

P.E.R.C. NO. 2011-17

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF ASBURY PARK,

Petitioner,

-and-

Docket No. IA-2008-069

PBA LOCAL 6,

Respondent.

CITY OF ASBURY PARK,

Petitioner,

-and-

Docket No. IA-2008-047

PBA LOCAL 6, SUPERIOR OFFICERS
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission affirms an interest arbitration award involving the City of Asbury Park and PBA Local 6 and PBA Local 6, Superior Officers Association. The City appealed the award arguing that the arbitrator failed to apply and give due weight to the statutory factors and that the delay in the arbitrator's issuance of the award without reopening the record resulted in an award not based on updated financial information. The Commission holds that the arbitrator's award is supported by substantial credible evidence, the arbitrator properly addressed the statutory factors and the City has not shown how the evidence, including the evidence it sought to submit if the record was reopened, require that the award be vacated or remanded for reconsideration.

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, Ruderman & Glickman, P.C.,
attorneys (Steven S. Glickman, of counsel)

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

DECISION

On June 1, 2010, the City of Asbury Park appealed from two interest arbitration awards involving units of police officers and police superior officers employed by the City and represented by PBA Local 6 (PBA) and PBA Local 6, Superior Officers Association (SOA), respectively. See N.J.S.A.

34:13A-16f(5)(a).^{1/} The arbitrator issued a conventional award, as he was required to do absent the parties' agreement to use another terminal procedure. N.J.S.A. 34:13A-16d(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.

The arbitrator was appointed in March 2008. Several pre-arbitration mediation sessions were held through November 19, 2008. A formal hearing was held on February 17, 2009. Post-hearing briefs were filed on or about May 15, 2009. On May 16, 2010, the arbitrator issued his Decision and Award.

The City proposed two-year contracts with wage freezes in both years and implementation of the State Health Benefits Direct 10 Plan. The unions proposed four-year contracts with 5% wage increases effective January 1 of each year, a \$500 increase in the clothing allowance each year, compensatory time to be compensated at the double time rate, giving employees the option of receiving compensation for extra duty work in the form of compensatory time, and adding an Inspector's rate.

The arbitrator issued a three-year award effective January 1, 2008 through December 31, 2010; increased the uniform allowance by \$100 effective June 1, 2010; awarded the City's

^{1/} We deny the City's request for oral argument. The matter has been fully briefed by the parties.

proposal granting it the authority to provide health insurance coverage pursuant to the State Health Benefits Program Direct 10 Plan; and increased salaries 2.5% effective October 1, 2008, 2.5% effective July 1, 2009, and 2.5% effective July 1, 2010. He rejected the unions' other proposals.

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 statutory facts listed in N.J.S.A. 34:13A-16g 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 judgement 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-16g; N.J.A.C. 19:16-5.9; Lodi.

In its initial appeal document, the City argues that the arbitrator failed to properly consider five of the nine statutory factors in rendering his award. 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]

Attached to the City's appeal were copies of the City's 2009 and 2010 Special Municipal Aid Applications and correspondence with a representative of the Civil Service Commission about the City's proposed layoff of three employees in the Department of Commerce and eight full-time and one part-time employee in other

departments. Also attached was a copy of the City's April 27, 2010 request to the arbitrator to reopen the record.

The City claims that the arbitrator failed to properly consider factors 1, 5, 6, 8 and 9. It asserts that the genesis of its appeal arises out of the delay in both the holding of the interest arbitration hearing and the issuance of the Decision and Award. The City asserts that: by awarding an agreement that includes 2010, the arbitrator issued an award with no record evidence from either party regarding the City's 2010 budget as it would relate to the statutory factors because, especially in these economic and legislative times, any such evidence would be too speculative to consider relevant; the lack of sufficient record evidence regarding the 2009 budget in conjunction with the delay in the issuance of the award required additional evidence to evaluate the statutory factors; the arbitrator indicated that his award would require adjustments to the City's 2008 and 2009 budgets, which could not be adjusted, requiring an even greater impact on the City's 2010 budget; and "extending the agreement into 2010 because the delay in the issuance of the Decision and Award would require the parties to immediately commence negotiations if an award did not include 2010 does not address the statutory factors." The City states that on April 27, 2010, it asked the arbitrator to reopen the hearing for the parties to submit updated financial and other information for consideration,

the unions objected, and the arbitrator denied the request. The City asks, at the very least, that the matter be remanded to the arbitrator to reopen the hearing so that both parties are given the opportunity to present updated information.

