

P.E.R.C. NO. 2010-42

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matters of

COUNTY OF PASSAIC AND
PASSAIC COUNTY SHERIFF,

Appellants,

-and-

Docket No. IA-2007-115

POLICE BENEVOLENT ASSOCIATION LOCAL 197
(Correction Officers),

POLICE BENEVOLENT ASSOCIATION LOCAL 197
(Correction Superior Officers),

POLICE BENEVOLENT ASSOCIATION LOCAL 286
(Sheriff's Officers),

POLICE BENEVOLENT ASSOCIATION LOCAL 286
(Sheriff's Superior Officers),

Respondents.

SYNOPSIS

The Public Employment Relations Commission vacates and remands an interest arbitration award to the arbitrator for reconsideration. The County appealed the award arguing that: the award must be vacated and remanded to a new arbitrator because the arbitrator did not apply and give due weight to the statutory factors; the award violates the New Jersey Arbitration Act, N.J.S.A. 2A:24-8, because the arbitrator failed to consider the statutory factors or calculate the total net economic changes for each year of the agreement; and the award is not based on substantial credible evidence in the record as a whole. The PBA argued 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 he deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor.

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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Respondents.

Appearances:

For the Appellants, Genova, Burns & Vernioia, attorneys
(Brian W. Kronick, of counsel and on the brief;
Kristina E. Chubenko, on the brief)

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

DECISION

The County of Passaic and Passaic County Sheriff appeal from an interest arbitration award involving negotiations units of County Correction Officers and Sheriff's Officers represented by Police Benevolent Association, Local 197 (Correction Officers), Police Benevolent Association, Local 197 (Correction Superior Officers), Police Benevolent Association Local 286 (Sheriff's

Officers), and Police Benevolent Association, Local 286 (Sheriff's Superior 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). We vacate the award and remand the case to the arbitrator for reconsideration consistent with this opinion.

The Associations proposed a five-year agreement from January 1, 2007 through December 31, 2011 with 5% annual across-the-board salary increases at each rank, step, and position on the salary guide.

The County proposed a five-year agreement with cost-of-living increases and changes as follows:

January 1, 2007	1.5%	July 1, 2007	1.5%
January 1, 2008	1.375%	July 1, 2008	1.375%
January 1, 2009	1.375%	July 1, 2009	1.375%
January 1, 2010	1.375%	July 1, 2010	1.375%
January 1, 2011	1.375%	July 1, 2011	1.375%

Any new employee hired through the State of New Jersey Intergovernmental Transfer Program may not receive a starting salary in excess of Step 2 of the salary guide.

Effective 1/1/07, any employee without academy certification shall be considered a recruit and shall receive a recruit salary of 75% of Step 1 and shall not receive increments until they complete the academy. Upon successful completion of the academy, the employee will receive Step 1. Step 1 shall not be withheld for more than 18 months unless the employee fails to pass a certified academy, which would extend the recruit pay until the Employee is certified by an academy.

The County also proposed the following:

Workweek/Work Hours:

For employees assigned to the Court-house - M-F 8:15 to 4:15 inclusive of a thirty (30) minute lunch period.

Overtime:

In lieu of overtime compensation, any employee assigned to the K-9 Unit will receive five (5) hours per week compensation at a rate commensurate with the duties performed in relation to the care of his or her canine.

All Employees required to attend Bi-Annual Firearms Qualifications on their day off will be compensated with three (3) hours of compensatory time for each day of qualification.

For PBA 197 and 197 (SOA): Article 10, Court Papers and Sequestered Jury Service, Paragraph A(1). Delete Article 10

For PBA 286 and 286 (SOA): Article 10, Court Papers and Sequestered Jury Service, Paragraph A(1). Substitute PBA 286 for 197: "Those members of PBA 286 who serve subpoenas"

Vacation:

Employees hired after the ratification of this agreement shall have the following vacation schedule:

<u>Years</u>	<u>Days</u>
1-5	12
6-10	12
11-15	15
16-20	18
Over 20	20

If an employee calls out sick on a holiday, he or she will have 3 days deducted from their accumulated time.

For each 12 month period that an employee does not use sick time, an additional comp day will be awarded as an incentive for perfect attendance.

