

P.E.R.C. NO. 98-47

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWN OF NEWTON,

Respondent,

-and-

Docket No. IA-96-113

PBA LOCAL 138 SOA,

Appellant.

SYNOPSIS

The Public Employment Relations Commission affirms an interest arbitration award issued to resolve contract negotiations between the Town of Newton and PBA Local 138 SOA. The SOA appealed the award contending that the arbitrator did not properly apply the statutory criteria and requesting that the award be vacated. The Commission 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.

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. 98-47

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWN OF NEWTON,

Respondent,

-and-

Docket No. IA-96-113

PBA LOCAL 138, SUPERIOR  
OFFICERS ASSOCIATION,

Appellant.

Appearances:

For the Appellant, Morris & Hantman, attorneys (Allen Hantman, on the brief)

For the Respondent, Trapasso, Dolan & Hollander, attorneys (William E. Hinkes, 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 PBA Local 138, Superior Officers Association, appeals from a June 7, 1997 award involving six superior 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 SOA proposed a four-year contract from January 1, 1995 through December 31, 1998, with across-the-board salary

increases of 5% for each year. It also sought to: (1) increase the clothing allowance by \$50 for each of the last three years of the agreement; (2) eliminate step 2 of the sergeants' salary guide in 1997 and step 3 in 1998; and (3) set the salary for lieutenant at 8.5% above the sergeant's top pay rate, and the salary for captain at 8.5% above the lieutenant's top pay rate, beginning in 1996. In addition, it proposed, effective January 1, 1998, that all officers be permitted to purchase 50% of their accumulated sick leave on retirement and that detectives be entitled to receive a maximum \$2,500 annual payment for unused compensatory time.

The Town also proposed a four-year contract and agreed to a 5% across-the-board wage increase in 1995. For 1996, 1997 and 1998, it proposed 3% across-the-board increases. The Town also sought to eliminate medical and dental coverage for dependents and to limit such coverage to employees.

The arbitrator awarded a four-year contract with a 5% across-the-board increase for 1995 and 3.5% increases for 1996, 1997 and 1998 (Arbitrator's opinion, p. 17). In addition, he awarded the PBA proposal to eliminate two steps on the sergeants' salary guide and increased the uniform allowance to \$600 in 1996, \$650 in 1997, and \$700 in 1998 (Arbitrator's opinion, pp. 17-18). He rejected the PBA's remaining proposals, as well as the Township's proposal to end medical and dental benefits for employee dependents (Arbitrator's opinion, pp. 17-18).

The SOA requests that we vacate the award, contending that the arbitrator did not properly apply the criteria in N.J.S.A. 34:13A-16g.<sup>1/</sup>

The Town responds, preliminarily, that the SOA's appeal should be dismissed because its notice of appeal was defective. It also urges that the Commission should deny the SOA's motion to accept its brief as filed within time. With respect to the substantive grounds of the appeal, it maintains that the arbitrator thoroughly considered all statutory criteria and that the award should be affirmed.

We turn first to the Town's procedural arguments. A notice of appeal must be filed within 14 days after receiving an interest arbitration award. N.J.S.A. 34:13A-16f(5)(a); N.J.A.C. 19:16-8.1. N.J.A.C. 19:16-8.1(a)(1) requires that the notice "specify each alleged failure of the arbitrator to apply the criteria specified in N.J.S.A. 34:13A-16g and each alleged violation of the standards in N.J.S.A. 2A:24-8 and -9." The Town maintains that the notice was deficient because, by simply stating that the arbitrator did not apply the statutory standards to the facts presented at the hearing, the notice did not adequately advise the Town of the basis of the appeal.

We agree that the SOA's notice of appeal should have specified each alleged error in the arbitrator's analysis. While

---

<sup>1/</sup> The SOA also requests oral argument. We deny that request.

we will not dismiss this appeal, in the future we will not process appeals unless the appellant promptly meets the specificity requirements of N.J.A.C. 19:16-8.1(a)(1).

We also grant the SOA's motion to accept its brief as filed within time. N.J.A.C. 19:10-2.1(c). In re Appeal of Syby, 66 N.J. Super. 460 (App. Div. 1961), cited by the Town, is inapt. Syby did not discuss extensions of time for filing briefs and does not militate against granting the Town's motion. Cf. R. 2:6-11(c) (notwithstanding rule's time provisions for filing briefs, court may enter a separate scheduling order in any case on appeal).

