P.E.R.C. NO. 97-119

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CHERRY HILL TOWNSHIP,

Appellant/Cross-Respondent,

-and-

Docket No. IA-95-110

FOP LODGE 28,

Respondent/Cross-Appellant.

SYNOPSIS

The Public Employment Relations Commission vacates an interest arbitration award issued to resolve negotiations between the Township of Cherry Hill and FOP Lodge 28. The Commission remands the matter to the arbitrator for reconsideration in accordance with its opinion. The Township had appealed the interest arbitration award and the FOP had cross-appealed.

With respect to the Township's allegation that the award was issued 20 days late, the Commission finds that this issue is more appropriately addressed under N.J.A.C. 19:16-5.9.

With respect to the Township's allegation that the arbitrator relied on evidence gained in mediation sessions, the Commission was not persuaded that the arbitrator improperly relied on such information.

With respect to the Township's allegation concerning health benefits, the Commission finds that a remand is necessary because the arbitrator expressed an improper presumption and did not analyze all the arguments and evidence presented concerning the proposal.

With respect to the FOP's argument that the arbitrator had no authority to freeze starting salaries, the Commission finds that the arbitrator could conclude that the issue of the appropriate starting salary was subsumed within the larger issue of across-the-board salary amounts. The Commission rules that the arbitrator may keep this provision in the award, if he chooses.

With respect to the FOP's argument that the arbitrator had no authority to change the biweekly pay date, the Commission agrees and finds that the issue was not presented by either party. A new award may not contain this provision.

With respect to the Township's argument that the arbitrator's analysis of salary, clothing and maintenance allowance issues was cursory and focused too heavily on the Township's "ability to pay" and police salaries in surrounding communities, the Commission finds no fundamental deficiencies in the arbitrator's consideration of the statutory criteria with respect to these issues. The Commission will not disturb the portions of the award concerning salary increases and clothing and maintenance allowances absent an independent reason for a remand but holds that the arbitrator may, however, choose whether or not to re-evaluate these portions of the award in connection with his evaluation of the evidence and arguments concerning the Township's health benefits proposal.

With respect to the Township's argument that the arbitrator did not "separately determine whether the total net annual economic changes for each year of the agreement are reasonable under the eight statutory criteria set forth in subsection g. of this section," the Commission finds that the arbitrator must comply with this statutory directive.

The Commission finds an inconsistency in the arbitration award concerning the date on which the cash-in option for the clothing allowance becomes effective. If this provision is retained, the arbitrator should clarify this apparent inconsistency.

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/Cross-Respondent, Susan Jacobucci, Township attorney

For the Respondent/Cross-Appellant, Markowitz & Richman, attorneys (Stephen C. Richman, of counsel)

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 Cherry Hill Township appeals and FOP Lodge 28 cross-appeals from a December 9, 1996 award.

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 Township proposed a three-year contract with across-the-board wage increases of 3%, 3%, and 3.5% for calendar

years 1995, 1996, and 1997 respectively. It also proposed that employees enrolling in an indemnity health care plan pay the difference between the annual premium for that plan and the premium for the managed health care ("HMO") plan offered by the Township. Under the 1992-1994 agreement, the Township paid the full premiums for both HMO and indemnity plans.[1/] The Township also offered to supply each officer with a new bullet-proof vest once every five years, in addition to the existing annual clothing allowance.

The FOP sought across-the-board wage increases of: 2% effective 1/1/95; 2% effective 7/1/95; 2% effective 1/1/96; 2% effective 7/1/96 and 4% effective 1/1/97. In addition, it sought a uniform maintenance allowance of $260 per year and proposed that effective January 1, 1995, employees could convert $150 of their annual clothing allowance to a cash payment to be used for uniform cleaning and maintenance.