Holiday:

Employees having a 4&2 work week shall be granted 15 comp days in lieu of holiday pay.

Criminal/Civil Actions, Paragraph C

Amend this paragraph as follows: "The maximum counsel fees for Employees"

Medical Benefits:

Employees hired prior to the ratification of the agreement provide the following medical premium contribution:

\$10/month	Single
\$20/month	Husband/Wife
	Parent/Child
	Employee/Domestic Partner
\$40/month	Family

Employees hired after the ratification of the agreement:

2%	of base salary	Single
2.5%	of base salary	Husband/Wife
		Parent/Child
		Employee/Domestic Partner
3%	of base salary	Family

Co-Pays:

Co-pays \$15.00

Deductible \$250/Employee and
 \$500/Family member

Out of pocket max
(in network) \$200 Employee
 \$400 Family member

Out of pocket max
(out of network) \$600 Employee
 \$1,000 Family member

Upon retirement, the employer will continue to provide and pay for the above programs as stipulated herein.

Prescription: \$5 (generic)/\$10 (brand)
 \$10 (mail generic)
 \$20 (mail brand)
 Includes family members.

Retirement:

Employees who have more than 2 years of service with the County at the time of this agreement may be out without a doctor's note for no more than 120 days. Those employees who have more than 15 years of service with the County but less than 20 years at the time this agreement is signed may be out without a doctor's note for no more than 90 days. Employees who have more than 10 years of service with the County, but less than 15 years at the time this agreement is signed may be out without a doctor's note for no more than 60 days.

The County shall pay all medical prescription premiums for all members who retire with a minimum of 25 years of service with the County. For employees with less than 25 years of service, the employees who retire on a disability

shall continue to receive full medical benefits as provided under this article at no cost to the retiree or the retirees family as if the employee were active.

Medical:

Employees shall pay the following monthly amount to the County toward medical coverage premiums:

10-17 years of County service

\$103.43	single
\$214.52	couple
\$265.00	family
\$172.68	parent & child

18-24 years of County service

\$101.08	single
\$183.53	couple
\$227.14	family
\$128.45	parent & child

Rates subject to change by Board of Chosen Freeholders.

Workweek/Hours of Work:

New requirements for the Reciprocal Day Program.

Holiday Compensation Program:

Change Washington's Birthday to Presidents' Day.

The arbitrator awarded a five-year agreement from January 1, 2007 through December 31, 2011 with 4% across-the-board increases for all unit members effective April 1 for each year of the agreement; premium sharing of \$10, \$20, and \$30 per month for single, husband/wife or parent/child, and family coverage respectively; and an increase in prescription co-pays to \$5, \$10,

and \$20 for generic, brand, and three-month mail supply drugs. All other proposals were denied.

The County appeals contending that: the award must be vacated and remanded to a new arbitrator because the arbitrator did not apply and give due weight to the statutory factors; the award violates the New Jersey Arbitration Act, N.J.S.A. 2A:24-8 because the arbitrator failed to consider the statutory factors or calculate the total net economic changes for each year of the agreement; and the award is not based on substantial credible evidence in the record as a whole.

Specifically, the County alleges that: the arbitrator did not give due weight to the interest and welfare of the public; did not discuss the impact of the award on the County tax rate; did not discuss the County budget and its ability to fund the award; erred in giving more weight to morale than the County taxpayers; did not discuss what weight was given to the comparability evidence of the County or to support a deviation from the internal pattern of settlement; the award is flawed in that it causes the County to exceed its tax cap; the arbitrator did not give proper weight or consider the relevant evidence presented as to the overall compensation; the arbitrator did not give due weight to the lawful authority of the employer; the arbitrator did not give due weight to the cost of living; the arbitrator did not give due weight to the continuity and

stability of employment; and the arbitrator did not calculate the net economic changes for each year of the agreement.

The Associations respond that: the award gave due weight to the statutory factors and points to the portions of the award that discuss the factors; the award did not violate the standards set forth in N.J.S.A. 2A:24-8 because the arbitrator noted that he considered both parties' proposals and evidence; and the award is supported by substantial credible evidence in the record as a whole; and if remanded, it should be to the same arbitrator.