We turn now to the SOA's contentions that the arbitrator did not properly weigh and analyze the evidence under the statutory criteria, gave controlling weight to the Consumer Price Index (CPI), and erroneously cited Department of Labor statistics on private-sector wage increases. This proceeding focused on salary increases for 1996, 1997 and 1998. The parties agreed to, and the arbitrator awarded, a 5% increase for 1995 (Arbitrator's opinion, p. 17). In awarding 3.5% increases for 1996, 1997, and 1998, the arbitrator declined to award either the 3% increases proposed by the Town or the 5% increases sought by the SOA (Arbitrator's opinion, p. 17). The arbitrator also awarded the SOA's clothing allowance and salary guide proposals for sergeants (Arbitrator's opinion, pp. 17-18). He denied the SOA's sick leave and compensatory time proposals, along with its proposal for an 8.5% differential between ranks and the Town's proposal to

eliminate dependent medical coverage (Arbitrator's opinion, p. 17-18).

In exercising his authority to fashion a conventional arbitration award, the arbitrator concluded that it was appropriate to award salary increases for 1996, 1997 and 1998 which were closer to those proposed by the Town than the SOA and to deny the SOA's proposal for an 8.5% shift differential. We are 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 cited United States Department of Labor (Bureau of Labor Statistics) data showing that "working supervisory" level employees in the private sector received increases of less than 3% in the past year (Arbitrator's opinion, pp. 13-14). He also accorded weight to the fact that non-uniformed Town employees had received 3% increases for 1997 (Arbitrator's opinion, pp. 8, 14). The arbitrator also found that the Town's offer was "by far the more reasonable" in light of the fact that the CPI averaged 2.6% for 1993-96 (Arbitrator's opinion, p. 12).

The arbitrator considered the SOA's evidence that, of the four Sussex County municipalities with superior officers, the Town's superior officers had the second lowest salaries (Arbitrator's opinion, p. 14). He concluded that all three of the

other municipalities were better off economically than Newton and were thus better able to afford higher salaries (Arbitrator's opinion, p. 14). Similarly, the arbitrator evaluated the SOA's evidence concerning: (1) the top salary for teachers employed by the Newton Board of Education and (2) the compensation packages offered by two Sussex County employers, AT&T and Beneficial Technology, for their low and middle-level managers. He stated that the SOA had not indicated the annual wage increases received by the teachers and concluded that the "single citation of a gross wage rate" failed to support the SOA's salary proposal (Arbitrator's opinion, p. 14). He found that some of the AT&T information concerned a merit raise program irrelevant to the proceeding (Arbitrator's opinion, p. 13). While the arbitrator noted that Beneficial had granted a 4% across-the-board increase plus merit raises, he concluded that Department of Labor statistics were more indicative of wage increases received in private employment in general, see N.J.S.A. 34:13A-16g(2)(a), than were the two examples selected by the SOA (Arbitrator's opinion, pp. 13-14).

After reviewing the above evidence on the cost of living and comparability, see N.J.S.A. 34:13A-16g(2) and (7), the arbitrator analyzed the evidence presented on the lawful authority, financial impact and public interest criteria. He accorded weight to, and found persuasive, the Town Manager's testimony concerning the dollar cost analysis of the proposals and

the overall financial health of the Town (Arbitrator's opinion, p. 16). The arbitrator cited the Town's evidence that the Town had adopted ordinances to increase the annual CAP rate above the index rate in each of the last five years (Arbitrator's opinion, p. 11). He also noted that the Town had a low per capita income, had lost \$38 million in assessed valuation and, in 1996, had raised the local purpose portion of the municipal tax by 11% (Arbitrator's opinion, pp. 7, 9, 11, 12, and 18). The arbitrator also evaluated the SOA's evidence that: (1) taxes had not been raised between 1990 and 1995 and (2) the police salary appropriation had decreased by \$60,000 between 1995 and 1996 (Arbitrator's opinion, p. 16). While he found that this evidence "argued to some extent for an award nearer [the SOA's] 5% final offer," he concluded that, based on the weight of the evidence on the financial impact criterion, as well as the CPI and the average public and private sector wage increases, it was appropriate to award increases, for 1996, 1997 and 1998, closer to those proposed by the Town than the SOA (Arbitrator's opinion, pp. 13, 16).

The SOA does not challenge any of the arbitrator's findings but disagrees with his weighing and analysis of the evidence. We conclude that the arbitrator's award is supported by substantial credible evidence in the record. Based on the evidence summarized above, we conclude that the arbitrator appropriately exercised his discretion in finding that the record did not support the SOA's request for 5% increases in 1996, 1997



and 1998 and, instead, supported an award of 3.5% for those years, along with the clothing allowance increase and the elimination of certain salary guide steps. 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 address the SOA's specific objections to the arbitrator's analysis and weighing of certain evidence.

