

P.E.R.C. NO. 2012-61

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BURLINGTON COUNTY PROSECUTOR'S OFFICE,

Appellant,

-and-

Docket No. IA-2012-016

BURLINGTON COUNTY PROSECUTOR'S
DETECTIVES, PBA LOCAL 320,

Respondent.

SYNOPSIS

The Public Employment Relations Commission affirms in part and reverses in part an interest arbitration award. The Burlington County Prosecutor appeals the award involving a unit of detectives represented by the Burlington County Prosecutor's Detectives, PBA Local 320. The Prosecutor asserts the award is subject to the 2% salary cap; it was unreasonable to permit the detectives to receive salary increments; and the arbitration erred in awarding a seniority provision. The Commission affirms the majority of the award and remands to the arbitrator for clarification of the seniority language.

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, Capehart & Scatchard, attorneys
(Alan R. Schmoll, of counsel and Kelly E. Adler on the
brief)

For the Respondent, Klatsky Sciarabone & De Fillipo,
attorneys (David J. De Fillipo, on the brief)

DECISION

The Burlington County Prosecutor's Office ("Prosecutor")
appeals from an interest arbitration award involving a unit of
Detectives employed by the Prosecutor. The arbitrator awarded a
contract commencing on January 1, 2011 and terminating on
December 31, 2013. The arbitrator issued a conventional award as
he was required to do pursuant to P.L. 2010, c. 105.

While the parties each submitted multiple proposals to the
arbitrator, this appeal raises three points for discussion. The
first point raised by the Prosecutor is a claim that this award
was subject to the 2% salary cap which was enacted as N.J.S.A.
34:13A-16.7. The second point asserts that it was unreasonable

for the arbitrator to provide both salary increases and advancement on the incremental steps provided under the expired contract. Finally the third point raised by the Prosecutor asserts that the arbitrator should not have awarded new language regarding the use of seniority in cases of layoffs, recalls, and time-off disputes. These issues will be dealt with seriatim in this decision.

The arbitrator issued a 23 page Opinion and Award. He noted the record consisted of witness testimony and documentary evidence in support of the parties' last offers. After summarizing the parties' arguments on their respective proposals, the arbitrator analyzed the proposal within the statutory factors and awarded a three-year agreement effective January 1, 2011 through December 31, 2013 with the following terms pertinent to the issues raised on appeal:

2. Salary /Salary Guides:

0.5% salary increase as of January 1,2011, 1.25% as of January 1, 2012, and 2.0% as of January 1,2013. "The raises shall be placed on the pre-existing salary guide previously established in the 2007-2010 agreement...."

7. Seniority

Add three paragraphs:

Paragraph A: "Seniority is defined as being the actual date the employee began work as an investigator at the Burlington County Prosecutor's Office."

Paragraph B: "Senior employees will be given preference (inverse seniority) with regard to layoffs, recalls, and time-off disputes when the job relevant qualifications of employees are equal. Laid-off investigators shall be placed on a recall list for two (2) years. Placement on the recall list shall provide preference to the laid-off Investigator over any other applicant in the event a vacant investigative position in the Burlington County Prosecutor's Office becomes available."

Paragraph C: "Upon written request from the Union, the employer shall furnish a complete seniority list ranked by the actual date that the employee began work as an investigator at the Prosecutor's Office. The list will also include the original date of hire."

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. . . ;
- (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.

An arbitrator's award is not necessarily flawed because some pieces of evidence, standing alone, might point to a different result. Borough of Lodi, P.E.R.C. No. 99-28, 24 NJPER 466 (¶29214 1998). 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 first determination appealed from is that the arbitrator ruled that the hard cap on salary increases contained in P.L. 2010, ç. 105 does not apply to this arbitration proceeding. It is undisputed that the prior contract expired on December 31, 2010. The Appellant argues that because the agreement continues until midnight of that date, it actually expires on January 1, 2011. The Commission, in Borough of Bloomingdale, P.E.R.C. No. 2011-70, 37 NJPER 143 (¶43 2011) held that:

"N.J.S.A. 34:13A-16.9 sets forth that the 2% base salary cap applies to contracts expiring on or after January 1, 2011 only. The arbitrator's ruling that the contract, which expired December 31, 2010, was not subject to the 2% base salary cap is in conformance with

the clear terms of the new law. The Borough's argument that the contract expired on January 1, 2011 is contrary to the plain meaning of the contract language."

Therefore, the Appellants arguments must be rejected. This portion of the arbitrator's award is affirmed.

The Prosecutor's contention is that the salary increases awarded by the arbitrator were unreasonable because they were predicated upon across the board increases and step movements. We have not been pointed to evidence showing that this was a reversible error within the review standards set forth above. The arbitrator discussed at length the economic condition of the County, and the impact of the tax levy cap which is incorporated by reference into N.J.S.A. 34:13A-16(g). As noted above, we give deference to the arbitrator's judgement and discretion. Here, he found that the award which he rendered would not cause the County to exceed its tax levy cap, and that the County had the ability to pay the salary award. We will deny the Prosecutor's application to reverse the Arbitrator's award on this ground.

The final basis for the appeal set forth by the Prosecutor was the award of new seniority provisions. The arbitrator analyzed the positions of the parties, and determined that the language which he awarded reflected an appropriate compromise between their positions. Indeed, the Commission, in examining the use of seniority has repeatedly held that a proposal which provides for seniority as a determining factor in such matters as

layoffs, recalls, and time-off disputes is negotiable provided that the employer retains the managerial prerogative to deviate from strict application of seniority where it determines that special skills are involved. Union County Prosecutors Office, P.E.R.C. No. 2011-74, 37 NJPER 166 (¶53 2011). The Prosecutor argues that the term "qualifications" in the language formulated by the arbitrator is ambiguous, and therefore undermines the validity of the award. While the arbitrator's discussion of this proposal and his awarded language is somewhat ambiguous as to the meaning to be attached to the word "qualifications", nonetheless it is appropriate to remand this issue to the arbitrator so that he may clarify the meaning of his award regarding the new seniority provision which he awarded in light of the multiple positions and job functions within the Prosecutor's Office.

We find that the arbitrator adequately evaluated all the statutory criteria; explained why he gave more weight to some factors and less to others; and issued a comprehensive award that reasonably determined the issues and is supported by substantial credible evidence as to the salary award. We do not perform a de novo review of the evidence and defer to the arbitrator's judgment, discretion and labor relations expertise where he weighed all the statutory criteria and his award is supported by evidence in the record as a whole. City of Newark.

ORDER

The interest arbitration award is affirmed, in part, and remanded for clarification as to the seniority language which was awarded. The clarified award shall be submitted to the parties and filed with the Commission not more than 45 days from this decision.

BY ORDER OF THE COMMISSION

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

ISSUED: May 30, 2012

Trenton, New Jersey