

P.E.R.C. NO. 2010-17

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 affirms an interest arbitration award on remand. The Commission had remanded the initial 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 Arbitrator issued a supplemental award finding no basis to modify the terms of his initial award and the Borough appealed. The Commission holds that in his second decision, the arbitrator provided a reasoned analysis and affirms the award.

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

This case involves an appeal of an interest arbitration award issued to resolve successor contract negotiations between the Borough of Fort Lee and PBA Local No. 245. On May 28, 2009, we issued a decision remanding the case to the arbitrator to issue a supplemental decision. P.E.R.C. No. 2009-64, 35 NJPER 149 (¶55 2009). In his original award, the arbitrator granted 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. On

remand, we directed the arbitrator to address the projected savings from the new salary schedule given the Borough's hiring freeze as well as to address comparability to private and public sector employment in general. The arbitrator issued a supplemental decision on July 6, 2009, finding no basis to modify the terms of his award.^{1/} The Borough has appealed the supplemental decision and we now affirm the award.

Realizing that the statute sets forth general criteria rather than a formula, an arbitrator will rarely be able to demonstrate that an award is the only "correct" one, but the arbitrator must provide a reasoned explanation for an award and explain how the factors are weighed and considered in arriving at the final award. Borough of Lodi, P.E.R.C. No. 99-28, 24 NJPER 466 (¶29214 1998); N.J.S.A. 34:13A-16g; N.J.A.C. 19:16-5.9.

The arbitrator's analysis of the savings from the new salary schedule was based on a total of 12 officers being hired in 2009 and 2010, with a savings of approximately \$80,000 per officer for the next 7 1/2 years as each officer moves through the salary guide. The arbitrator found that if a hiring freeze were in

^{1/} The Borough argues that the award should be rendered null and void because it was received by this agency one day after a 30-day extension requested by the arbitrator. Our original order directed the arbitrator to "issue" a supplemental decision within 30 days. Then, due to a scheduled vacation, the arbitrator requested an extension of time until July 6 to issue his decision. He issued it on July 6 and we received it on July 7. The decision was not issued late.

effect and the first six officers were not hired in 2009, the Borough's savings would be immediate and significantly higher.^{2/} Although the Borough argues that this finding was not based on a "scintilla of evidence" and that the arbitrator's decision makes "false assumptions that have no basis in fact," the supplemental decision proves otherwise. The arbitrator based this finding on information submitted by the PBA, which noted that ten officers (one captain, two lieutenants, two sergeants and five patrol officers) retired during the term of the last collective bargaining agreement, with a total base salary of \$995,553.^{3/} An even greater savings would result from the same number of officers retiring, but those officers not being replaced because of a hiring freeze.^{4/} The arbitrator acknowledged that the

2/ The Borough's arguments that the arbitrator failed to acknowledge the existence of the hiring freeze are unfounded since the arbitrator provided an analysis of the impact of the hiring freeze on the savings projected from the new salary schedule.

3/ The information regarding officers' retirement during the term of the last collective negotiations agreement was not disputed by the Borough.

4/ On September 1, 2009, the Chairman granted the PBA's motion to exclude from the record a certification that the Borough included with its brief in response to the supplemental decision. The certification included information about retirements in 2009 that was not in the record before the arbitrator and cannot properly be considered by the Commission. The Chairman also excluded a document about dangerous jobs that also was not in the record before the arbitrator and cannot be considered on appeal. The Borough has moved for reconsideration of the Chairman's decision and
(continued...)

actual savings would be determined by the mix of officers retiring or resigning, and that the Borough's savings would be higher if senior officers, sergeants, lieutenants and captains retire and are not replaced whereas the savings will be lower if junior officers are not replaced. However, estimating the average cost to the Borough for each police officer in 2009 as \$161,994, the arbitrator found that the savings resulting from not replacing officers is significantly greater than the savings he originally projected from the hiring of new officers on the new salary schedule. He also noted that if and when the Borough decides to lift the hiring freeze, it will have the benefit of a reduced cost salary schedule for new hires.^{5/} We cannot fault the arbitrator for projecting a cost savings based on past experience, just as we cannot fault an arbitrator for projecting that the cost of health benefits will continue to rise based on past experience. See, e.g., Borough of Pompton Lakes, P.E.R.C. No. 2009-23, 34 NJPER 371 (¶120 2008). The arbitrator's cost savings projections are well reasoned and will be realized at some point when new officers are hired.

4/ (...continued)
we deny that motion.

5/ Because the savings to the Borough is long term, regardless of the number of retirees in 2009, the Borough will realize savings from additional steps on the salary guide when it does finally hire new employees.

The arbitrator next addressed comparability to private employment in general and public employment in general. With regard to private employment comparisons, he found that a police officer is a unique public sector position that does not lend itself to specific private sector comparisons. While the Borough now argues that police officers could be compared to emergency medical technicians and paramedics, the arbitrator noted that neither party submitted salary data on this issue. The arbitrator assigned no weight to this sub-factor.

With regard to private employment comparisons generally, the arbitrator noted that the awarded salary increases, while somewhat higher than private employment salary increases in general, are acceptable when measured against the totality of the terms of the award. He noted that neither party emphasized private sector comparisons and found that this sub-factor was not entitled to significant weight.

With regard to comparisons to public employment in general, the arbitrator found that the average annual salary increases in that sector are consistent with both the salary increases proposed by the Borough and the awarded salary increases. Although the Borough now argues that police officers could be compared to State corrections officers, the arbitrator noted that neither party submitted any salary data on this issue. The

arbitrator found that public employment comparisons in general are supportive of the awarded salary increases.

In addition to the Borough's arguments on the remanded issues, the Borough reiterates many of the arguments it made in its initial appeal brief. Those arguments were addressed in our initial decision, were not part of our remand order, and, since the arbitrator did not modify his award with regard to any of those issues, they are outside the scope of the remand. Those arguments include why the arbitrator rolled holiday pay into base pay and whether the arbitrator considered the effect of the roll-in on pension and overtime costs, the recent downturn in the economy and its impact on State and local governments, overall compensation, financial impact on the governing unit, and the relationship between the awarded increases and the Consumer Price Index. Given the reasoned analysis provided by the arbitrator on the remanded issues, we now affirm the award.

ORDER

The award is affirmed.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Branigan, Buchanan, Fuller, Joanis and Watkins voted in favor of this decision. None opposed. Commissioner Colligan recused himself.

ISSUED: September 24, 2009

Trenton, New Jersey