

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HUDSON COUNTY PROSECUTOR,

Appellant-Respondent,

-and-

Docket No. IA-96-178

PBA LOCAL 232,

Appellant-Respondent.

SYNOPSIS

The Public Employment Relations Commission affirms the award of an interest arbitrator appointed to resolve unsettled negotiations issues between the Hudson County Prosecutor and PBA Local 232. The PBA requests that the award be vacated and the matter be remanded to a different arbitrator. The PBA contends that the arbitrator's analysis was flawed and that he deviated from accepted principles of conventional arbitration by awarding salary increases outside the boundaries of the parties' last offers. The Prosecutor asks that the Commission remand the award to the arbitrator because the Prosecutor believes the actual costs of the arbitrator's award for 1998 exceed the 5% to 5.5% cost calculated by the arbitrator. The Commission rejects the PBA's and the Prosecutor's challenges and concludes that the arbitrator analyzed the evidence presented on the relevant statutory factors and reached conclusions that are supported by substantial credible evidence in the record. The Commission finds that the arbitrator gave due weight to each of the statutory factors and decided the dispute based on a reasonable determination of the issues.

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.

P.E.R.C. NO. 98-88

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Appearances:

For the Hudson County Prosecutor, Scarinci & Hollenbeck,
attorneys (Sean D. Diaz, of counsel)

For the PBA, Loccke & Correia, attorneys (Leon B.
Savetsky, of counsel)

DECISION

The Police and Fire Public Interest Arbitration Reform Act, P.L. 1995, c. 425, N.J.S.A. 34:13A-14 to -21, authorizes the Commission to decide appeals from interest arbitration awards. N.J.S.A. 34:13A-16f(5)(a). We exercise that authority in this case, where both the PBA and the Hudson County Prosecutor appeal from a July 23, 1997 award involving investigators in the Prosecutor's office.

The arbitrator resolved the unsettled issues in dispute by conventional arbitration, as he was required to do absent an agreement by the parties to use another terminal procedure. N.J.S.A. 34:13A-16d(2). He fashioned a conventional award after analyzing the parties' final offers. Those offers were as follows.

The Prosecutor proposed a two-year contract from January 1, 1996 through December 31, 1997, with 4% across-the-board increases on January 1 of each year. He also proposed to increase the overtime cap for each employee from \$3500 to \$5000 per year and to decrease from 30 to 21 days the required notice for vacations.

The PBA proposed a three-year contract from January 1, 1996 through December 31, 1998, with 6% across-the-board wage increases each year. It also proposed an automatic step system in which all employees below the maximum salary would move one step annually on the salary guide.^{1/} The PBA agreed to the Prosecutor's overtime and vacation proposals.

The arbitrator awarded a three-year contract which provided salary increases as follows:

1996 -- 4% across-the-board salary increases for all unit members, applied to the 1995 salary guide

1997 -- 3% across-the-board salary increases for all unit members, applied to the 1996 salary guide

1998 -- Effective January 1, 1998, a one-step movement on the 1997 salary guide for investigators below the top step [Arbitrator's opinion, pp. 23; 25]

Investigators at the top step in 1997 will receive no salary increase for 1998 (Arbitrator's opinion, p. 23). In addition, the

^{1/} The parties' 1994-1995 agreement included a salary guide, but provided that there would be no step movement after the contract expired unless provided for in a successor agreement.

arbitrator awarded the Prosecutor's overtime and vacation proposals "to be effective January 1, 1997, where practicable in terms of implementation" (Arbitrator's opinion, p. 25).

The PBA requests that we vacate the award and remand the matter to a different arbitrator. It contends that the arbitrator's analysis was flawed and that he deviated from accepted principles of conventional arbitration by awarding salary increases outside the boundaries of the parties' last offers.^{2/} The Prosecutor asks that we remand the award to the arbitrator because the Prosecutor believes the actual costs of the arbitrator's award for 1998 exceed the 5% to 5.5% costs calculated by the arbitrator.

