

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Interest Arbitration Between:

TOWNSHIP OF BYRAM

-and-

Docket No. IA-2013-12

SUSSEX COUNTY PBA LOCAL NO.138

Before: Susan W. Osborn, Interest Arbitrator

Appearances:

For the Township:

Laddey, Clark & Ryan, Attorneys
(Thomas N. Ryan, of counsel)

For the PBA:

Loccke & Correia, Attorneys
(Richard Loccke, of counsel)

SUPPLEMENTAL AWARD

On January 18, 2013, I was assigned as the Interest Arbitrator concerning the successor contract between Sussex County PBA Local 138 and Byram Township. The parties' previous agreement expired on December 31, 2012. Both parties submitted final offers, produced documents and witnesses at a hearing and filed closing briefs. On March 11, I issued an Interest Arbitration Award in this matter. My decision in relevant part, concerned the Township's proposals concerning health benefit plans. The Township had proposed several changes to contract Article XXVI, Medical and Dental Insurance.

Specifically, it proposed to eliminate the current AETNA Open Access Plan and replace it with the Aetna QPOS Patriot V Plan for all current employees. Further, employees hired after January 1, 2013 would be required to elect one of three newly adopted health/medical/prescription insurance plans known as: Aetna Choice High Deductible Plan, Aetna HMO or the Aetna Preferred Choice.

The Township also sought several changes with regard to medical and dental benefits for retirees: (1) it sought to eliminate post-retirement medical and dental benefits for future retirees who are hired after January 1, 2013; (2) it proposed to restrict retiree insurance coverage to the benefit level provided at the date of retirement; and (3) it asked to eliminate contract language that would require the Township to pay retirees an annual sum equal to the cost of insurance in their last full year of active employment, in the event that the retiree health benefit became prohibited or deleted from the contract. The Township also sought to include a reference in the contract to employee contribution rates pursuant to Chapter 78 and waiver payment caps pursuant to Chapter 2.

The PBA made no proposal to change the medical/dental insurance article in its final offer. At hearing, the PBA argued against the health insurance changes proposed by the

Township with the exception of the provisions of Chapter 78 and Chapter 2. At the conclusion of the arbitration hearing, the PBA argued that the statutory 45-day limitation on the interest arbitration process rendered it virtually impossible for the parties to fully vet alternative health care plans. It proposed a 60-day period during which time a study committee of Township representatives and PBA representatives could compare other plans and potentially reach a consensus on an alternative plan to the current Open Access plan.

On March 11, I issued an Award. With regard to the health insurance issues, I awarded the Township's proposals concerning employee contributions and waiver payments pursuant to Chapters 78 and Chapter 2 respectively. With regard to retiree health benefits, I specifically rejected the Employer's proposal to eliminate all health benefits upon retirement for employees hired after January 1, 2013 (Award, p. 75). However, I did award certain modifications to the contract provisions concerning retiree health benefits, although not entirely what the Township had requested.¹ More specifically, I awarded,

- Employees will, upon retirement, be eligible for the

¹The PBA's argument in its May 31 letter brief concerning retiree benefits is not considered herein as these issues were previously decided in the March 11 award.

same benefit plans they were upon their last day of active duty, with the cost of such coverage paid by the Township, except that the percentage of premium contribution being made by the employee pursuant to Chapter 78 on his last day of active duty shall continue into retirement.

- Retirees shall be permitted to reduce coverage options as circumstances dictate (e.g, a retiree may go from husband/wife coverage to single coverage), but may not opt for a higher level of coverage thereafter.
- The provision in Article XXVI (E), second sentence, "In the event of any prohibitions..." is eliminated. (March 11 award page 75-76)

With regard to health benefits for active employees, I agreed with the Township that this bargaining unit needs to get out of the more traditional coverage offered through the Open Access Plan at an annual cost of just under \$37,932 for employees with family coverage. But I also noted that the Township's proposed plan - Aetna's Patriot V Plan seemed to be a particularly expensive alternative which, at a cost of \$33,816 for family coverage, would not be in the best interest of the taxpaying public or the police officers, both of whom would be shouldering the costs. I awarded the following:

The Township and the PBA (together with representatives of the Township's civilian employees, if such participation is required) shall, within ten days of this award, form a joint labor management committee to study health care plan alternatives to the current Aetna Open Access Plan. The committee

shall exercise due diligence to explore options with an objective of reaching an agreement upon alternative plans to be offered to current employees and alternatives to be offered to new employees. In the event that the parties fail to reach agreement upon mutually satisfactory plans, then I will retain jurisdiction to impose alternative plans upon the parties. (March 11 award, page 72-73)

