

P.E.R.C. NO. 2010-35

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF PARAMUS,

Appellant,

-and-

Docket No. IA-2008-060

PARAMUS PBA, LOCAL NO. 186,

Respondent.

SYNOPSIS

The Public Employment Relations Commission vacates and remands an interest arbitration award to the arbitrator for reconsideration. The Borough of Paramus appealed the award arguing that: the arbitrator failed to apply the statutory factors; the arbitrator violated the standards set forth in N.J.S.A. 2A:24-8; and the award violates N.J.S.A. 2A:24-9. The PBA argues that the award meets the statutory criteria and should be affirmed. The Commission vacates and remands the award to the arbitrator for reconsideration and issuance of a new award that must explain which of the statutory factors were deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor. The arbitrator must also consider the total net annual economic change for each year of the agreement. The arbitrator's new award is due within 30 days of the Commission decision.

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, Herten, Burstein, Sheridan, Cevasco, Bottinelli, Litt & Harz, LLC (Patrick Papalia, of counsel and on the brief; Daniel C. Ritson, on the brief)

For the Respondent, Loccke, Correia, Schlager, Limsky & Bukosky, attorneys (Leon B. Savetsky, of counsel)

DECISION

The Borough of Paramus appeals from an interest arbitration award involving a negotiations unit of approximately 95 police officers. See N.J.S.A. 34:13A-16f(5)(a). The arbitrator issued a conventional arbitration award as he was required to do absent the parties' agreement to use another terminal procedure.

N.J.S.A. 34:13A-16d(2). The parties were able to reach agreement on many issues. The outstanding issues were submitted to the arbitrator in the parties' final offers. We vacate the award and remand the case to the arbitrator.

The PBA proposed a four-year agreement from January 2008 through December 31, 2011, with 5% across-the-board salary

increases effective each January, and an increase in the promotional adjustment from \$400 to \$2,000. The PBA also proposed: an increase in the compensatory time off bank from 160 hours (20 days) to 320 hours; an additional holiday for a total of 13; and for an officer who worked overtime to have the option of receiving payment in cash or compensatory time.

The Borough proposed a three-year agreement with 2% across-the-board salary increases for each year of the agreement and an increase in the maximum allowable hours in the compensatory time off bank from 160 hours (20 days) to 25 days.

At the commencement of the formal interest arbitration hearing on November 14, 2008, the PBA objected to the arbitrator's considering a Borough medical coverage proposal. The Borough proposed that employees contribute 1.5% of base salary yearly towards their medical coverage. That proposal was separate from the Borough's original proposal for a 3.5% across-the-board wage increase. The PBA argued that the issue was not on the list of issues submitted by the PBA in its initial petition, nor added by the Borough in its response to the petition.

On December 1, 2008, the arbitrator granted the PBA's motion and ruled that the issues to be submitted to formal arbitration are limited to those issues listed on the PBA's initial petition. The arbitrator stated that N.J.A.C. 19:16-5.5 is clear and

unambiguous.^{1/} The arbitrator considered the Borough's argument that the medical care issue is very important to the Borough and that it has been a continuous topic in the mediation phase of the arbitration. However, he concluded that it has been long established that without mutual agreement, an issue not listed in the petition or response may not be included for consideration in the formal proceeding -- to hold otherwise would violate the rules and open the door for either side to continuously propose additional issues and harm the arbitration process.

On December 8, 2008, the Borough requested special permission to appeal the arbitrator's interlocutory ruling. Our Chairman denied the Borough's request, finding that the arbitrator acted within his discretion and noted that the net economic effect of a wage giveback as a contribution toward medical benefits is the same as a lower across-the-board wage increase and that the PBA had no objection to the Borough adjusting its wage proposal accordingly. Borough of Paramus, P.E.R.C. No. 2009-28, 34 NJPER 384 (¶125 2008), lv. to app. den. App. Div. Dkt. No. AM-29208T3.

The arbitrator awarded a four-year contract from 2008 through 2011 with 4% across-the-board increases for all unit

^{1/} N.J.A.C. 19:16-5.5(a) requires that a non-petitioning party, in this case the Borough, file a response to the interest arbitration petition within 14 days of receipt of a notice of filing. The response must set forth "[a]ny additional unresolved issues to be submitted to arbitration."

members for each year of the agreement. He also awarded the Borough's compensatory time proposal and the PBA's overtime proposal. All other proposals were denied.

