoid pressure to raise taxes. However, the agreement it made with the Chief, previously mentioned, provides the same type of plan that the subordinates have.

[Id. at 10]

From these passages, it is apparent that the "costout" document reviewing the terms of the Borough's agreement with the Chief was a key factor in the arbitrator's decision to reject the Borough's proposals on wages and clothing allowance and for the complete end of the terminal leave benefit.

We conclude that Exhibit P-34 is not an accurate reflection of the employment agreement between the Chief and the Borough. We further conclude that the actual agreement does not contain the "Borough of North Arlington, Chief of Police Costout for the years 2010 through 2015."

We do not fault the interest arbitrator for relying upon Exhibit P-34 in issuing his award. He diligently performed his duties meeting the statutorily imposed deadlines, but issued a decision based on a mistake as to the true contents of an exhibit placed in evidence. The arbitrator's reliance on a doctored version of the Borough-Chief employment agreement as a key factor in his reasoning, requires that the interest arbitration award be set aside.

Our decision should not be viewed as a determination that the terms and conditions of employment of the Chief, and the Borough's expenses in providing those benefits, should not be weighed by the arbitrator in fashioning an award. Nor do we hold that the disputed "costout" chart cannot be entered into evidence if it is properly authenticated. However, placing the document inside another, separate document deprived the Borough of an opportunity to counter any portions of the document it disputes, or explain the items it might concede are accurate. Given the short period of time between the hearing and the submission of post-hearing briefs, we cannot fault the employer for not noticing and calling to the arbitrator's attention, that the next to last page of a familiar, 22-page document had been altered..<sup>5/</sup>

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<sup>5/</sup> The Borough, citing Teamsters Local Union #11 v. Abad, 135 N.J. Super. 552 (Ch. Div. 1975), asserts that the award was procured by fraud. We note that the Appellate Division did not sustain that decision, holding that a determination of  
(continued...)

Given the circumstances under which we vacate this award, it is not necessary at this time to apply the standard of review applicable to the substantive terms of an interest arbitration award. If an appeal is filed after a new award is issued, we will apply the appropriate standard of review.

ORDER

A. The interest arbitration award issued June 13, 2011 is vacated.

B. We remand this case to the arbitrator to issue a new award within 45 days of this decision.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Eskilson, Krengel and Voos voted in favor of this decision. None opposed. Commissioners Jones and Wall recused themselves.

ISSUED: July 19, 2011

Trenton, New Jersey

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5/ (...continued)  
fraud should not have been made without a plenary hearing. See Teamsters Local Union #11 v. Abad, 144 N.J. Super. 239 (App. Div. 1976). In addition, the reference to fraud as a means of overturning an arbitration award is more commonly used when the arbitrator is accused of fraudulent behavior. See Hough v. Osswald, 198 Ill. App. 3d 1056, 1990 Ill. App. LEXIS 700, (Ill. App. Ct. 1st Dist. 1990).