

P.E.R.C. NO. 98-46

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF MIDDLESEX,

Appellant,

-and-

Docket No. IA-96-115

PBA LOCAL NO. 156,

Respondent.

SYNOPSIS

The Public Employment Relations Commission affirms an interest arbitration award issued to resolve negotiations between the County of Middlesex and PBA Local No. 156. The County appealed the award contending that the arbitrator did not properly apply the statutory criteria. The County requests that the Commission vacate the award and remand the matter to another arbitrator for a new hearing. The County also appeals an interlocutory ruling of the arbitrator denying the County's request to submit additional issues.

The Commission concludes that the County has not demonstrated why N.J.A.C. 19:16-5.5(a) should be relaxed and denies its appeal of the arbitrator's interlocutory ruling denying the County's request to submit additional issues. The Commission further 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 also concludes that the arbitrator gave due weight to each of these factors and decided the dispute based on a reasonable determination of the issues.

The Commission does not consider the County's position that, if the arbitrator properly applied the Reform Act, that statute unconstitutionally delegates governmental powers. The Commission's jurisdiction is limited to reviewing the application of the criteria in N.J.S.A. 34:13A-16g and determining whether the arbitrator violated the standards in N.J.S.A. 2A:24-8 or N.J.S.A. 2A:24-9.

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, Geneova, Burns & Vernoia, attorneys
(James M. Burns, of counsel; James M. Burns and Lynn S.
Degen, on the brief)

For the Respondent, Loccke & Correia, attorneys (Richard
D. Loccke, of counsel; Joseph Licata, on the brief)

DECISION AND ORDER

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 the County of Middlesex appeals from a June 9, 1997 award involving its police officers.

The arbitrator resolved the unsettled issues in dispute by conventional arbitration, as he was required to do absent the parties' agreement 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 PBA proposed a three-year contract from January 1, 1996 through December 31, 1998 with 6.5% across-the-board salary increases for each year. In addition, it sought: (1) a change to a four days on, two days off work schedule; (2) a \$100 increase in the clothing allowance for each year of the contract; (3) 10 annual PBA business days; and (4) modification of overtime and vacation provisions. The PBA also proposed: (1) including a "preservation of rights" clause; (2) specifying longevity program terms in the contract instead of in sidebar documents and (3) prohibiting a full-time employee from being replaced by any "non-police officer or part time or other personnel."

The County also proposed a three-year contract from January 1, 1996 through December 31, 1998. It proposed to add the following dollar amounts to base pay at each step, on the dates indicated:

1/1/96	\$500
7/1/96	\$500
1/1/97	\$600
7/1/97	\$400
1/1/98	\$700
7/1/98	\$450

It also proposed that, beginning on January 1, 1997, each unit member would be eligible for a \$250 performance incentive bonus based on evaluations. It further sought to change the pay period from bi-weekly to semi-monthly and have overtime calculated on a weekly basis. In addition, on August 1, 1996, the County sought to submit to interest arbitration additional issues not listed in the PBA's March 1996 petition to initiate compulsory

interest arbitration. In response to the PBA's objection, the arbitrator limited the issues in the proceeding to those contained in the PBA's petition. On November 19, 1996, the Commission denied the County's motion for leave to appeal this interlocutory ruling. Middlesex Cty., P.E.R.C. No. 97-63, 23 NJPER 17 (¶28016 1996).

The arbitrator issued an award that established a three-year contract from January 1, 1996 through December 31, 1998 and awarded the following across-the-board wage increases:

1/1/96:	2%
7/1/96:	2%
1/1/97:	2.25%
7/1/97:	1.50%
1/1/98:	2.5%
7/1/98:	1.5%

The arbitrator denied each party's remaining proposals.

The County asks that we vacate the award and remand it to a different arbitrator for a new hearing, contending that the arbitrator did not properly apply the statutory criteria. It also appeals the arbitrator's interlocutory ruling. N.J.A.C. 19:16-5.17(a).

We turn first to the County's appeal of the arbitrator's ruling denying its request to submit additional issues to interest arbitration. We incorporate the procedural history and analysis in our decision denying leave to appeal the ruling. Middlesex Cty. We add the following.

In Middlesex, we assumed for purposes of analysis that N.J.A.C. 19:16-5.5 may be relaxed, or its time periods extended,

in accordance with N.J.A.C. 19:10-3.1(a) and (b). We so hold now. We will defer to an arbitrator's decision to admit or exclude additional issues unless we find an abuse of discretion. As discussed in Middlesex, the County has not demonstrated why N.J.A.C. 19:16-5.5(a) and (b) should be relaxed, and we affirm the arbitrator's ruling. The County had a statutory obligation, once the PBA filed its petition, to engage in interest arbitration with the PBA negotiations unit within the parameters of N.J.S.A. 34:13A-14 to -21 and Commission rules designed to accomplish the legislative goal of resolving disputes expeditiously. It was not entitled to delay its responses concerning the PBA unit until it determined its position with respect to all other units. We add that some of the issues submitted on August 1 appear to be PBA-specific. The County has not explained why it had to wait until it finalized its proposal for other units to submit these issues.