In requiring that disputes be resolved by conventional arbitration unless the parties agree to another terminal procedure, the reform act entrusts the arbitrator with weighing the evidence and fashioning an award. Middlesex Cty., P.E.R.C. No. 98-46, 23 NJPER 595 (¶28293 1997); Cherry Hill Tp., P.E.R.C. No. 97-119, 23 NJPER 287 (¶28131 1997). An arbitrator must assess the evidence on individual statutory factors and then weigh and balance the relevant, sometimes competing, factors in arriving at his or her award. Middlesex Cty. In reviewing a challenge to an

^{2/} The PBA's briefs do not address two other issues listed in its notice of appeal. We will not consider those issues. Compare Town of Kearny, P.E.R.C. No. 82-12, 7 NJPER 456 (¶12202 1981) (issue raised in scope of negotiations petition, but not briefed, will not be considered). The PBA also requests oral argument. We deny that request.

award, we will vacate an award if 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 or -9; or (3) the award is not supported by substantial credible evidence in the record as a whole. Middlesex Cty.; Cherry Hill Tp.; cf. PBA Local 207 v. Bor. of Hillsdale, 137 N.J. 71, 82 (1994); Div. 540, Amalgamated Transit Union, AFL-CIO v. Mercer Cty. Improvement Auth., 76 N.J. 245, 253 (1978).

The focus of this proceeding was salary increases -- both across-the-board salary increases and the PBA proposal to implement an automatic step system, which it had identified as a high priority. The background to the latter issue is as follows. When the current Prosecutor took office in 1992, there were 20-30 salaries for 75-80 investigators. The contracts negotiated by the Prosecutor and the PBA for 1993-1994 and 1994-1995 replaced that system with an 11-step salary guide. The first nine steps of the salary guide in the 1994-1995 agreement remained the same for the contract term, although the last two steps were increased for 1995. Investigators below maximum step advanced one step on the guide in 1994 and in 1995. As noted, the contract specified that there would be no step movement after the contract expired unless provided in a successor agreement.

The arbitrator declined to award either the Prosecutor's proposal for a two-year contract with 4% across-the-board

increases or the PBA's proposals for a three-year contract with 6% across-the-board increases plus an automatic step system.

Instead, after analyzing the parties' evidence on the statutory criteria, N.J.S.A. 34:13A-16g, he fashioned an award providing for some across-the-board increases and some step advancement.

(Arbitrator's opinion, pp. 15, 23). He found that, while an automatic step system was desirable, the statutory criteria did not warrant the award of both the PBA's proposed across-the-board increases and a step system, which together would cost approximately 11% per year (Arbitrator's opinion, p. 21). He reasoned that award of the PBA proposal would result in investigators receiving increases far beyond what County employees -- including law enforcement employees -- had received, and could not be justified in view of the County's economic condition (Arbitrator's opinion, p. 21). In explaining his decision to award across-the-board increases (but no step movement) in 1996 and 1997, and step movement (but no across-the-board increases) for 1998, the arbitrator stated:

There is little question that external comparisons tend to favor the implementation of an automatic step system. Municipal law enforcement units universally have them, and, while only half the prosecutors' officers around the State have them, there have been several recent adoptions of automatic step systems. But, with the exception of the investigator's last agreement, no one else in Hudson County has automatic increments, and economic conditions in the County are not compatible with the high cost of setting up an automatic step system. In terms of salary maximums, despite the fact that maximums changed very little during the last agreement, the investigators are still paid more at maximum than law enforcement staff in most

surrounding municipalities, and relatively the same as prosecutor's investigators in two nearby counties facing similar urban economic ills, Passaic and Essex.

In terms of salary increases, the County's last offer reflects the going rate elsewhere for across-the-board increases, and thus would retain the relative position for the maximum salaries with external public jurisdictions, but this across-the-board compensation strategy does not reflect the fact that most other public jurisdictions also pay automatic increments. As a result, under the County's last offer, the junior employees who comprise two-thirds of the bargaining unit would receive substantially lower salary increases over the period of the agreement than in other public jurisdictions with step increases and make no relative progress towards the guide's maximum salary. On the other hand, if the alternative strategy of providing only step increases was followed, the senior employees comprising a third of the bargaining unit would continue to receive low annual increases as occurred under the last contract, and the salary maximums would deteriorate in relation to comparable external jurisdictions. But one thing [that] is clear, as the above analysis indicates, is that the financial impact of the PBA's last offer on the governing unit, its residents and taxpayers, the interests and welfare of the public, and the continuity and stability of employment [are] such that the County cannot afford to both give competitive across-the-board increases and fund automatic steps in a bargaining unit that has so many junior employees. [Arbitrator's opinion, pp. 22-23]

In arriving at his award, the arbitrator made various findings, not challenged by the PBA, concerning the County's financial circumstances and the relative position of unit members vis-a-vis other public and private sector employees. Thus, the arbitrator found that the employees constituting the one-third of the unit at maximum were paid \$50,954 in 1995, a salary that compared well

with municipal officer maximum salaries at the end of 1995 (Arbitrator's opinion, p. 18). The arbitrator also noted that the maximum salary was similar to the maximum investigator salary in the prosecutor's office in Passaic County (\$48,834) and in Essex County (\$52,053) -- two northern New Jersey counties that the arbitrator found were comparable to Hudson because they have similar urban problems (Arbitrator's opinion, p. 18).