The Borough appeals,^{2/} contending that the arbitrator failed to apply the statutory factors when he: based the award on his erroneous conclusion that ability to pay was not a central issue in interest arbitration; placed undue, unexplained, and factually unsubstantiated emphasis on the purported wage increases and compensation awarded to other bargaining units in Bergen County; and based the award in part on his erroneous conclusion that it will not put pressure on the Borough pursuant to the Local Budget Law without analysis to support the conclusion. The Borough further contends that the arbitrator violated the standards set forth in N.J.S.A. 2A:24-8 by refusing to rule on the issue of employee contributions to health benefits, and not considering that issue with regard to the wage increases, and repeating the parties' arguments without explanation as to what weight was given, if any, to the evidence submitted. The Borough's last point of appeal is that the award violates N.J.S.A. 2A:24-9 because the arbitrator erroneously found that the Borough is not

^{2/} The New Jersey League of Municipalities submitted an amicus curiae application in this case that was denied by the Chairman. Despite the denial of the League's application, the Borough has included the League's Brief in its appendix and the PBA objects to its inclusion. We exclude the brief from consideration in this matter.

faced with pressure from the Local Budget Law and cited charts submitted by the PBA for base wages when the charts are actually percentage wage increases unrelated to base wages.

The PBA responds that: the arbitrator fully considered each of the statutory criteria; the award is justified based on the evidence presented; it was established that the officers had increased productivity; the financial condition of the Borough supports the award; and the Borough is unable to accept the arbitrator's procedural ruling that precluded it from modifying its final offer to add a health benefits proposal.

The Borough replies that the PBA misstates its position; the productivity of officers cannot be relied upon in defending the award; and the PBA's arguments as to the Borough's financial condition focuses on the past. The PBA counters that productivity is an integral part of the interests and welfare of the public and the award should be affirmed.

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 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 arbitrator must also separately determine whether the total net annual economic changes for each year of the agreement

are reasonable under the foregoing factors. N.J.S.A. 34:13A-16d(2).

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.

Within this framework, we conclude that the award must be vacated and the matter remanded. The arbitrator summarized the parties' positions including their views on the application of the statutory factors. However, the arbitrator did not provide an independent analysis of the relevant factors and how he weighed each of them against the evidence presented to reach his award. It was not sufficient to simply assert that he considered the parties' evidence and arguments.

On remand, the arbitrator must discuss each of the statutory factors and then explain how the evidence and each relevant factor was considered in arriving at his award. The arbitrator must also address the arguments of the parties and explain why he accepts or rejects a specific argument. For

example, in his discussion of the financial impact on the governing unit, its residents and taxpayers, the arbitrator concluded that the Borough would not be immediately devastated if the PBA's entire wage proposal were awarded. However, the arbitrator did not discuss the weight he gave this factor or how the evidence supports his conclusion. The Borough asserts that two experts testified about its financial condition.^{3/} If the employer submitted evidence and argument regarding the Borough's financial condition, the arbitrator must address that evidence and explain how it was considered in arriving at the award. This exercise must be repeated for each relevant factor and for each term of the award.

We understand that the arbitrator did not award a health benefit change, but if evidence was presented about the cost of the Borough's health plan to justify the Borough's wage proposal, it must be considered in the arbitrator's discussion of his wage award. See, e.g., Borough of Ramsey, P.E.R.C. No. 2010-026, ___ NJPER ___ (¶ ___ 2009).

We also vacate and remand the award for the arbitrator to consider the total net annual economic change for each year of the agreement. The arbitrator must determine whether the

^{3/} The Borough submitted a copy of the 2009 Budget with its reply brief. This document was not available at the time of the hearing and will not become part of the Commission record.

economic changes for each year of the agreement are reasonable under the statutory factors. N.J.S.A. 34:13A-16b(2). The arbitrator did not make this calculation and must do so on remand.

We are confident that the new award will remedy the parties' dispute as to whether PBA charts relied upon in the initial award are reflective of base wages or percentage wage increases.

ORDER

The interest arbitration award is vacated and remanded to the arbitrator for reconsideration and issuance of a new award that must explain which of the statutory factors he deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor. The arbitrator's new award is due within 30 days of this decision.

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: November 24, 2009

Trenton, New Jersey