In evaluating these proposals, the arbitrator was required to decide the dispute "based on a reasonable determination of the issues, giving due weight to those factors listed below that are judged relevant for the resolution of the specific dispute." N.J.S.A. 34:13A-16g. Those factors are:

1/ In an interim relief decision, a Commission designee restrained the Township from unilaterally imposing a premium co-pay on indemnity plan members. The restraints were imposed pending the implementation of a successor agreement and/or a final Commission decision. Special permission to appeal the decision was denied. Cherry Hill Tp., P.E.R.C. No. 97-36, 22 NJPER 378 (¶27199 1996).

(1) The interests and welfare of the public. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by P.L. 1976, c. 68 (C:40A:4-45.1 et seq.)

(2) Comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings 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; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.

(b) In public employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.

(c) In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L. 1995, c. 425(C.34:13A-16.2); provided, however, that each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.

(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. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by P.L. 1976, c. 68 (C.40A:4-45.1 et seq.

> (6) The financial impact on the governing unit, its residents and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take into account, to the extent that evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element or, in the case of a county, the county purposes element, required to fund the employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers of the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in a proposed local budget.
>
> (7) The cost of living.
>
> (8) The continuity and stability of employment including seniority rights and such other factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours, and conditions of employment through collective negotiations and collective bargaining between the parties in the public service and in private employment.

After discussing each factor, the arbitrator issued an award which: (1) denied the Township's health benefits proposal; (2) granted the FOP's uniform and maintenance allowance proposals and (3) awarded salary increases of 3%, 3.5% and 3.5% for 1995, 1996 and 1997 respectively. The wage increases thus matched those proposed by the Township, except that 3.5% was awarded in 1996 instead of the 3% offered by the Township. In addition, the

arbitrator's award: (1) established January 1, 1995 through December 31, 1997 as the term of the agreement; (2) accepted the Township's offer to supply each unit member with a bullet-proof vest every five years; (3) froze the starting salary for police officers at its 1994 level; and (4) stated that, effective January 1, 1997, the Township could pay unit members every other Thursday.

The final paragraphs of the arbitrator's opinion summarize his conclusions:

> In summary, the Township's offer is not unreasonable. However, the Township's offer will slightly diminish the standing of the bargaining unit compared to similarly situated police jurisdictions in comparable communities. Therefore, some augmentation of the Township's offer is appropriate.
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> The addition of an additional .5% in the second year and an enhancement of the clothing allowance, a benefit unique to the Police Department, will permit this bargaining unit to continue receiving comparable wages and benefits to their colleagues situated nearby without unduly straining the Township's resources. No further amelioration of the Township's medical insurance situation can be justified without substantial additional wage or benefit inducements, which should not be imposed by an Interest Arbitrator, but should be negotiated directly by the parties. Absent such other inducement, the wage pattern offered by the Township, minimally enhanced, satisfies the applicable statutory criteria for determining [the] appropriate package of salary and benefits for this contract term.
> [Arbitrator's opinion, p. 22-23].

The Township requests that we vacate the award and remand the matter to a new arbitrator because: (1) the arbitrator allegedly did not apply the statutory criteria in N.J.S.A.

34:13A-16g; and (2) contrary to PBA Local 207 v. Bor. of Hillsdale, 137 N.J. 71 (1994), the arbitrator allegedly relied primarily on the Township's "ability to pay" and police officer salaries in surrounding communities. The Township also argues that the award should be vacated because the arbitrator allegedly: (1) did not rule on its health benefit proposal; (2) filed his award 20 days late; (3) relied on evidence gained in mediation sessions; and (4) issued an internally inconsistent ruling on the FOP's proposal to allow unit members to convert $150 of their current clothing allowance to a cash payment to be used for uniform cleaning and maintenance.2/

The FOP's cross-appeal asserts that the arbitrator exceeded his authority in freezing starting salaries and changing the biweekly pay date. The FOP asks that the Commission excise these provisions and affirm the award in all other respects.

In reviewing the parties' challenges to the award, we must determine whether the arbitrator adequately considered the criteria in N.J.S.A. 34:13A-16g and rendered a reasonable determination on the issues in dispute. Our analysis is also informed by Hillsdale; Washington Tp. v. New Jersey PBA Local 206, 137 N.J. 88 (1994); and Fox v. Morris Cty., 266 N.J. Super. 501 (App. Div. 1993), certif. denied, 137 N.J. 311 (1994).