On March 20, the Township appealed portions of my Award, including my conclusion with regard to health benefits, to the Public Employment Relations Commission. On April 18, the Commission affirmed that part of my award. Township of Byram, P.E.R.C. No. 2013-72, ___ NJPER ___ (¶ 2013). It found,

The directive that the parties form a health insurance study committee does not violate the interest arbitration law. . . The parties must implement an award on receipt.²

Thus, the health care study committee should already have been formed and be pursuing its assigned task. We do agree that the arbitrator should not have an unlimited amount of time to issue a ruling on health care coverage in the event the parties do not reach an agreement. In accordance with our normal practice when we remand all or part of an interest arbitration award, we will direct that the arbitrator issue a ruling on health care plans if necessary, within 45 days of receipt of this decision.

In the attendant footnote, the Commission explained,

As we have previously emphasized, because immediate

²N.J.S.A. 34:13a-16F(5) (B) provides, "An arbitrator's award shall be implemented immediately." P.L. 2010, c.105, deleted language that had allowed a grace period where the award was appealed. The same statute previously read: An award that is not appealed to the Commission shall be implemented immediately. An award that is appealed and not set aside by the Commission shall be implemented within 14 days of the receipt of the Commission's decision absent a stay.

implementation of an award is required by law, the parties should have formed their study committee 10 days after receipt of the March 11, 2013 award. Assuming they did so, the 60 day period will expire on May 20. This remand would require the arbitrator to issue her supplemental ruling on or before June 3. That date is approximately two weeks after the health insurance study committee should have finished its work or reached an agreement. We deem that a sufficient period for the interest arbitrator to receive any supplemental submissions and to make her determination.

This language makes it clear that the parties was obligated to form the committee and begin studying alternative plans immediately after receipt of my Award. The Commission decision also directs me to issue a supplemental decision on the health care issue by June 3. It reasoned that the 60-day period would expire on May 20, and that I would then have a two-week period to receive supplemental submissions and make a determination.

On May 17, I emailed the parties requesting an update of the status of the study committee's progress. The Township did not reply. The PBA Attorney's office emailed me the same day that "I know the parties have been speaking and it is my understanding that they will be presenting a proposal to the Town by the end of the month." In my follow-up call to the PBA Attorney's office, I reminded them that I was required to issue a decision by June 3, and that I needed more definitive information. Neither party further updated the status of the study committee's work, nor did

the parties make any submissions. By email of May 30, I wrote to both attorneys,

By email of May 17, I requested the parties to advise me whether there is still a dispute concerning alternative health care plans in Byram Township. I reminded the parties that the Commission gave me until June 3 to issue a supplemental decision if necessary. I have not heard definitively from either party concerning the status of your discussions. . . . If I do not hear from you by close of business on May 31, I will assume that the parties have come to resolution and no further action is required on my part.

The Township responded May 31 that the parties had not reach a conclusion on the health care issue and requested that I issue a decision based upon the record developed at the hearing.

The PBA submitted a six-page letter on May 31, raising certain procedural arguments. First, the PBA contends that, because the award was confirmed by the Commission on April 18, the parties should have a 60-day period -- measured from that date -- to comply with the requirements of the Award. Therefore, it asserts, that 60-day period would not expire until June 17. It asserts that, "absent a remand or a modification order which would appear if any other conclusion than the parties having until June 17, 2013 was *ultra vires*."

The PBA asks that a prompt hearing date be set to permit the PBA to "set forth through testimony and exhibits a full

record upon which [I] may make a determination. To do otherwise would be to ignore the far reaching implications and complexity of this issue. Further, the public would be best served by this procedure as it might tend to contain costs."

As to the merits of the health care insurance issue, the PBA maintains that it seeks the status quo concerning medical insurance plans.³ It asserts that the Township has not met its burden of proof required to sustain a change from the existing plan. It notes that,

The parties are now one-half year into a three-year contract and will undoubtedly be back at the bargaining table early in the process for a new agreement. The subject matter of this case is not one that lends itself to superficial analysis or incomplete exploration of all impacts, costs and alternatives. It is a circumstance that should require a full factual hearing where evidence and testimony may be taken on the subject of the various alternatives. . . . the arbitrator should rule that the status quo should be maintained.