We reject the SOA's contention that the arbitrator should not have relied on the Department of Labor statistics because they do not indicate what type of positions the employees had or whether they were responsible for 365-day, 24-hour coverage, as are the Town's superior officers. N.J.S.A. 34:13A-16g(2)(a) calls for, among other things, a comparison of the wages, hours, and working conditions of the employees involved in the proceeding with employees "in private employment in general." Therefore, the arbitrator did not err in considering the Department of Labor information on average wage increases.

We disagree with the SOA that the arbitrator gave controlling weight to the CPI. As the foregoing summary indicates, the arbitrator analyzed the comparability, public interest and welfare, lawful authority, cost of living and financial impact criteria.<sup>2/</sup> The SOA does not point to any criteria or evidence ignored by the arbitrator.

---

<sup>2/</sup> He also discussed the overall compensation and continuity and stability of employment criteria, N.J.S.A. 34:13A-16g(3) and (8), and found that there were no stipulations. N.J.S.A. 34:13A-16g(4).

We reject the SOA's contention that the award should be vacated because the Town is fiscally healthy and did not demonstrate that it could not pay the SOA's offer. N.J.S.A. 34:13A-16g(6) does not require a municipality to prove its inability to meet the other party's offer. Hillsdale, 137 N.J. at 86. An interest arbitration award must be based on an analysis of all the relevant statutory factors. Ibid. The arbitrator considered all the evidence bearing on the Town's financial status and concluded that, overall, the evidence supported an award closer to the Town's offer than the SOA's offer. That decision is supported by the record. The arbitrator acknowledged a five-year period where there were no tax increases and noted that, between 1995 and 1996, the budget for police salaries had been reduced. However, those facts did not require him to award higher salary increases where, based on a weighing and analysis of all the evidence, he concluded that other financial factors, along with the comparability and cost of living evidence, supported his award.

The SOA also contends that the arbitrator did not recognize that, because only a few jurisdictions in rural Sussex County have superior officers, it was limited in the amount of comparability evidence it could submit. See N.J.S.A. 34:13A-16g(2)(c). The arbitrator did not evaluate the SOA's proposal based on the quantity of evidence it submitted. He found that the the jurisdictions cited by SOA were not comparable. In any case, geographic proximity is only one of the factors which

may be used to determine whether jurisdictions are comparable, so that the SOA was not limited to Sussex County in presenting its evidence on this factor. N.J.A.C. 19:16-5.14(d).

The Town was not required to submit, or the arbitrator to request, additional information concerning superior officer salaries in other jurisdictions. Cf. Hillsdale, 137 N.J. at 84; N.J.A.C. 19:16-5.7(d); N.J.A.C. 19:16-5.14(b)(2). The arbitrator considered all the comparability evidence presented by the parties. N.J.S.A. 34:13A-16g; N.J.A.C. 19:16-5.14(b). He did not consider that additional evidence on this factor was necessary for him to issue an award. The SOA has not demonstrated why we should disturb that judgment on appeal.

The SOA also maintains that the arbitrator erred in denying its proposal for 8.5% differentials between the ranks of sergeant and lieutenant and between the ranks of lieutenant and captain. It argues that the arbitrator did not explain his ruling on this issue and that he re-adopted a system where sergeants make more than the captain. We disagree. The Town explains that some sergeants made more than the captain because they received additional compensation in the form of overtime, seniority pay, and off-duty work at construction sites. The record indicates that the parties' prior contract included a \$2500, 4.9% differential between sergeant and lieutenant base salaries and a \$2500, 4.7% differential between lieutenant and captain base salaries. In view of these factors, the arbitrator's award is supported by substantial credible evidence in the record.

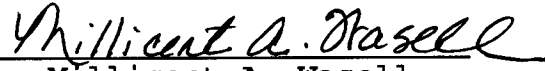
Finally, the SOA maintains that the Town's health benefits proposal should not have been submitted to interest arbitration because, as a member of the New Jersey State Health Benefits Program, the Town could not eliminate dependent coverage for only one group of employees. The arbitrator treated the Town's health benefit proposal as a discrete item and commented that "[a]bsent significant economic justification, such a proposal is unthinkable, and it is rejected" (Arbitrator's opinion, p. 18). Assuming for the purposes of analysis that the proposal should not have been submitted to interest arbitration, we do not believe that the arbitrator's consideration of the proposal affected his evaluation of the parties' other proposals.

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 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