

P.E.R.C. NO. 2010-26

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

POLICEMEN'S BENEVOLENT ASSOCIATION,
LOCAL 155,

Appellant,

-and-

Docket No. IA-2007-081

BOROUGH OF RAMSEY,

Respondent.

SYNOPSIS

The Public Employment Relations Commission affirms an interest arbitration award involving the Borough of Ramsey and the Policemen's Benevolent Association, Local 155. The PBA argued that the health insurance award is not supported by substantial credible evidence in the record because the Borough cannot calculate the cost impact of its proposal and the award is in conflict with N.J.S.A. 34:13A-18. The Commission finds that the arbitrator provided several reasons that constitute substantial credible evidence supporting the award and that the award is not in conflict with the statutes cited by the PBA.

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, Loccke, Correia, Schlager, Limsky &
Bukosky, attorneys (Richard D. Loccke, of counsel)

For the Respondent, Ruderman & Glickman, attorneys
(Mark S. Ruderman, of counsel; Ellen M. Horn, on the
brief)

DECISION

On August 11, 2009, Policemen's Benevolent Association, Local 155 appealed from an interest arbitration award involving a unit of approximately 32 police officers.^{1/} 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 affirm the award.

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

The Borough proposed a four-year agreement beginning January 1, 2007 with 2.5% salary increases on January 1 of each year. The Borough also proposed the creation of a ten-step salary schedule for officers hired after January 1, 2008; to freeze the starting salary at \$35,000 for the life of the contract; and the creation of a five-step salary guide for lieutenant and sergeant. The Borough proposed employee contributions toward insurance benefits for active and retired employees; modified sick leave benefits; the capping of the terminal leave benefit at \$15,000; the capping of the vacation benefit for new hires at 20 days; a maximum of three personal days for employees hired after January 1, 2008; the freezing of longevity payments in dollar amounts for existing employees while eliminating the longevity benefit for new hires; modification of the death benefit provision; and modifications to the grievance procedure.

The PBA proposed a six-year agreement beginning January 1, 2007 with annual salary increases of 4.8%, 4.9%, 5.0%, 5.1%, 5.2% and 5.3%. It also proposed to add Thanksgiving and Easter as holidays, increase the minimum to four hours for recall for outside details, and a provision that would allow an officer to receive the minimum recall payment in the event an overtime assignment is canceled less than eight hours prior to commencement. It also proposed a provision that would permit

officers to elect a deferral of sick leave payout at termination for up to three years.

The arbitrator awarded a five-year agreement, effective January 1, 2007 through December 31, 2011. Effective January 1, 2010, the arbitrator awarded the Borough's proposal regarding Article XXXVII, Insurance Coverage for Active Employees and Article XXXVI, Retiree Insurance Benefits as follows:

Article XXXVI - Retiree Insurance Benefits

Effective January 1, 2010, add the following to paragraph (G):

"Retired employees eligible to receive medical and dental benefits in retirement under this article shall receive the same level of medical and dental benefits accorded to non-retired employees under this contract or 54% of the contribution requirements as non-retired employees."

Article XXXVIII - Health Insurance

Effective January 1, 2010, delete paragraph (A) and replace with the following:

- A. Full-time employees receiving medical insurance benefits shall have an option to choose one of the two coverages under Horizon Blue Cross/Blue Shield PPO plan. One is a 90/70 plan and one is a 100/80 plan. Employees should be given a booklet from Horizon Blue Cross/Blue Shield to find the exact terms of the plan.
- B. Employees will have the following option with respect to Health Benefits described in Paragraph A:
 1. Those current employees choosing the 90/70 plan shall

pay the following per pay period:

	Family	Parent/Child	Single
2010	32.50	20.00	11.25

2. Those current employees choosing 100/80 plan shall pay the following:

	Family	Parent/Child	Single
2010	137.50	87.50	47.50

- C. New hires (hired after 1/1/10) desiring coverage other than single coverage (for example, family coverage or parent and child coverage) must pay one-half of the cost to the Board/Borough of the premium difference between single coverage and the enhanced coverage desired by the employee, both for medical insurance and dental insurance. Such payment shall be in the form of pro rata payroll deductions every pay period.
- D. The employer reserves the right, solely at the employer's option, to change to the New Jersey State Health Benefits Program at any time without renegotiation, or to any other health insurance provider program offering substantially similar benefits to the employee.
- E. Employees who have a spouse also employed (or retired from employment with) a public entity in New Jersey that provides health insurance benefits, shall decide, in conjunction with their spouses, whether they will opt out of health insurance benefits with the Employer and advise the Borough Administrator accordingly in writing. Employees shall have a continuing responsibility to promptly inform the

Borough Administrator whenever they have a spouse who is entitled to receive health insurance benefits by virtue of employment with (or retirement from) another public entity in New Jersey and promptly advise the Borough Administrator of their decision with regard to opting out of the Employer's health insurance plan, as set forth hereinabove. It is expressly understood by the parties hereto that the objective of this provision is to avoid duplicate coverage for a family by public entities in New Jersey employing spouses in that family in furtherance of sound public policy, and is not intended to be punitive or detrimental to employees.

- F. Employees who opt out of health insurance benefits shall receive a \$2,500 annual opt-out payment. In the event the employee's other insurance is lost (for example, if the employee's spouse loses insurance coverage for the family because of a change in employment status) or amended so that it becomes detrimental for the employee to opt out of the Employer's health insurance plan, either event would be considered a "qualifying event" and the employee would be permitted to re-enroll in the Employer's health insurance plan without penalty, except that the pro rata share of the opt-out payment must be returned by the employee to the Employer.

With regard to salary, for each step on the salary schedule except Patrolman 1st step, the arbitrator awarded increases of 4.0% on January 1 of 2007, 2008 and 2009, and 3.75% in 2010 and 2011. The arbitrator awarded the Patrolman 1st step an annual increase of \$500. Moreover, the arbitrator awarded the PBA's proposal regarding the deferral of sick leave at termination for

a period of three years, however the arbitrator included a requirement that the officer provide the Borough with 60-days' prior notification. The arbitrator rejected the parties' remaining proposals.

The PBA asserts that the awarding of Article XXXVIII- Health Insurance, paragraphs C, D and E is not supported by substantial credible evidence in the record because the Borough cannot calculate the cost impact of its proposal. The PBA also asserts that because the Borough failed to supply the requisite information to cost out the proposals, the arbitrator never had the opportunity to evaluate the total net annual economic changes of the Borough's proposals. The PBA also raises concerns about the opt-out provision of the award and its relation to the provision allowing the Borough to move to the New Jersey State Health Benefits Program ("SHBP"), as well as the provision requiring retiree contributions toward premiums and whether there may be conflict with N.J.S.A. 52:14-17.32i.

The Borough counters that the interest arbitration law does not require the employer to be able to quantify a proposal as a precondition for the employer's availing itself of the interest arbitration process.^{2/} The Borough further alleges that if the

^{2/} Initially, the Borough interpreted the PBA's appeal as including an argument that health insurance proposals are negotiable but not subject to interest arbitration. In its reply, the PBA clarified that it was not making such an
(continued...)

PBA's argument were taken literally, no health insurance proposal would be appropriate for interest arbitration because of the uncertainty of the economic expense.

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 leaves, insurance and pensions, medical and hospitalization

2/ (...continued)
argument, and that the specific points of its appeal had been enumerated in its brief.

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 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.

With regard to the award of Article XXXVIII, Health Insurance, the arbitrator noted that the record reflected the existence of a settlement pattern among the Borough's non-law enforcement units providing for the co-payment of insurance

premiums for active and retired employees.^{3/} The arbitrator found, after giving substantial weight to N.J.S.A. 34:13A-16g(1) (interests and welfare of the public) and (2) (c) (comparison to public employment in the same jurisdiction), that the Borough had sustained its burden to prove that the extension of the pattern of settlement to the PBA on the health care issue is reasonable and justified.^{4/} He also concluded that the PBA, despite its vigorous opposition, had not advanced sufficient justifications to break the pattern.