N.J.S.A. 34:13A-16(g) requires an arbitrator to 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-16(g); N.J.A.C. 19:16-5.9; Lodi.

Within this framework, we conclude that the award must be vacated and remanded to the arbitrator for reconsideration.^{1/} The arbitrator summarized the parties' positions on the application of the statutory factors, but he did not provide an independent analysis of the relevant factors and how he considered each of them in light of the evidence presented to reach his award. Borough of Paramus, P.E.R.C. No. 2010-35, ___ NJPER ___ (¶ ___ 2009). The Associations point to sections of the award that they contend apply the required analysis, but those sections are a summary of the parties' positions on the statutory factors, not the arbitrator's analysis of how the factors led him to his particular result.

The County's appendix on appeal includes over 12,000 pages of evidence submitted to the arbitrator. The arbitrator's award is 45 pages, but the rationale for his award is just four and a half pages. We summarize that rationale.

^{1/} We believe a remand to the original arbitrator will benefit the negotiations process as he is already familiar with the record and can presumably issue a comprehensive award without additional briefing or argument from the parties.

The arbitrator began with a discussion of one of the statutory factors, "Interest and Welfare of the Public." He stated:

The interest and welfare of the public is not solely determined by the County paying its officers the most or the least of any comparable group. The morale of the County's officers will inevitably impact the quality of services rendered. On one hand, the County offers salary increases that, on a percentage basis, are lower than the average voluntary settlement or awarded amount through interest arbitration over the relevant time period. On the other hand, the Association seeks increases that are beyond the going rate. In sum, my analysis leads to the conclusion that the interests and welfare of the public will be best served by accepting neither party's proposals in their entirety, but rather, determining a reasonable but competitive compromise based upon the factors that will be more fully discussed below.

As for the "Cost of Living," the arbitrator stated that the Associations' proposal exceeded the CPI and the County's wage proposal includes an employee contribution toward medical insurance that results in a lesser net annual wage increase than proposed by the County. He found that neither economic proposal prevails under this factor.

As for the "Continuity and Stability of Employment," the arbitrator noted that until the County's recent layoffs, employment has been relatively stable; the current and past compensation packages have encouraged employees to remain with the County; and that compared with sheriff's officers and

correction officers in other counties, these employees are fairly compensated. He noted that although the County has taxed at the maximum since 2003, it has managed to maintain healthy fund balances. He concluded that there is no reasonable basis for providing an award that would significantly deviate from either the recent settlements of sheriff's officers and correction officers around the State, or the recent settlements for other County employees.

The arbitrator noted that there were no substantive stipulations of the parties.

As for the "Lawful Authority of the Employer" and the "Statutory Restrictions on the Employer," the arbitrator stated that "[b]ased on the extensive financial data supplied and the relevant expert testimony, I conclude that the Award outlined below will not exceed the statutory restrictions or cause a CAP problem for the County."

As for "Overall Compensation," the arbitrator noted that employees enjoy a broad spectrum of benefits that are not only adequate, but competitive no matter what comparison group is considered. He continued that the County has not proven that the host of changes it proposes are necessary and that neither party prevails under this factor.

As for "Comparability," the arbitrator found that the Associations had not proven that municipal law enforcement

officers comprise the best comparison group for reviewing maximum salaries. He stated that this factor leans in favor of the County's assertion that the appropriate comparison is other county sheriff's officers, sheriff's superior officers, correction officers and correction superior officers. He then stated that neither comparison supported the parties' proposals and that having reviewed all the relevant comparisons, including the other County units and the private sector, the County's officers receive competitive wage and benefits that fall within an acceptable range.

Finally, as for "Financial Impact," the arbitrator stated that the economic health and welfare of the County must be taken into consideration. He noted that the County emphasized the basis for its recent layoffs and the fact that it has taxed at the maximum since 2003; the Association pointed out the healthy amount of surplus the County continues to regenerate despite its fiscal challenges. The arbitrator concluded by stating that his independent analysis led him to the conclusion that his award will not produce prohibitive financial effects on the County.

