

P.E.R.C. NO. 2012-16

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF NORTH ARLINGTON,

Appellant,

-and-

Docket No. IA-2011-050

POLICE BENEVOLENT ASSOCIATION  
LOCAL 95,

Respondent.

SYNOPSIS

The Public Employment Relations Commission affirms an interest arbitration award. The Commission had remanded the initial award, P.E.R.C. No. 2012-1, finding that it appeared the arbitrator relied on an inaccurate exhibit to support his wage increase. The Borough of North Arlington appealed the award on remand arguing that the arbitrator continued to rely on the inaccurate document. The Commission affirms finding that the arbitrator satisfactorily explained the basis for his award that did not include the alleged inaccurate document.

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, Pearce Law, LLC, attorneys (Randy T. Pearce, of counsel and on the brief)

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

DECISION

On July 19, 2011, we vacated an interest arbitration award and remanded the case to the interest arbitrator to issue a new award within 45 days. Borough of N. Arlington, P.E.R.C. No. 2012-1, 37 NJPER \_\_\_\_\_ (¶\_\_\_\_\_ 2012).<sup>1/</sup> On September 6, 2011, the interest arbitrator issued a supplemental award clarifying his reasoning and explaining that his initial award was not based solely on figures contained in a version of a purported contract between the Borough and the Chief of Police which the Borough

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<sup>1/</sup> On August 11, 2011 we denied a motion for reconsideration filed by Police Benevolent Association Local 95. Borough of N. Arlington, P.E.R.C. No. 2012-4, 2011 NJ PERC LEXIS 121, 37 NJPER \_\_\_\_\_ (¶\_\_\_\_\_ 2012).

alleged was doctored. The agreement set the Chief's working conditions from December 31, 2009 through December 15, 2015.<sup>2/</sup> The award covers the calendar years 2011 through 2013.

On September 15, 2011, the Borough filed an appeal seeking to vacate the award. On September 22, Police Benevolent Association Local 95 filed a response urging that we affirm the award. We deny the Borough's appeal and affirm the award.<sup>3/</sup>

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 . . . ;

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2/ That document portrayed the Chief as the recipient of annual percentage increases of 2.8% for 2011 and 3% for 2012 and 2013. In the brief submitted in support of its appeal of the initial award, the Borough noted that Article 14 of its agreement with the Chief provides that his base salary will be 9% greater than the next ranking superior officer, but at least 9% greater than the base salary of a Captain.

3/ We deny the Borough's request for oral argument.

- (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.

In challenging the arbitrator's award the Borough focuses on the annual percentage increases contained in the initial award and argues that those figures should have been modified in the award after remand given the arbitrator's reliance on the allegedly doctored version of P-34. It disputes the arbitrator's explanation that the perceived increases in the Chief's compensation were not the basis of the increases awarded to the PBA in his award after remand.

The PBA responds that the supplemental award demonstrates that any perceived increases in the chief's base salary were not a factor in the percentage increases. It notes that the arbitrator awarded 0% in the first year of the agreement and explained that savings from changes in the health benefit provider would be sufficient to support 2.5% increases in each of the last two years covered by the award. The PBA also refers to the arbitrator's discussion of the Borough's financial condition in the initial award including savings from anticipated retirements.

Addressing the contention that his initial award was closely linked to the perceived increases awarded or to be provided to the Chief, the arbitrator wrote:

While it is certainly true that I mentioned justification of the increases in part on the treatment of the Chief, it must be obvious that this was not seen as a mandate for the

rank and file as my award was 0% in 2011 and delayed increases in each of the next two years, neither of which equaled 3%. My explanation for this is stated in the [initial] Award. "There shall be no across the Board increase in 2011. In 2012 the impacts from savings from the modified Health Benefits change will be sufficient to support an increase of 2.5% effective on April 1, 2012 and a second 2.5% increase effective on April 1, 2013." Further my comment in support of these increases makes no mention of any salary changes for the chief. Instead I explained the basis for those increases as, "It is my best judgment that without the modification of the Health Benefits Plan (which the Union had resisted) I could not have justified these increases."

[Supplemental Award at 2]

The Borough has not pointed to any record evidence that would require us to modify or vacate the award. It does not question the reliance on health insurance cost savings as a means of funding the 2.5% increases. Nor has it provided us with any argument as to how the arbitrator misapplied or failed to consider the factors listed in N.J.S.A. 34:13A-16(g). Under the standards of review we find that the award should be upheld.

ORDER

The arbitrator's award is affirmed.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Eskilson, Krengel and Voos voted in favor of this decision. None opposed. Commissioners Jones and Wall were not present.

ISSUED: October 14, 2011

Trenton, New Jersey