The arbitrator provided several reasons that constitute substantial credible evidence supporting this aspect of the award. First, the Borough's proposal did not require a reduction in the level of health insurance benefits. While premium sharing would be required under the Borough's proposal, employees are entitled to keep their same insurance coverage, although at a greater cost. The arbitrator found:

After achieving premium sharing by voluntary agreement or by implementation for all other Borough employees, a result that would exempt the PBA from this key and common feature,

3/ The non-law enforcement units are represented by Teamsters Locals 11, 469 and 945, and the United Public Service Employee Union.

4/ Notwithstanding the existence of an internal pattern of settlement on the issues of sick leave, terminal leave, death benefits, grievance procedure, arbitration, vacations and longevity in the non-law enforcement labor agreements, the arbitrator found insufficient justification to extend the pattern to this award.

would, more than likely, undermine employee morale for those who have co-pays deducted and create a potential for unstable labor relations within the Borough in the future. The Borough has sought to provide common treatment with respect to providing a policy affording health insurance benefits to all employees. After negotiating contributions toward the costs of providing those benefits, a result that would separate one group from another, absent evidence warranting a deviation, would run counter to the goal of common treatment. The distinction in employment conditions that I have found to distinguish police officers from the non-law enforcement employees and non-unionized employees on other issues that form the pattern are simply not present on the issue of premium sharing. All affected are employees of the Borough and the unique nature of law enforcement work cannot serve as a disconnect on the issue of premium cost sharing. It is unnecessary to determine whether in the absence of a pattern, the exact terms proposed by the Borough would represent the more reasonable determination of this issue because the most substantial weight on this issue must be given to the terms that represent the internal pattern of settlement. The conclusion sought by the PBA would render the Borough's policy and budgetary actions irrelevant when applied to the PBA.

[Award at 34-35]

With regard to the interests and welfare of the public, the arbitrator found that the record reflected steady increases in health insurance costs, and a current cost of over \$22,000 for a family plan. The PBA argues that the Borough's health care proposal should be rejected because it offered no evidence of its inability to pay for the PBA's proposal. The arbitrator found,

and we agree, that the Borough need not prove an inability to pay to defeat the PBA's proposal, or a budgetary crisis to have its proposal awarded. While the Borough has saved money through attrition, the arbitrator did not find the arguments on the Borough's financial abilities to outweigh the evidence regarding the internal pattern of settlement.

The PBA's opposition to the award of the Borough's health care proposal centers around the arbitrator's inability to project the Borough's cost savings or employee contributions because the Borough did not provide future premium costs. Article XXXVIII, Health Insurance, Paragraph C establishes that employees hired after January 1, 2010 must pay one-half of the cost, for both medical and dental insurance, of the premium difference between single coverage and enhanced coverage (either family or parent/child coverage). The PBA asserts that there is an inability to calculate the difference between the two insurance programs for new employees, and contends that without supplied costs for both options in both medical and dental insurance categories, the arbitrator could not determine the impact of the award. The PBA makes a similar assertion with regard to Article XXXVI, Retiree Insurance Benefits, and asserts that a specific figure cannot be determined for retirees to pay 54% of the contribution requirements made by active employees

because the base on which the percentage is to be calculated is not available.^{5/}

The Borough provided employee contribution rates for 2010, but not for 2011. The Borough's inability to provide specific future cost savings, or employees' future cost contributions, is reasonable as it is expected that future premium costs would be unavailable. The award represents the first time this unit has been directed to contribute toward health insurance premiums. Accordingly, there will be definite cost savings realized for the Borough beginning January 1, 2010, when employees start making premium contributions. We will not fault the award for not providing future cost savings for the Borough or employee contributions in the absence of figures that would have made such calculations possible. Borough of Fort Lee, P.E.R.C. No. 2010-17, __ NJPER __ (¶ ____ 2010). The arbitrator also could not make such calculations since he does not know which plan the officers will choose as of January 1, 2010 when an alternative plan becomes available, or whether any officers will opt out of the insurance. The award of the Borough's health care proposal was well-reasoned. As detailed above, the arbitrator provided a

^{5/} The PBA also asserts that retiree contributions towards premiums may affect the vested rights of retirees. However, the Borough represented in its brief that it intends to apply that provision prospectively to officers retiring on or after January 1, 2010 only. An interpretation of the plain language of this provision supports the Borough's position.

comprehensive and reasonable analysis as to why he placed significant weight on the internal pattern of settlement as well as the interests and welfare of the public.