2/ The Township also requested oral argument. We deny that request.

In Washington Tp., Hillsdale, and Morris Cty., the courts underscored that arbitrators should focus on the full range of statutory factors and not just police salaries in surrounding jurisdictions or the governing body's "ability to pay" the other party's offer. Hillsdale, 137 N.J. at 85-86; Washington Tp., 137 N.J. at 92; Morris Cty., 266 N.J. Super. at 516-517.

The reform statute reflected this concern by requiring 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. It also changed some of the section 16g factors. N.J.S.A. 34:13A-16g(1) now expressly requires the arbitrator to consider the CAP Law, N.J.S.A. 40A:4-45.1 et seq., in evaluating the public interest and welfare. And N.J.S.A. 34:13A-16g(6) requires consideration, to the extent evidence is presented, of the effect of an award on county and municipal tax rates, the impact of an award on each income sector of a local unit's property taxpayers, and its impact on a governing body's ability to maintain, expand, or initiate local programs and services. These changes are consistent with the courts' concern that all statutory factors be properly considered.

The threshold issue is the standard of review the Commission should apply in considering an appeal from an interest arbitration award. N.J.S.A. 34:13A-16f(5)(a) states that an arbitrator's award "shall be binding and irreversible" except that

a party may file an appeal with the Commission alleging a violation of the Arbitration Act, N.J.S.A. 2A:24-8 and -9, or a failure to apply one or more of the criteria in N.J.S.A. 34:13A-16. The Commission may affirm, modify, correct or vacate an award or remand a case to the same or a different arbitrator.

The grounds for appeal are the same as under the predecessor statute, except the Commission is the initial review authority and the statute explicitly states that failure to give due weight to the section 16g factors may be grounds for an appeal. N.J.S.A 34:13A-16f(5)(a). The latter point had long been established in case law. See N.J. State PBA v. Irvington, 80 N.J. 271, 295 (1979). Accord Hillsdale, 137 N.J. at 82.

Before the reform statute, the courts had held that, because interest arbitration is a statutorily-mandated procedure in which public funds are at stake, judicial review of such awards must be more stringent than of grievance arbitration awards. Hillsdale, 137 N.J. at 82; Div. 540, Amalgamated Transit Union, AFL-CIO v. Mercer Cty. Improvement Auth., 76 N.J. 245, 253 (1978). Therefore, a reviewing court could vacate an award if it failed to give "due weight" to the section 16g factors or if it violated the standards in N.J.S.A. 2A:24-8 and -9. In general, the courts reviewed an interest arbitration award to determine whether it was supported by substantial credible evidence in the record as a whole. Hillsdale, 137 N.J. at 82.

We will apply these standards of review. We discern no legislative intent to create a different standard. The "substantial credible evidence" standard is required by a well-established body of case law and P.L. 1995, c. 425 changed the forum, rather than the standards, for reviewing interest arbitration awards.

We also note that, in requiring that disputes be resolved by conventional arbitration unless the parties agree to another terminal procedure, the reform statute vests the arbitrator with the responsibility to weigh the evidence and fashion an award. We will not disturb the arbitrator's exercise of discretion in weighing the evidence unless an appellant demonstrates that the arbitrator did not adhere to the standards in the reform statute or the Arbitration Act or shows that the award is not supported by substantial credible evidence in the record as a whole. Cf. Kearny PBA Local #21 v. Town of Kearny, 81 N.J. 208, 221 (1979) (arbitrator's grievance award is not to be cast aside lightly).

Within this framework, we first address the Township's arguments that the award should be vacated because: (1) it was allegedly filed 20 days too late and (2) the arbitrator allegedly relied on information learned in mediation sessions.