In its brief, the City emphasizes that the issue in this case is limited to situations where there is a disparity between the parties regarding the duration of the award; where the parties agree upon the duration of the agreement, they accept the deficiencies inherent in issuing such an award. The City states that the delay in the issuance of the Decision and Award is not the reason why the Award should be overturned, but it illustrates the arbitrator's inability to accurately apply the statutory factors beyond the contract duration proposed by the City. The City asserts that there can be no dispute that the documents submitted by the City are absolutely necessary to apply the statutory factors to the Award. The City contends that if the arbitrator had reopened the record as the City had requested, he would have had the documents necessary to apply the statutory factors to the duration issue, which then might have changed his Decision and Award not only with respect to the duration of the Award, but to the terms of the Award as well.

The unions respond that the arbitrator fully considered each of the statutory factors, the evidence and the arguments of the parties. They contend that numerous documents properly received

in evidence during the hearing dealt with terms and conditions of employment not only going back to 2004, but also with 2008 and 2009. The unions argue that there was certainly a substantial basis upon which the arbitrator could award a very modest, deferred salary increase for 2010.

In deciding the issue of contract duration, the arbitrator balanced the nature of the City's financial status, the need to provide harmony and stability in the labor-management relationship, including the need to maintain the department's increased effectiveness and productivity, and the desirability of maintaining the continuity and stability of employment within the department. He concluded that a three-year contract would be consistent with the above considerations and, by doing so, would best further the interests and welfare of the public.

Having awarded a three-year contract beginning January 1, 2008, the arbitrator was charged with setting salary rates for those three years. He awarded delayed 2.5% increases for each of the three years. The first would be payable on October 1, 2008, the second on July 1, 2009, and the third on July 1, 2010. The arbitrator found that a balance had to be struck between the level of salary increases and the realities of the City's budgetary needs. He found that the increases awarded were well below comparable increases in surrounding municipalities and for those in general for contract years 2008 and 2009, although the

arbitrator took notice of settlements and awards for those years and years going forward that reflect, as in this case, decreasing levels of increases for contracts negotiated during the time frame of this proceeding. The arbitrator recognized that the monies required to fund the award will require adjustments to the City's budget, and perhaps to staffing levels in the department. However, he also found that the costs can be funded without compelling the City to exceed its budget and tax levy caps. He concluded that the requirement to maintain and fund an effective law enforcement department in Asbury Park cannot be met without some assumption of costs that place a burden on the City's finances.

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.

We have examined the documents attached to the City's appeal, documents that presumably the City wanted the arbitrator to consider after reopening the record. Those documents indicate that the City requested and received \$7.5 million in Special Municipal Aid for 2007, \$12 million for 2008, and \$10.5 million for 2009. The documents also indicate that in December 2009, the City requested \$12 million in Special Municipal Aid for 2010, but they do not indicate the outcome of that application. The documents also indicate that the City planned to lay off three employees in the Department of Commerce in the fall of 2009, and eight full-time and one part-time employee in various other departments in April 2010. The City could have submitted the documents regarding its receipt of Special Municipal Aid for 2007 and 2008 during the February 2009 hearing. Most of the remaining information it sought to have included in the record in April 2010 could have been offered to the arbitrator at a much earlier date. Nonetheless, none of these documents require vacating the

arbitrator's decision to award a delayed 2.5% salary increase for 2010. That decision is supported by substantial credible evidence in the record. An interest arbitration award is not unreasonable even though an employer may be forced to make economies in order to implement the award. Irvington PBA v. Town of Irvington, 80 N.J. 271, 296 (1979). That is true even where municipal officials must determine whether, and to what extent, police personnel or other town employees should be laid off, or whether budgetary appropriations for non-payroll costs should be reduced. Id. at 296-297. This arbitrator properly addressed the five statutory factors identified by the City in its appeal. The City has not shown how the record evidence, or even the evidence it would have submitted in a reopened record, require that the award be vacated or remanded for reconsideration. We therefore affirm the award.

ORDER

The interest arbitration award is affirmed.

BY ORDER OF THE COMMISSION

Commissioners Eaton, Fuller, Krengel and Voos voted in favor of this decision. Commissioner Watkins voted against this decision. Commissioner Colligan recused himself.

ISSUED: August 12, 2010

Trenton, New Jersey