

P.E.R.C. NO. 2011-75

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF HUNTERDON,

Appellant,

-and-

Docket No. IA-2009-103

FOP LODGE 94,

Respondent.

SYNOPSIS

The Public Employment Relations Commission affirms an interest arbitration award. The County of Hunterdon appealed the award of an incremental salary guide for the Sheriff's officers represented by FOP Lodge 94. The Commission holds that the arbitrator had the authority to award a salary guide and that the award is supported by substantial credible evidence in the record. The Commission notes that it does not perform a de novo review of interest arbitration awards.

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 Petitioner, Gaetano M. De Sapio, attorney.

For the Respondent, Mets, Schiro & McGovern, attorneys
(James M. Mets, of counsel)

DECISION

The County of Hunterdon appeals from an interest arbitration award involving a negotiations unit of approximately 15 Sheriff's officers.^{1/} 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).^{2/} A conventional award is crafted by an arbitrator after considering the parties' final offers in light of nine statutory factors. We affirm the award. We note that we

1/ We deny the County's request for oral argument. The issues have been fully briefed.

2/ Effective January 1, 2011, P.L. 2010, c. 105 eliminated all other methods of interest arbitration and only provides for conventional arbitration.

are constrained by our review standard to affirm the award. We may not perform a de novo review of the evidence and 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).

The parties stipulated to a three-year agreement effective January 1, 2009 through December 31, 2011. The parties also stipulated to various other language changes to the agreement. The outstanding issues were submitted to the arbitrator in the parties' final offers.

The FOP's main proposal was to establish a salary schedule with annual increments for sheriff's officers effective January 1, 2009, with 5.5% across-the-board salary increases effective January 1, 2010 and 2011. Also proposed was a 5% above-step differential for any officer holding the corporal designation. In addition, the FOP proposed: changes to the Hours of Work, Overtime, Holidays, Leaves of Absence, Medical Benefits, Employee Expenses, Safety, Employee Rights, Uniforms, Attendance Bonus, On-Call Procedures including the use of a County vehicle, Longevity, increased tuition reimbursement, training incentive, EMT incentive, elimination of the employment and reimbursement agreement and a new modified duty article.

The County proposed a 1.5% across-the-board salary increase retroactive to January 1, 2009, but the payment of which to be effective January 1, 2010. The County also proposed that

effective January 1, 2011, the County pay employees on a bi-weekly basis with staggered implementation resulting in a ten-day hold back on an employee receiving a pay check. The end result of the new pay schedule is that when an officer leaves the employ of the County, two weeks of pay will be owed to the officer. The County opposed all other contested issues presented by the FOP, including the salary guide proposal.

On January 31, 2011, the arbitrator issued a 82-page Opinion and Award. He noted that the record was extensive, containing 120 documentary exhibits totaling thousands of pages in support of the parties' last offers. After summarizing the parties' proposals and respective arguments on those proposals in detail, the arbitrator compared the proposals and awarded a three-year agreement.

The arbitrator awarded the implementation of the following 11-step incremental salary schedule for 2009 through 2011:

STEP	2009	2010	2011
11	57,500	58,500	60,000
10	54,000	54,000	55,500
9	51,000	51,000	51,000
8	48,500	48,500	48,500
7	46,500	46,500	46,500
6	42,500	42,500	42,500
5	40,500	40,500	40,500
4	37,900	39,000	39,000

3	35,500	37,500	37,500
2	33,150	33,150	33,150
1	31,600	31,600	31,600

The arbitrator did not award any salary increase for officers in 2009 and placed officers on the step corresponding to their existing 2008 salary. The arbitrator also awarded the County's proposal for a two-week salary hold-back to be implemented as soon as feasible after the award issued. The arbitrator denied all other proposals.

The County appeals contending that: the arbitrator exceeded his authority in awarding a salary guide; even if the arbitrator had the authority to award a salary guide, it was contrary to the credible evidence in the record; and the economic increase awarded to the FOP is excessive in the current economic climate.