We next turn to the County's contentions that, in formulating his award, the arbitrator disregarded the public interest and improperly applied the criteria in the Reform Act. 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. An arbitrator must assess the evidence on individual statutory factors and then weigh and balance the relevant, sometimes competing, factors. In reviewing a challenge to an award, we will determine whether the arbitrator considered

the criteria in N.J.S.A. 34:13A-16g and rendered a reasonable determination on the issues. Cherry Hill Tp., P.E.R.C. No. 97-119, 23 NJPER 287 (¶28131 1997); N.J.A.C. 19:16-5.9.

Consistent with pre-Reform Act case law, 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 and -9; or (3) the award is not supported by substantial credible evidence in the record as a whole. 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).

This proceeding focused on salary increases. The arbitrator awarded salary increases of 3.02%, 4.04% and 4.04% for 1996, 1997, and 1998.^{1/} He declined to award either the 6.5% increases sought by the PBA or the flat dollar increases proposed by the County -- dollar amounts that would have resulted in percentage increases of 1.62%, 2.27% and 2.17% for the 70% of the unit earning the top salary (Arbitrator's opinion, pp. 29, 33-34). The arbitrator denied the parties' remaining proposals, including the PBA's requests for increases in the clothing allowance, additional PBA business days, modified vacation

^{1/} These figures reflect the split increases and the effect of compounding. There is a .79% carryover into 1999.

procedures, and reduced work hours. In exercising his authority to fix an award between the parties' offers, the arbitrator wrote:

The undersigned does not believe that either the PBA proposal or the County proposal reasonably addresses the diverse concerns which must be reconciled in the development of this decision in order to be consistent with the public interests and welfare. As shown later in this decision, the PBA proposal exceeds the rate of increase in the cost of living, exceeds the "going rate" of current wage increases, exceeds the rate of increase in the private sector and the rate of increase in a significant internal Middlesex County settlement. On the other hand, the County proposal would fail to match the rate of increase in the cost of living, would fall below the "going rate" of wage increases, [and] would be less than the rate of increase in the private sector and the percentage value of the significant internal Middlesex County settlement. Accordingly, the undersigned intends to develop an Award which is more consistent with the public interest and welfare than the competing final offers submitted by the parties. [Arbitrator's opinion at 19]

The County argues that because the award exceeds the amounts the County had budgeted for wage increases, it necessarily failed to give due consideration to the taxpayers' interests, as required by N.J.S.A. 34:13A-14(b). We disagree.

The Reform Act requires the arbitrator to indicate which of the statutory factors are deemed relevant, satisfactorily explain why the others are not relevant, and analyze each relevant factor. N.J.S.A. 34:13A-16g; see also N.J.A.C. 19:16-5.9. The arbitrator must weigh and balance all relevant factors in determining what award is reasonable. The Reform Act does not require that the arbitrator award the amount the employer has budgeted for wage increases, automatically equate the employer's

offer with the public interest, or specify a formula for arriving at an award. Therefore, the award is not automatically defective because it exceeded the employer's offer and the amount it had budgeted for wage increases.

We are also satisfied that the arbitrator analyzed all the evidence on the relevant statutory factors and fashioned an award that is supported by substantial credible evidence in the record as a whole. In awarding the salary increases he did, the arbitrator gave "considerable weight" to Bureau of Labor Statistics reports, submitted by the County, showing that the rate of wage increases in the private sector was "somewhat in excess" of 3% for 1994, 1995 and 1996 (Arbitrator's opinion, p. 21). He also found to be "significant" Bureau of Labor Statistics data, also submitted by the County, showing that, for public sector contracts replacing contracts expiring in 1995, annual changes over the contract term are averaging 3.3% (Arbitrator's opinion, pp. 21-22). He considered the County's evidence to the effect that the cost of living for the first eight months of 1996 had risen by 3.2% (Arbitrator's opinion, p. 30). The arbitrator also considered data showing that interest arbitration awards and settlements averaged 4%, 4.16% and 3.96% for 1996, 1997 and 1998 (Arbitrator's opinion, p. 27). In addition, he placed "significant weight" on the County's settlement with its largest negotiations unit, 760 non-uniformed employees represented by AFSCME (Arbitrator's opinion, pp. 27, 29). He noted that, when

the dollar increases were applied to the average salary for the AFSCME unit, they resulted in increases of 2.91%, 3.96%, 4.08% for 1996, 1997 and 1998 (Arbitrator's opinion, p. 28). In addition, he found that the AFSCME settlement was enhanced by provisions that could not be precisely quantified -- including a performance incentive, increased reimbursement of Child Care Assistance payments, and an increased uniform allowance (Arbitrator's opinion, pp. 28-29).