N.J.S.A. 34:13A-16f(5) requires that an award be rendered within 120 days of the appointment of an arbitrator, but allows the Commission to grant, or the parties to agree to, extensions of

time. N.J.S.A. 34:13A-16f(5). We will assume, as the employer alleges, that the arbitrator was 20 days late in issuing his award.[3/]

The statutory goal of providing for an expeditious, effective and binding procedure for the resolution of disputes would not be served by vacating an award filed 20 days late and having to start proceedings all over again. Lateness in filing an award is more appropriately addressed under N.J.A.C. 19:16-5.9 (providing that any arbitrator violating the timelines for filing awards may be subject to suspension, removal or discipline under N.J.A.C. 19:16-5.6). The cases cited by the Township are distinguishable because they did not involve mandatory arbitration, where the process would have to be undertaken anew if an award were vacated.

We are not persuaded that the arbitrator improperly relied on information discussed in mediation sessions. The Township objects to the arbitrator's statement that the superior officers had agreed to salary increases commensurate with those granted non-police negotiations units "in order to achieve an amendment to their pension contribution rates which would inure to

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3/ The FOP argues that the award was not late because the parties orally gave the arbitrator an open-ended extension. It also states that it never received a copy of a November 13, 1996 letter to the arbitrator in which the Township consented to an extension of time until November 18. We emphasize that an oral extension does not satisfy N.J.A.C. 19:16-5.9. That regulation requires that an agreement for an extension be in writing, and that it include the date on which the extension expires. The agreement must be filed with the arbitrator and the Director of Arbitration.

the benefit of retirees" (Arbitrator's opinion, p. 17). Both parties indicate that this statement refers to a sick day "buy back" provision available to superior officers in their twenty-second, twenty-third and twenty-fourth years of service.

The arbitrator's reference to this item does not implicate the concerns discussed in Aberdeen Tp. v. PBA, 286 N.J. Super. 372 (App. Div. 1996). Aberdeen emphasized the importance of "protecting the confidentiality of negotiations during mediation so as to ensure the parties to the dispute will feel free to adopt and modify their positions as necessary to reach an agreeable settlement." Id. at 379. This concern is not present in this case, where the arbitrator did not penalize the Township for changing positions. While Aberdeen also referred to the inappropriateness of relying on information obtained in mediation sessions, id. at 376, 379-80, that problem is not present in this case, where the Township's own exhibits referred to the sick day "buy back" provision.

We consider next the Township's argument that the arbitrator committed a fundamental error in analyzing its health benefits proposal by refusing to decide it. While we do not agree entirely with this position, we are not satisfied that the arbitrator fully analyzed this proposal.

The arbitrator gave considerable weight to the fact that the Township's health benefits proposal sought to alter existing contract language. He wrote:

> This co-payment represents a major alteration in the terms and conditions of employment. Such a major change in an important benefit, which affects an employee's ability to select a physician or to change physicians, should be effectuated through negotiation. Impasse on an issue which affects the right to choose one's physician should not be resolved by the fiat of an Arbitrator.
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> The parties' inability to negotiate voluntary abandonment of the contractual right to an indemnity plan without substantial consideration supports this conclusion. Were an arbitrator to order such a result, the level of wages should be augmented on the order of an additional .7% for each of three years to compensate for the increased costs incurred by the significant minority of the bargaining unit who continue to elect the indemnity plan coverage option, as averaged over the entire bargaining unit. [Arbitrator's opinion, p. 18.]

At the conclusion of his opinion, the arbitrator again stated that "[n]o further amelioration of the Township's medical insurance situation can be justified without substantial additional wage or benefit inducements, which should not be imposed by an Interest Arbitrator, but should be negotiated directly by the parties" (Arbitrator's opinion, p. 23).

While it is appropriate for an arbitrator to require that a party requesting a contract change explain the need for it, the language in this award about not deciding a matter "by fiat," is inconsistent with an interest arbitrator's obligation to resolve the unsettled issues. When an unsettled issue is submitted to interest arbitration, the arbitrator cannot start the analysis with a presumption that interest arbitration is an inappropriate forum for granting, modifying or denying a benefit.