The FOP responds that the County ignored Commission precedent that establishes the arbitrator's authority to award a salary system; the arbitrator's award in adopting the FOP's proposal for a salary guide is supported by substantial credible evidence in the record; the arbitrator's economic award was reasonable; and if the Commission finds an error in the award, a remand is the appropriate remedy.

N.J.S.A. 34:13A-16g 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-16g]

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. 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.

The County argues that the arbitrator exceeded his authority in creating an incremental salary guide because the County negotiated the elimination of salary guides with all of its units years ago and the arbitrator's actions will create an incremental payment obligation for the County in 2012. Citing N.J.S.A. 2A:24-8 and 2A:24-9(b), the County contends that the award must be vacated because the award of a salary increment for 2012 was not submitted to the arbitrator rendering the award incomplete.

The FOP responds that its proposal to implement a salary guide containing automatic salary steps is a mandatorily negotiable term and condition of employment that may be submitted to an interest arbitrator; incremental salary step systems are a

fundamental component of almost all compensation packages for law enforcement officers; and the County is not bound to continue the salary guide in future negotiations.

We have held that a proposal to implement a salary guide containing automatic salary steps is mandatorily negotiable and may be submitted to interest arbitration. Sussex Cty., P.E.R.C. No. 83-92, 9 NJPER 77 (¶14042 1982), recon. den. P.E.R.C. No. 83-101, 9 NJPER 104 (¶14056 1983) (a salary step system determines the compensation employees will receive over the course of the contract which is a fundamental term and condition of employment). We have also recently examined an interest arbitrator's authority to award salary increases outside the duration of the award. In City of Asbury Park, P.E.R.C. No. 2011-17, 36 NJPER 323 (¶126 2010), we stated:

The collective negotiations process contemplates labor and management sitting down and negotiating terms and conditions of employment for one, two, three or more future years. Parties enter into collective negotiations agreements even though no one can predict with any assurance the exact budget circumstances a public employer will face in future years. For police and fire departments, when the parties cannot reach a voluntary agreement, either party may invoke the interest arbitration process by which a neutral third party sets terms and conditions of employment based on the evidence presented and in light of the nine statutory factors. N.J.S.A. 34:13A-16b(2). As an extension of the collective negotiations process, an arbitrator will also award multi-year contracts. And because of the delays in the interest arbitration process, arbitration

awards will often also set terms and conditions of employment retroactively thereby requiring adjustments to the public employer's budgets. Retroactive salary adjustments and future salary increases are inherent in both the collective negotiations process and interest arbitration.

Thus, we find that the arbitrator acted within his conventional arbitration authority to award an incremental salary guide.

Next, the County argues that the arbitrator's analysis in awarding a salary guide is flawed and not supported by substantial credible evidence in the record as a whole because although almost all other sheriffs' officer units have salary guides, Hunterdon County eliminated them years ago and to reintroduce them will upset labor relations in the County; the arbitrator failed to set forth a rational basis for selecting the salaries inserted at each point of the guide; the arbitrator incorrectly shifted the burden of proof in changing the salary structure to the County; the record does not support and the County does not agree that turnover is an issue that needed to be addressed; and the record does not indicate that training costs are an issue for the County.

The FOP responds that the arbitrator found that the interest and welfare of the public favors the award of a salary guide because the public interest is best served when a public employer has a low turnover rate creating a stable workforce

particularly in a Courthouse facility in order to maintain high standards of safety and supervision.