DISCUSSION

Procedural Issues:

The PBA's request for a hearing on the health care issue must be denied. The Commission's directive in P.E.R.C. No. 2013-72 was clear: the parties were to form a study committee, examine alternative plans and, if no agreement could be reached,

³The PBA states that, alternatively, it would be willing to accept health care coverage under the New Jersey State Health Benefits Direct 10 Plan.

make additional submissions to me concerning alternate plans by May 20. The Commission calculated that I would then have a two-week period to examine the additional submissions and render a supplement award on alternative plans by June 3. The PBA represents that the parties have held discussions and proposals have been exchanged concerning the medical plans. However, both parties advised me on May 31 that they had not reached a resolution as to the issue. The Township had no reason to make an additional submission as it continued to propose the Patriot V Plan and to rely on the record as previously developed at hearing. The PBA made no substantive submission concerning any alternative plan.

In light of the specific directive in the Commission's decision to issue a supplement decision by June 3, and in light of all of the foregoing, the PBA's procedural arguments must be rejected. I am constrained to issue a supplemental award based upon the record previously established.

Merits:

In my original award, I reviewed the details of both the existing Open Access Plan and the Patriot V plan. I also considered the three new plans the Township has proposed for new hires. I have already found that the existing plan is not in the best interest of the public and should be eliminated as an

option. (Award, p.70). The Patriot V plan has been fully explored through testimony and documents at hearing, but alternative plans have not. However, in my original award, I also found that the Patriot V plan, although less costly than the Open Access plan, still appeared to be an expensive plan in comparison with other alternatives not fully explored. I urged the parties to do that exploration process. Yet the Township seems committed to the Aetna plan, notwithstanding its \$33,816 price tag for family coverage. In considering the public interest, including the cost to the taxpayers, and the Township's stated desire to control budget expenditures, I remain unconvinced that the Aetna Patriot V plan is the best alternative available. Further, the cost of the Patriot V plan must also be borne by the contributions of the employees at a rate which will reach 23.5% of the premiums by the end of the awarded contract period. This will result in employee contributions for family coverage of \$7,946 annually. Therefore, this expensive plan does not appear to be in the best interest of Byram's police officers and does not enhance continuity of employment or employee morale, but may encourage employees to seek employment with other municipalities.

However, since no alternative plans have been presented for my evaluation, I am compelled to limit my comparison to that

which the Township has proposed. It must be noted that the Patriot V plan is at least more cost effective than the open access plan and the plan shares the same Aetna network of practitioners. As previously found in my original award, there will be little impact on the employees for in-network care as deductibles and co-pays are not higher. Further, in comparison to the Open Access plan, the Patriot V plan better serves the public interest and reduces the cost of employee contributions towards premium expenses by \$1,032 per year. I also note that, in considering the statutory factor of internal comparability, this is the plan which has been agreed upon by all of Byram's civilian employees. I award the implementation of the Aetna Patriot V plan effective September 1, 2013, or as soon as thereafter as employees can be so enrolled.

For new hires, the Township has proposed limiting health care coverage plans to the high deductible plan, the HMO plan, and the preferred choice plan, all offered through Aetna. These plans have premium costs of \$30,264 for the HMO plan, and \$29,424 for the Preferred Choice Coverage. The details of these plans have already been reviewed at length in my March 11 Award, and need not be repeated here.

In applying the statutory criteria to this proposal, I cannot ignore that these three alternative plans have also been

implemented already for the Township's civilian employees. It is clear that these plans, while providing higher deductibles and arguably less coverage, are in the public interest because they reduce premium cost by about 10%. In the absence of any evidence concerning possible alternative plans available, these plans are awarded for unit employees hired after July 1, 2013.

AWARD

Effective September 1, 2013, or as soon thereafter as employees can be enrolled in new plan choices, the existing Open Access Plan will be eliminated. All current unit employees will have a choice of enrolling in the Aetna Patriot V plan, the Aetna HMO plan, the Aetna Preferred Choice plan, or the Health Savings Account/High Deductible plan. Employees hired after July 1, 2013, will be permitted to enroll in the Aetna HMO plan, the Aetna Preferred Choice plan, or the Health Savings Account/High Deductible plan.

Susan W Osborn
Susan W. Osborn
Interest Arbitrator

Dated: June 3, 2013
Trenton, New Jersey

On this 3rd day of June, 2013, before me personally came and appeared Susan W. Osborn to me known and known to me to be the individual described in and who executed the foregoing instrument and she acknowledged to me that she executed same.

Pamela Jean Sutton-Browning