We recognize that the arbitrator went on to rule on the Township's proposal: he declined to award it because the co-payment would impose increased costs on a significant number of unit members which could not be justified without an additional wage increase. While it was appropriate for the arbitrator to consider the health benefits proposal in conjunction with the parties' other proposals, we are not satisfied that he fully considered it, given the quoted language about his disinclination to award the proposal in interest arbitration. Moreover, he did not address the Township's argument that the FOP negotiations unit should receive the same health benefits as other Township employees.

We stress that we express no opinion as to the merits of the Township's health care proposal. However, a remand is necessary because the arbitrator expressed an improper presumption and did not analyze all the arguments and evidence presented concerning the proposal.

We address the parties' remaining arguments in order to provide guidance to them and the arbitrator on remand.

We reject the FOP's argument that the arbitrator had no authority to freeze starting salaries. N.J.S.A. 34:13A-16c, in listing terminal procedure options, refers to conventional arbitration "of all unsettled items." N.J.S.A. 34:13A-16d(2) mandates that, in the absence of an agreement to use another terminal procedure, conventional arbitration shall be used to determine "the award on all unsettled issues." These statutory

provisions contemplate that an arbitrator, even one with conventional authority, will not reach out to decide issues not raised by the parties. However, in this case, there was a dispute over salary increases. The arbitrator could conclude that the issue of the appropriate starting salary was subsumed within the larger issue of across-the-board salary amounts. This is particularly so since the Township presented evidence that there were many applicants for police officer positions and that police officers usually stayed with the Township until retirement. This evidence provided a basis for the arbitrator's conclusion that there was no need to raise the starting wage rate for police officers (Arbitrator's opinion, p. 22). Therefore, the arbitrator may keep this provision in the award, if he chooses.

We agree with the FOP that the arbitrator had no authority to change the biweekly pay date. That issue was not presented by either party. Unlike the starting salary, the biweekly pay date could not reasonably be said to have been subsumed within any proposal. A new award may not contain this provision.

We turn now to the Township's argument that the arbitrator's analysis of salary, clothing and maintenance allowance issues was cursory and, contrary to Hillsdale and Washington Tp., focused too heavily on the Township's "ability to pay" and police salaries in surrounding communities. We perceive no fundamental deficiencies in the arbitrator's consideration of the statutory criteria with respect to these issues.

The arbitrator awarded an additional .5% to the Township's proposal in the second year of the contract -- along with the FOP's uniform and maintenance allowance proposals -- and concluded that the award would enable the negotiations unit to maintain its approximate ranking vis-a-vis police officers in comparable jurisdictions (Arbitrator's opinion, p. 22-23). We note that the Township is in a different posture from the employers in Hillsdale and Washington Tp. In those cases, the arbitrator, under the final offer system, had awarded the union's offer in its entirety whereas here the arbitrator fashioned a conventional award in between the parties' salary positions. An appellant in such a posture should identify the analytical deficiencies which resulted in those aspects of the award adverse to its position. While arbitrators must write reasoned opinions, an appellant cannot attack an opinion in the abstract. Cf. Heffner v. Jacobson, 100 N.J. 550, 553 (1985) (appeals are from judgments, not opinions). Accord Mills v. J. Daunoras Constr., Inc., 278 N.J. Super. 373, 379 (App. Div. 1995).

The Township offers no particularized challenge to the arbitrator's analysis or conclusions. For example, the arbitrator concluded that the Township's proposal would slightly diminish the standing of the Township's police officers, as compared to police officers in comparable communities (Arbitrator's opinion, p. 22). He found that some augmentation of the offer was appropriate and concluded that the unit would maintain its approximate ranking

under the award when the 1995 and 1996 figures for other communities were considered (Arbitrator's opinion, pp. 14, 22).

The Township does not identify any errors in these conclusions and there is substantial credible evidence in the record to support the arbitrator's conclusion that, under the award, the Township's police officers would receive a compensation package not significantly different from that received by officers in comparable communities (Arbitrator's opinion at p. 14, 22).