The arbitrator concluded that the 2.9% increase in the cost of living during 1996, private-sector wage increase data, and interest arbitration awards averaging 4% for 1996 were all more consistent with the Prosecutor's 4% salary proposal than the 11% annual cost of the PBA's offer (Arbitrator's opinion, pp. 16, 19, 21). In addition, the arbitrator noted that the Prosecutor's proposal for 1996, together with the increases received by the investigators in 1994 and 1995, would result in investigators and their superior officers receiving the same increases for 1994-1996 (Arbitrator's opinion, p. 8).

While the arbitrator found that these factors weighed in favor of the Prosecutor's proposal, he also found that the lack of a step system was a factor to be considered in fashioning an award and in evaluating the significance of public-sector wage settlements and interest arbitration awards. He stated that the cost of increments was not included in reported settlements or interest arbitration awards involving municipal and county law enforcement officers, even though that cost could be substantial

for a unit with a large number of junior employees (Arbitrator's opinion, p. 19). He also concluded that the unit's "overall compensation" was below average when compared to other municipal and county law enforcement units (Arbitrator's opinion, p. 20), a finding that appears to have been based in part on the lack of an automatic step system since he concluded that the unit's maximum salary compared favorably with that in other local law enforcement agencies. On the other hand, he rejected the PBA's position that the absence of an automatic step system had caused high turnover, finding that turnover was unremarkable (Arbitrator's opinion, p. 21).

After weighing the evidence, the arbitrator concluded that a combination of step movement and across-the-board increases was warranted. In arriving at that mix, the arbitrator considered "the undisputed precarious financial condition of the county" as set forth in exhibits (Arbitrator's opinion, p. 16).^{3/} Those exhibits indicated that the County has the third lowest per capita income in the state; the second highest number of persons living in poverty; the highest percentage of families, children and elderly persons living in poverty; and the sixth lowest net valuation per capita of any New Jersey county (Arbitrator's opinion, p. 13). It also has the second highest county property tax rate and the highest ratio of county property taxes to per

^{3/} The salaries of Prosecutor employees are paid by the County. See N.J.S.A. 2A:157-18; N.J.S.A. 2A:158-13.

capita income in the State (Arbitrator's opinion, p. 13). The County's 9.5% unemployment rate is far above the state average of 6.4%, and 11 of 12 County municipalities qualified in 1995 for state assistance as distressed cities (Arbitrator's opinion, p. 13). The County's "structural deficit" -- the inability to meet recurring expenses with recurring revenues -- had increased from \$15 to \$47 million from 1988 to 1997 (Arbitrator's opinion, p. 13). As a result, its tax rate tripled between 1995 and 1996, and the County laid off its entire police force and some crossing guards, parking violations officers, firefighters and other employees. The County experienced a decline in reserves and a 16% loss in its tax base (Arbitrator's opinion, p. 13). State aid was cut significantly between 1995 and 1996, and Moody's reduced the County's bond rating (Arbitrator's opinion, p. 14). Against this backdrop, the arbitrator stated that he had "never seen a situation where the negative financial impact of a settlement and its possible extension to other employees through pattern bargaining could have such negative consequences for a public agency, its employees, and its taxpayers" (Arbitrator's opinion, pp. 20-21).

We turn first to the PBA's contention that the arbitrator deviated from accepted principles of conventional arbitration by awarding an across-the-board increase for 1997 lower than that proposed by the County, and no such increase for 1998, even though each party had included an across-the-board increase for each year

included in its final offer. We conclude that the arbitrator's award represented an appropriate exercise of his conventional arbitration authority.

Conventional arbitration allows the arbitrator considerable discretion to fashion an award, although the arbitrator may not reach out and decide issues not presented by the parties. Cherry Hill; Middlesex. Where there are several points of disagreement between the parties -- in this case, for example, a dispute over the length of the contract, the amount of across-the-board increases, and the appropriateness of a step system -- an arbitrator may evaluate the relationship among, or the combined effect of, the different proposals in arriving at an award. See Cherry Hill Tp. (arbitrator could appropriately consider health benefits proposal in conjunction with parties' other proposals). The arbitrator may then fashion an award that represents a reasoned determination of all the issues in dispute. An award is not necessarily flawed because, in making this overall determination, the arbitrator goes outside the boundaries of the parties' positions on one of the issues in dispute.