The arbitrator also found, based on the record evidence, that the PBA had shown that County police officers had a lower base pay rate than any municipal police force within Middlesex County; that the top-step base pay for County police officers was \$5000 below the County-wide average for municipal officers; and that county police officers in Union County, a jurisdiction identified by the employer as comparable, had a better overall compensation package than the officers in this proceeding (Arbitrator's opinion, pp. 12-13, 24). Finally, the arbitrator found that County police officers had maintained and in some areas exceeded productivity levels despite the fact that the unit had been reduced from 33 to 21 officers between 1993 and 1995 (Arbitrator's opinion, pp. 33, 41). With the exception of the arbitrator's finding concerning the Union County police force, the County does not dispute any of these findings.

After analyzing the above evidence on comparability, overall compensation and the cost of living, see N.J.S.A. 34:13A-16g(2), (3) and (7), the arbitrator considered the

financial impact of his award. The arbitrator calculated the cost, for each year of the agreement, of the employer's offer, the PBA's offer, and the salary increases awarded (Arbitrator's opinion, p. 34). He found that the difference between his award and the County's offer would be \$1,095, \$25,607 and \$41,197 for 1996, 1997, and 1998, or a total difference of \$67,899 over three years (Arbitrator's opinion, pp. 38-40). The opinion acknowledged the County's financial goals. The arbitrator noted that, since 1993, the County had reduced its tax levy and was committed to increasing its retained surplus by 1998 (Arbitrator's opinion pp. 12, 40). He concluded that his award would not materially jeopardize those goals (Arbitrator's opinion, p. 40).

Against this background, we conclude that the arbitrator's award is supported by substantial credible evidence in the record. The arbitrator appropriately exercised his discretion in concluding that the record did not support the PBA's request for 6.5% increases. He also appropriately exercised his discretion in concluding that the record supported increases above the dollar amounts proposed by the County. The County's evidence on the cost of living showed that it had risen by 3.2%. Its evidence on the rate of wage changes in the private and public sectors, submitted in percentage form, reflected wage increases in excess of 3%. When the settlement between the County and AFSCME was converted to a percentage of the average AFSCME salary, it reflected wage increases of 2.91%, 3.96% and 4.08% for 1996, 1997,

and 1998. The PBA's evidence on police salaries in surrounding jurisdictions indicated that County police officers were less well-paid than their municipal counterparts or members of the Union County police force. The arbitrator explained that he chose not to award the County offer because it would be lower than the cost of living and the increases received by public and private sector employees, would result in officers losing purchasing power, and would not be justified by financial or public interest considerations. The arbitrator considered the internal settlement. But he was not required to give dispositive weight to the fact that it was stated in dollar amounts rather than percentage increases where, based on his analysis and weighing of all the evidence, he concluded that a different award was warranted.

The record also supports the arbitrator's findings on the financial impact and lawful authority criteria. The arbitrator found that if the differences between his award and the County's proposal were funded from the 1996 retained surplus of \$6,785,273, it would reduce that surplus by no more than 1% and, therefore, would not "materially jeopardize" the County's goal of achieving a \$10 million retained surplus after adoption of the 1998 budget (Arbitrator's opinion, p. 40). This conclusion is consistent with the comptroller's certification that it was the County's goal to assume "very little, if any, Surplus in the 1997 and 1998 Operating Budgets," thus indicating that some surplus could be

assumed (Arbitrator's opinion, p. 39). In any case, the record also supports the arbitrator's conclusion that it was "quite likely" that the County could fund the award without recourse to surplus (Arbitrator's opinion, p. 40). The arbitrator noted that overtime costs might be reduced in 1997 and 1998 because the County had hired additional officers in 1996 and they could be employed at straight-time rates (Arbitrator's opinion, p. 40). He also commented that some of the seven employees eligible to retire in 1998 might do so, thereby producing savings since new recruits would be hired at lower salaries (Arbitrator's opinion, p. 40). The arbitrator did not definitively state that these savings would occur, but his statements were reasonable inferences from the record.^{2/}

The arbitrator also considered the "lawful authority" criterion. He found that, in 1997, the County had a CAP bank of approximately \$14 million and had the lawful authority to fund the award (Arbitrator's opinion, p. 39). The County does not challenge this conclusion.