We vacate the award and remand this matter to the arbitrator because he did not provide a reasoned explanation for his award and state what statutory facts he considered most important, explain why they were given significant weight, and

explain how the evidence and factors were weighed and considered to arrive at his award.

Addressing the "Interest and Welfare of the Public" factor, the County argues that the arbitrator did not discuss the award's impact on the County tax rate; and did not analyze the County's budget situation and the ability of the County to fund and implement this award in light of the County's CAP constraints. We agree.

In addressing the "Comparability" factor, the arbitrator did not make any findings about the County's alleged pattern of settlement with 13 other negotiations units; and did not decide whether a wage and medical contribution pattern was established or whether the evidence supports a deviation from the pattern. See Union Cty., P.E.R.C. No. 2003-33, 28 NJPER 452 (¶33169 2002). He must do so on remand.

In addition, there was no serious discussion of the wages and benefits of unit employees relative to other County employees, or other sheriff's and corrections officers throughout the State. The County asserts that the Sheriff's officers receive the third highest base compensation in the State and the corrections officers the second highest base salary in the State. The County correctly asserts that the arbitrator did not even mention private sector comparisons in his award. We note that the record includes at least seven exhibits addressing private

sector wages. Six of those exhibits contain private sector collective bargaining agreements.

As for the "Overall Compensation" factor, the arbitrator did not explain how his award would affect overall compensation. Nor did he explain what evidence he relied on in deciding that 4% was the appropriate annual salary increase.

Two statutory factors require an arbitrator to consider the lawful authority of the employer including compliance with the CAP laws. The arbitrator addressed these factors in one sentence, finding that the award would not exceed the statutory restrictions or cause a CAP problem. The County states that it introduced undisputed evidence that it is suffering through a major financial downturn; that its bond ratings went from a neutral outlook to a negative outlook; and that the arbitrator did not address how the salary increases he awarded would affect other areas of the County's budget. The Associations respond that the arbitrator considered and discussed the PBA's contention that the County's ability to pay was within the CAP law; that the County's proposal would not have a negative effect on the County, its residents or its taxpayers; and would not prevent the County from meeting any statutory restrictions placed upon it. We agree that the arbitrator repeated the parties' assertions. What he did not do is explain how the evidence supports one conclusion or the other and how that evidence supports his award.

We also agree with the County that the arbitrator's discussion of the "Financial Impact" on the governing unit was inadequate. It was not enough for the arbitrator to assert that his "independent analysis leads me to the conclusion that the Award rendered below will not produce prohibitive financial effects on the County." The arbitrator must explain the evidentiary basis for his conclusions.

As for the "Cost of Living" factor, the arbitrator recited the cost-of-living percentages as 4.1% for 2006, 2.3% for 2007, 3.9% for 2008, and 0.5% for 2009. He awarded 4% increases for 2007 through 2011. The County argues that he did not explain what weight he gave to this factor and why. We agree.

In addressing "Continuity and Stability of Employment," the arbitrator stated that there is no reasonable basis for providing an award that would deviate significantly from the recent settlement trends for sheriff's officers and corrections officers around the State, or the recent settlements for employees of the County. The County states that it presented testimony about its pattern of settlement: three, four or five year agreements with 3% increases in year one and 2.75% increases for the remainder of the contracts. The County states that it negotiated agreements with 13 of its 20 units with salary increases at or below 3% per year; the pattern also includes employee contributions to medical insurance. As noted above, the arbitrator did not explain

whether there was a pattern of settlement, and if there was, what evidence or factors justify a deviation from that pattern.

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 Associations argue that the arbitrator's failure to perform this calculation was harmless since the only economic change was in gross salary. We disagree. The interest arbitration statute charges the arbitrator with the responsibility to determine whether the 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.

Finally, given the remand on the ground that the arbitrator failed to apply the criteria specified in N.J.S.A. 34:13A-16g and did not make the determination required by N.J.S.A. 34:13A-16b(2), we need not reach the question of whether those same reasons would also violate N.J.S.A. 2A:24-8.

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, Commissions Branigan, Buchanan, Fuller, Joanis and Watkins voted in favor of this decision. None opposed. Commission Colligan recused himself.

ISSUED: December 17, 2009

Trenton, New Jersey