The arbitrator evaluated all the proposals and evidence presented, considered the statutory criteria and arrived at a salary award that, while different from that proposed by either party, represents a reasoned determination of the parties' salary dispute. The arbitrator could consider the parties' proposals in conjunction with one another and, therefore, could decide to award

some step advancement and some across-the-board salary increases. In fixing those across-the-board increases, he could take into account the award of step advancement in the third year of the contract and arrive at an overall award that, in his judgment, comported with the statutory criteria.

We agree with the PBA that interest arbitration is an extension of the negotiations process and that, within the context of the statutory criteria, an interest arbitrator should fashion an award that the parties, as reasonable negotiators, might have agreed to. The arbitrator here did that: just as the parties had agreed to step movement instead of across-the-board increases in 1994 and 1995 (Arbitrator's opinion, p. 20), the arbitrator's award effects the same trade-off for 1998. In recognition of the parties' prior negotiations history and the desirability of maintaining comparability of maximum salaries with other jurisdictions, the arbitrator directed a different compromise for 1996 and 1997. We disagree with the PBA that the arbitrator took it upon himself to reduce the salary differences between junior and senior investigators, which neither party had requested. The arbitrator sought to recognize and balance the interests of junior employees in step advancement and the interests of senior employees in maintaining comparability of maximum salaries with other jurisdictions -- interests which the PBA had advanced by seeking both a step system and across-the-board increases.

We need not decide whether, if confronted only with competing proposals for across-the-board salary increases, an arbitrator would be prohibited from awarding increases lower (or higher) than proposed by either party.^{4/} That is not the situation here. As noted, the arbitrator could set across-the-board salary increases which took into account the step movement in the third year of the contract. Moreover, the arbitrator awarded annual increases close to those proposed by the Prosecutor -- 4%, 3% and, as discussed later, an approximate 5% increase in overall salary costs for 1998. Thus, the average annual increase in salary costs for the three-year contract is 4% -- the percentage increase which the Prosecutor proposed for each year of a two-year contract. In addition, the PBA received the three-year contract term it had sought.^{5/}

We also reject the PBA's more specific challenges to the arbitrator's analysis. The PBA objects to the arbitrator's conclusion that implementing an automatic step system would result

^{4/} Cherry Hill did not, as the PBA suggests, decide this issue. The statement that the arbitrator in that case issued a conventional award "in between the parties' offers" simply described the award in that case.

^{5/} We recognize that the employees at maximum do not receive an increase in the third year and receive 3% in the second year of the contract. However, in considering whether the award is less than what the Prosecutor offered, we believe the focus should be on the overall cost to the County, not the effect on particular classes of employees. Some employees will receive step increases of more than 5% in the third year; by focusing on these employees the award would be higher than stated.

in unit employees receiving far greater increases than other County employees and that, if extended to other units, such an award would have major consequences for the County, given its precarious financial condition. The PBA argues that these statements are inconsistent with the arbitrator's finding that the award of an automatic step system for this unit would have little direct financial impact on the County. It maintains that the focus on the extension of step systems to other units "approaches an illegal parity argument" and that the arbitrator's analysis is undercut by the fact that the expired contract included a step system.

The PBA does not dispute that the possible extension of a step system to other County or Prosecutor units could have a negative financial impact on the County. Rather, it maintains that it was not appropriate for the arbitrator to consider this possibility. We disagree.

N.J.S.A. 34:13A-16g(6) requires the arbitrator to consider the impact of a proposal on the governing unit, its residents and taxpayers. The record established that no other negotiations unit in Hudson County has a step system (Arbitrator's opinion, p. 17). The arbitrator therefore reasonably concluded that, if he awarded the PBA proposal, other units would try to negotiate similar provisions which, if obtained, could hurt the County's finances (Arbitrator's opinion, pp. 20-21). Moreover, given the requirement to consider "internal comparability," see

N.J.S.A. 34:13A-16g(2)(c), interest arbitrators in other proceedings involving other County or Prosecutor law enforcement units would have to consider evidence concerning the award of a step system in this matter.