In his discussion of interest and welfare of the public, the arbitrator found:

The evidence in the record establishes that all other Sheriff's Officer bargaining units in the State have what is commonly known as an incremental salary schedule. This is the standard method of payment for all other county Sheriff's Officers. This is a term and condition of employment received by all other county Sheriff's Officers. While I am discussing the incremental salary guide issue under the interests and welfare of the public criterion, other criteria also favor its inclusion in the new CBA. The second criterion, (comparison of the wages, salaries, hours, and condition of employment of the employees involved in the arbitration proceedings with the wages, salaries, hours, and conditions of employment of other employees performing the same or similar services) supports the awarding of a salary schedule. The County bears a heavy burden in convincing an arbitrator that a term and condition of employment enjoyed by thousands of other Sheriff's Officers throughout the State should be denied to its Sheriff's Officers. In addition, the incremental salary schedule is the standard form of compensation for all other public safety officers in the State. This grouping includes municipal Police Officers, County Correction Officers, Firefighters, Prosecutor's Detectives, and other County and State police bargaining units.

[Award at 57].

The arbitrator then reviewed the evidence in the record that the FOP presented which established an 85% turnover rate for Sheriff's Officers between 1996 and October 2008. The arbitrator

determined that between 2000 and 2005, only four of the 32 officers the County hired were still employed by the County. The arbitrator then reviewed the evidence presented by the County that established its compensation model is to pay more senior officers smaller raises than junior officers. The arbitrator credited the evidence of the FOP and concluded that the current compensation model values inexperience over experience and thus encourages high turnover which produces a continuing spiral of recruitment and training resulting in a significant number of inexperienced Sheriff's officers. The arbitrator then addresses his experience as well as decisions of other arbitrators in assisting public employers in reducing turnover with the establishment of an incremental salary schedule and concluded that the awarding of a salary guide was appropriate.

We conclude that the arbitrator addressed the interest and welfare of the public when he awarded a salary guide. We note that the arbitrator found the FOP's proposed salary schedule deficient in many aspects and that he awarded substantially lower increments and increases than those proposed by the FOP. The arbitrator found that the award of the salary guide is reasonable despite the other County units not having them given his findings on the high turnover rate between 1996 and October 2008 and that the County's non-police units did not have an issue with

turnover.^{3/} We note again that the arbitrator has the discretion to weigh the criteria and our review is to determine if he did so and not to substitute our judgment.

The arbitrator's statement that "the County bears a heavy burden in convincing an arbitrator that a term and condition of employment enjoyed by thousands of other Sheriff's officers throughout the State should be denied to its Sheriff's officers"^{4/}, did not shift the burden of proof to the County in awarding the salary guide. The arbitrator accurately recited that the burden of proof to establish a change rested with the party seeking the change at the outset of his analysis. In his justification for awarding the salary guide, the arbitrator found that the FOP met its burden through its presentation of evidence establishing that all other County units have salary guides and the lack of experienced officers employed by the County due to the high turnover rate. The arbitrator then acknowledged the difficult hurdle the County had to rebut the evidence presented by the FOP including a memorandum issued by former Sheriff William D. Doyle, who had attempted in 2004 to re-open the parties' contract, describing that officers were leaving the

3/ We note that the arbitrator also awarded an incremental salary guide to the County's Correction officers. That award has also been appealed to the Commission. Docket No. IA-2009-67.

4/ Award at 57.

County because of financial hardship. Thus, the FOP provided substantial evidence in the record to support the award of a salary guide.

The County also argues that the arbitrator did not correctly apply the evidence involving the comparability factor because the other County units do not have salary guides; the arbitrator engrafted upon the collective negotiations process the concept that all public employers must in all circumstances pay their employees through a step salary guide; and other Counties that have salary guides are being forced into layoffs in the present fiscal environment.

We find that the arbitrator addressed the comparability factor. It was within the arbitrator's discretion to weigh external and internal comparability and make a reasonable determination on the evidence that his award of a salary guide was justified. The evidence was conflicting with external comparability favoring the FOP's salary guide proposal and internal comparability disfavoring it. Our review standard only permits us to determine if the evidence was in the record and not to review it de novo. The arbitrator did not state that all public employers must pay their employees on salary guides. The arbitrator determined that internal comparability justified his award of the County's salary hold-back proposal, but external comparability supported his award of the salary guide.