While the Township contends that the arbitrator inadequately analyzed the public interest and welfare, the financial impact of an award on the governing body and its residents and taxpayers, and the cost of living, it does not point to any evidence the arbitrator failed to consider. The salient point is that, despite extensive and undisputed findings as to the Township's vigorous fiscal health, the arbitrator did not award the FOP proposal but granted annual salary increases closer to those proposed by the Township. He fashioned an award which took into account the Township's interest in maintaining a low tax rate and a zero-based budget.

Similarly, the arbitrator compared the wages, salaries hours and conditions of employment of unit members with those of other public employees, as required by N.J.S.A. 34:13A-16g(2). He also considered the Township's argument that there is a public interest in maintaining consistency in the terms of employment among Township employees. While the arbitrator wrote that this

factor was not dispositive (Arbitrator's opinion at p. 17), that language also implies that he gave it some weight. Moreover, the salary increases awarded are close to those granted other Township employees.

Further, while the Township asserts that the arbitrator ignored evidence concerning the salaries of private-sector employees, it does not inform us what evidence it presented and no information concerning private-sector employees' salaries or wage increases is included in the record submitted to us on appeal. While the Township cites its appendix, the referenced pages contain only compensation information for protective service occupations in state and local governments in New Jersey and Pennsylvania.4/

Finally, we reject the Township's argument that the arbitrator was compelled to analyze the clothing and maintenance allowance proposals separately under the eight section 16g criteria. While that approach might also have been appropriate, the arbitrator could properly consider these items in the course of determining the appropriate salary increases for unit members.

An arbitrator is not required to apply every statutory criterion to every facet of every proposal. N.J.S.A. 34:13A-16g requires an arbitrator to "decide the dispute based on a reasonable determination of the issues, giving due weight to

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4/ Pursuant to N.J.S.A. 34:13A-16.6, the Commission prepared an annual survey on private-sector wage increases. That report indicates that the statewide average private-sector wage increase from 1994 to 1995 was 3.4%.

those factors listed below that are judged relevant for the resolution of the specific dispute." This language gives an arbitrator discretion to decide that a particular dispute is best analyzed by applying the relevant statutory factors to a cluster of related issues. Of course, an arbitrator must consider all of the evidence and arguments presented, regardless of what method is chosen to analyze a proposal.

For these reasons, we would not be inclined to disturb the portions of the award concerning salary increases and clothing and maintenance allowances absent an independent reason for a remand. The arbitrator may, however, choose whether or not to re-evaluate these portions of the award in connection with his evaluation of the evidence and arguments concerning the Township's health benefits proposal.

The Township observes that the arbitrator did not "separately determine whether the total net annual economic changes for each year of the agreement are reasonable under the eight statutory criteria set forth in subsection g. of this section." N.J.S.A. 34:13A-16d(2). The arbitrator must comply with this statutory directive. The arbitrator may refer to his analysis of the parties' proposals in determining whether the changes for each year are reasonable.

There is an inconsistency in the award concerning the date on which the cash-in option for the clothing allowance becomes effective. The award now states that unit members may

elect that $150 of their clothing allowance be paid as a cash payment with the first payroll after July 1st of each year. It then states that the payment shall be paid with the first payroll after January 1st of each year. If this provision is retained, the arbitrator should clarify this apparent inconsistency.

In remanding this matter, we are confident that the appointed arbitrator may reconsider the award in accordance with this opinion. See Fox v. Morris Cty., 266 N.J. Super. at 521-522 (court would presume, until shown to the contrary, that the original arbitrator would be able to take a fresh look at the case and reach a fair and impartial decision). We direct that the arbitrator complete his reconsideration of the award no later than 60 days from the date of this decision.

ORDER

The arbitration award is vacated and the matter remanded to the arbitrator for reconsideration in accordance with this opinion.

BY ORDER OF THE COMMISSION

Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, Klagholz and Ricci voted in favor of this decision. None opposed. Commissioner Finn abstained from consideration. Commissioners Boose and Wenzler were not present.

DATED: April 24, 1997
Trenton, New Jersey
ISSUED: April 25, 1997