We disagree with the County that the award has the same defects as those considered in Hillsdale, Washington Tp. or Fox. In awarding increases in between those proposed by the parties,

^{2/} An award in excess of the amounts an employer has budgeted for wage increases does not inevitably force the employer to increase its overall expenditures. N.J. State PBA v. Town of Irvington, 80 N.J. 271, 288-89 (1979); PBA Local 207 v. Bor. of Hillsdale, 263 N.J. Super. 163, 194 (App. Div. 1993), aff'd in part, rev'd in part, 137 N.J. 71 (1994).

the arbitrator considered all relevant factors and did not rely solely on police salaries in surrounding jurisdictions. The parties presented, and the arbitrator analyzed, evidence on private sector wage increases and wage increases of non-uniformed public employees. The arbitrator also considered the financial impact of the award.

Although we emphasize that we evaluate the entire award to determine whether it is supported by substantial credible evidence in the record as a whole, we will address the County's more specific challenges to the arbitrator's findings or analysis concerning individual criteria. We find that the arbitrator appropriately considered the public interest in maintaining a high-productivity and high-morale police force (Arbitrator's opinion, p. 17). That is one component of the public interest and welfare criterion. The arbitrator's conclusion that Union County police officers were better compensated than the County officers is supported by his analysis of the salary guides of the two forces (Arbitrator's opinion, p. 24). The County's challenge to this finding is unparticularized. Similarly, the arbitrator's award is not undermined because, in discussing the continuity and stability of employment criterion, he did not analyze the County's evidence concerning public and private-sector positions that had been privatized or "downsized." The arbitrator accepted the County's position that this unit had stable employment and rejected PBA arguments to the contrary. The County's challenge to

the award based on the analysis of this criterion is without merit. Cherry Hill Tp. Finally, the arbitrator did not err in referring to the County's CAP bank in concluding that the County could fund the award for 1996 and 1997. The County argues that, because the tax levies for those years have already been struck, the County's CAP bank is pertinent only to 1998. However, if the award for 1996 and 1997 cannot be funded out of reserves for those years, the availability of a CAP bank for 1998 is relevant to assessing whether the County can fund the award in 1998. See N.J.S.A. 40A:4-45.41.

The County argues that the arbitrator was required to consider the impact of the award on existing or planned programs or services, the county tax rate, and property taxpayers of different income levels. The plain language of section 16g(6) requires an analysis of these factors "to the extent that evidence is introduced." Neither the County's post-hearing brief nor its brief on appeal points to any such evidence.

We also reject the County's argument that the award must be vacated because the arbitrator did not consider the financial impact which would result if the County's other law enforcement units received similar awards. Before the arbitrator, the County argued generally that his award could set a precedent for eight other units eligible for interest arbitration, but it offered the arbitrator no particularized analysis or projections of how various levels of potential awards, if applied to other units,

would affect the County financially. In this posture, the arbitrator was not required to address this issue.^{3/}

We are not persuaded that the arbitrator violated N.J.S.A. 34:13A-16d(2) because: (1) his award exceeded the amount the County had budgeted for wage increases for this unit, or (2) he did not consider that his award might result in increased salary expenses for other County law enforcement units. N.J.S.A. 34:13A-16d(2) requires the arbitrator to determine the reasonableness of "the total net annual economic changes for each year of the agreement." Whether the total net economic changes for any year are reasonable depends on the arbitrator's assessing, weighing and balancing the relevant statutory factors, not on any independent requirement imposed by 16d(2).

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

^{3/} On appeal, the County submits an exhibit from its comptroller estimating the expenditures that could result for 1996 and 1997 if the arbitrator's award were applied to other County law enforcement units. Given the absence of any particularized submission below, we decline to consider this supplemental material now.

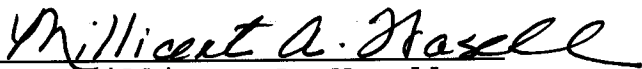
fully considered the requirements of the law. For these reasons, we also reject the argument that the award was procured by undue means, contrary to N.J.S.A. 2A:24-8.

We do not consider the County's position that, if the arbitrator properly applied the Reform Act, that statute unconstitutionally delegates governmental powers. Under N.J.S.A. 34:13A-16f(5)(a), our jurisdiction is limited to reviewing the application of the criteria in subsection 16g and determining whether the arbitrator violated the standards in N.J.S.A. 2A:24-8 or N.J.S.A. 2A:24-9.

ORDER

The arbitrator's award is affirmed.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Boose, Buchanan, Finn, Klagholz, Ricci and Wenzler voted in favor of this decision. None opposed.

DATED: October 30, 1997
Trenton, New Jersey
ISSUED: October 30, 1997