The County also argues that the arbitrator failed to consider and give due weight to the lawful authority of the County by failing to address and/or analyze the ability of the County to implement the terms of the award in the year 2012 and the future as well as the financial impact on the governing unit, its residents and taxpayers because other units will insist on salary guides in future negotiations. See N.J.S.A. 34:13A-16g(5), (6) and (9).

N.J.S.A. 34:13A-16g(5), (6) and (9) require consideration of the employer's lawful authority, in particular consideration of its cap restrictions. Our discussion of Asbury Park above is relevant here. There is no per se bar to awarding terms and conditions of employment for future years based on the record evidence and the current economic trends. The parties presented hundreds of pages of documentation to the arbitrator. The County has not pointed to any particular evidence in the record that requires rejecting the arbitrator's award of incremental increases or that the County can not pay the increases. Town of Kearny, P.E.R.C. No. 2011-37, 36 NJPER 160 (¶160 2010). The arbitrator found and the County does not dispute that it is well managed and financially sound with the ability to reduce its budget and maintain a surplus in 2010. Further, the arbitrator thoroughly examined and acknowledged that the other County units

did not have salary guides, but still determined that the record justified his award. We can not disturb that judgment.

Finally, the County argues that the economic award was unreasonable in the current economic climate as it totals 14.96% over three years (\$0 in 2009, \$39,400 in 2010 and \$75,900 in 2011). Citing Irvington PBA v. Town of Irvington, 80 N.J. 271, 296 (1979), the FOP responds that an interest arbitration award is not unreasonable even though an employer may be forced to make economies in order to implement the award. That is true even where municipal officials must determine whether, and to what extent, police personnel or other employees should be laid off, or whether budgetary appropriations for non-payroll costs should be reduced. Id. at 296-297. The County has made economies to avoid layoffs and furloughs including its salary hold-back scheme. Under Irvington, we can not reverse an award because economies may have to be made.

In his discussion of the costs of the award, the arbitrator found:

The cumulative cost of the award is \$115,300 (zero in 2009, \$39,400 in 2010 and \$75,900 in 2011). The cumulative cost of the award is more than \$50,000 less than what the County's cumulative cost would be if it had offered the same annual percentage rate increases to the Sheriff's Officers that it offered to the Correction Officers. The cost of the increments in 2012 (assuming no turnover) is \$41,000. Thus, the cumulative cost is less than the \$165,954 even when the cost of the 2012 increments is included. I have compared

the cost of the award to both the County's final offer of 7.5% and what it offered in the Correction Officer case (13.2%) because as stated many times above, I have patterned the outcome of the Sheriff's Officer case on the outcome in the Correction Officers case given the virtually identical evidentiary records. The County could have made the same proposal to the Sheriff's Officers that it made to the Correction Officers. After all, that is the norm in all negotiations and arbitration matters. Employers make similar, if not identical proposals to comparable employee groups.

We recognize that any salary increase places pressure on a public employer's budget. However, an interest arbitration award with a cumulative cost of \$115,300 that is less than the County's offer to another law enforcement unit is not unreasonable and should not create unexpected pressure to the County. We appreciate the County's argument that a 14.96% total increase is higher than the average State-wide increases in 2008, 2009 and 2010, however it must be noted that those statistics cited by the County as a comparison do not include increment costs. Yet, we also note that the base salaries are the second lowest in the State and therefore a 14.96% increase yields a total cost of \$115,300 for a three-year agreement. Finally, we acknowledge that the terms of the new interest arbitration law, P.L. 2010, c. 105 will apply to any impasse that the parties may reach in negotiating a successor agreement. The new law includes the 2% base salary item cap which will contain the costs of the awarded

salary guide to 2% if the guide is continued in a successor agreement.

ORDER

The arbitrator's award is affirmed.

BY ORDER OF THE COMMISSION

Commissioners Colligan, Eaton, Krengel and Voos voted in favor of this decision. Chair Hatfield and Commissioner Bonanni voted against this decision. Commissioner Eskilson recused himself.

ISSUED: May 5, 2011

Trenton, New Jersey