The arbitrator's analysis does not raise the concerns identified in our cases discussing parity clauses. Cf. Marlboro Tp., P.E.R.C. No. 97-102, 23 NJPER 174 (¶28087 1997) (illegal parity clauses automatically extend increases in salary or benefits to a unit of employees based upon future or as yet uncompleted negotiations between the same employer and other employee units; they interfere with an employee organization's right to negotiate over its own economic proposals because the public employer must inevitably consider that if it agreed to those proposals, it would be contractually required to extend the same economic benefits to all other employees protected by a parity clause). The arbitrator did not award or enforce a parity clause. As part of his overall consideration of all the statutory criteria, he made a reasoned determination that awarding the PBA proposal could affect negotiations or arbitral deliberations involving other units, which in turn could have an adverse financial impact on the County. The arbitrator did not deny the proposal based solely on the possibility that, if it were awarded, there could be an effect on negotiations or interest arbitration proceedings with other units. He cited other factors, including internal comparability, public and private-sector wage increases

and the cost of living, in denying the PBA proposal and fashioning his award (Arbitrator's opinion, pp. 16-19, 21). We will not disturb the arbitrator's exercise of discretion in giving some weight to the potential impact that awarding the PBA proposal would have on other units, particularly given the "undisputed precarious financial condition of the County."

The arbitrator did find that, if the PBA's proposal were awarded, the salary costs for this 68-employee unit would represent only \$1.80 of a \$3,000 annual property tax bill and would thus have little direct financial impact on the County (Arbitrator's opinion, pp. 20-21). However, the arbitrator was not required to give dispositive weight to this finding where other factors, including the raises received by other County and Prosecutor employees, pointed toward a different award. In this vein, the absence of step systems in other County units and the across-the-board salary increases received by those units were relevant to the arbitrator's consideration of the PBA's proposal, independent of any financial impact on the County. See N.J.S.A. 34:13A-16g(2)(c) and N.J.A.C. 19:16-5.14 (requiring an arbitrator to compare the wages, hours, and conditions of employment of employees involved in the proceeding with those in the same or similar comparable jurisdictions). Finally, the arbitrator reasonably concluded that the PBA's proposal would have a greater financial impact than the prior contract, which had provided for

step advancement only, with no across-the-board salary increases (Arbitrator's opinion, p. 20).

We also reject the PBA's argument that the arbitrator erred in commenting that "there is no proof that the Prosecutor's budget was not subject to the County's CAP as part of the County budget" (Arbitrator's opinion, p. 20). The arbitrator did not find that the County lacked the lawful authority to fund the PBA's proposal or otherwise cite CAP considerations in assessing the financial impact of the award. See N.J.S.A. 34:13A-16g(1) and (5). Therefore, the arbitrator's analysis of this factor cannot constitute reversible error. See Cherry Hill Tp.; Middlesex Cty. (appellant must identify deficiencies in interest arbitration award which led to those aspects of the award adverse to its position).

We turn now to the Prosecutor's contention that a remand is necessary to correct an alleged inconsistency between the arbitrator's statement that the cost of increments for 1998 was between 5% and 5.5% and the fact that the step movement directed by the arbitrator results in investigators below the 1997 maximum salary receiving increments in excess of that figure. We find no inconsistency.

The arbitrator did not state that each affected employee below the maximum step would receive a 5% to 5.5% increment in 1998; he found instead that the overall cost to the County, based on his own and the County's estimates, would be in this range (Arbitrator's opinion, p. 23). We have reviewed the record and

are satisfied that this conclusion is accurate. There is an approximate 5% increase in total salary costs for this unit from 1997 to 1998 when the step movement for all employees below maximum is considered together with the fact that the 23 investigators already at the top step will receive no increase in 1998.

For all these reasons, we reject the PBA's and the Prosecutor's challenges to the award. We conclude that the arbitrator analyzed the evidence presented on the relevant statutory factors and reached conclusions that are supported by substantial credible evidence in the record. We also find that he gave "due weight" to each of those factors and decided the dispute based on a reasonable determination of the issues. N.J.S.A. 34:13A-16g; N.J. State PBA Local 29 v. Irvington, 80 N.J. 271, 295 (1979). He properly exercised his authority under N.J.S.A. 34:13A-16d(2) and 16g and fully considered the requirements of the law.

ORDER

The arbitrator's award is affirmed.

BY ORDER OF THE COMMISSION



Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, Finn, Klagholz, Ricci and Wenzler voted in favor of this decision. None opposed. Commissioner Boose was not present.

DATED: December 18, 1997
Trenton, New Jersey
ISSUED: December 19, 1997