With regard to Article XXXVIII, paragraph D, which gives the Borough the option of entering the SHBP, the PBA asserts that the cost differentials between the current health care plans and the SHBP cannot be determined. While this provision gives the Borough the option of entering the SHBP, the Borough has not exercised that option. Therefore, it is not unreasonable that cost savings to the Borough and employee contributions under this provision were not calculated.

The PBA also asserts that N.J.S.A. 34:13A-18, which prohibits an arbitrator from issuing "any finding, opinion or order regarding any aspect of the rights, duties, obligations in or associated with the New Jersey State Health Benefits Program" may conflict with Article XXXVIII, paragraph E, which allows employees who have spouses employed with a public entity in New Jersey that provides health insurance benefits to opt out of health insurance benefits with the Borough, and then opt back in if their spouse loses coverage. The PBA asserts that N.J.S.A. 34:13A-18 prevents the arbitrator from rendering an award that allows retirees who opt out of coverage from obtaining coverage again with the SHBP. The Borough responds that the opt-out

provision applies only to employees, and not to retirees. The provision, on its face, supports that interpretation.

The PBA also raises concerns about a potential conflict between retirees' making premium contributions under the award and N.J.S.A. 52:14-17.32i. That statute provides eligibility for enrollment in the SHBP to certain retired local police officers and firefighters whose employers do not pay for health benefits coverage. The Borough asserts that the contract between the Borough and the PBA in effect on July 1, 1998 provided for Borough-paid, post-retirement medical benefits, therefore Borough retirees would not look to take advantage of the coverage option offered pursuant to N.J.S.A. 52:14-17.32i. This assertion was not refuted by the PBA in its reply to the Borough's brief.

The PBA asserts that the award is also inadequate because the arbitrator could not calculate the total net annual economic changes for each year of the agreement due to the Borough's failure to provide figures for the future costs of health insurance premiums. N.J.S.A. 34:13A-16d(2). After rendering the portion of the award pertaining to salary increases, the arbitrator did determine the total annual net economic change. He found:

The cost analysis for the salary terms will fluctuate depending upon the number of employees employed during the contract years. The Borough estimates that manpower will decrease from 31 to 29 over the contract term which, if realized, could

impact on the amount of salary to be paid and impact on costs of the Award. For the sake of clarity I will calculate total net economic change based upon the 2006 payroll and apply the awarded percentages without engaging in projections as to changes that might or have occurred to number of employees employed or placements on the salary schedule. The cost for Year 2007 would be \$111,975, \$116,434 for 2008, \$121,102 for 2009, \$118,074 for 2010 and \$144,335 for 2011. The 2010 and 2011 costs would be offset by premium co-payment deductions which cannot be calculated without evidence as to the plan each employee opts into or whether an employee would opt out of coverage.

[Award at 40]

That calculation need not more precisely estimate the health insurance cost savings.

Finally, the PBA asserts that the awarded salary increases are significantly reduced when factoring in employee contributions toward health insurance premiums. That may be true, however, the arbitrator's awarded salary increases were more closely aligned with the PBA's proposals. Indeed, the arbitrator found that the Borough's proposal of 2.5% each year did not give sufficient consideration to the external comparisons nor provide consistency with at least two of the internal settlements. The arbitrator further found that the Borough did not show evidence concerning financial impact or statutory spending or taxing limitations that would interfere with its ability to provide increases at or near what was achieved in

surrounding communities. For contract years 2010 and 2011, when salary increases were lower than the first three years of the contract, the arbitrator balanced external comparability with evidence showing a decline in the cost of living, sharp increases in unemployment within the State and Nation, and economic considerations impacting the private and public sector generally. The arbitrator's awarded salary increases were well-reasoned within the overall context of the award.

ORDER

The award is affirmed.

BY ORDER OF THE COMMISSION

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

ISSUED: October 29, 2009

Trenton, New Jersey