

P.E.R.C. NO. 2011-36

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter 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 remands an interest arbitration award involving the County of Passaic and the Passaic County Sheriff and Police Benevolent Association Locals 197 and 286 to a new arbitrator for decision on the existing record because the interest arbitrator issued two awards that do not adequately address all the statutory factors or comply with the remand directives of the Commission set forth in P.E.R.C. No. 2010-42, 35 NJPER 451 (¶149 2009).

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 Appellants, Genova, Burns & Giantomasi,
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). We had vacated the arbitrator's initial award in this matter and remanded to the arbitrator for reconsideration and issuance of a new award. P.E.R.C. No. 2010-42, 35 NJPER 451 (¶149 2009). We instructed the arbitrator that the new award had to 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. After an extension of time, the arbitrator's new award was due on March 18, 2010. On April 27, the arbitrator issued his opinion and award on remand. The arbitrator had not sought a second extension of time. His initial award ordered 4% increases on April 1 of each of the five contract years. His award on remand reduced the increases to 3.75% for 2007 and 2008, and 3.5% for 2009, 2010 and 2011.

The County argues that the award should be vacated because the arbitrator's jurisdiction to issue the new award expired; the arbitrator failed to analyze the nine statutory factors and failed to comply with our remand directives; and the arbitrator violated N.J.S.A. 2A:24-8. The Associations respond that the arbitrator's award complied with the applicable statutes and the standard of review, but that if a remand is required, it should be to the same arbitrator.

Because the second award does not include the findings and analysis that we directed, we vacate the award and remand the case to a new arbitrator for reconsideration consistent with this opinion. If the parties are unable to agree on a replacement arbitrator, an arbitrator shall be appointed by lot. N.J.A.C. 19:16-8.3. The remand shall be decided on the existing record, unless the arbitrator requires additional submissions.

We take this action because the arbitrator has issued two awards that do not adequately address all the statutory factors. For example, N.J.S.A. 34:13A-16g(2) requires an arbitrator to make a comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceeding with those of other employees performing the same or similar services and with other employees generally. More specifically, this statutory factor requires a comparison with public employees in the same jurisdiction. In our initial decision, we stated:

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 his decision on remand, the arbitrator did not discuss the alleged internal pattern of settlement that we specifically

directed him to address. The County has filed exceptions on that issue and has outlined the evidence it presented supporting a finding of an internal pattern of settlement. The arbitrator was required to address that evidence on remand and did not. We express no opinion on the evidence presented because it is for an arbitrator to review that evidence and apply the statutory factors in the first instance. It is then for us to review an award under the standards affirmed in 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).

ORDER

The interest arbitration award is vacated and this matter is remanded for appointment of a new arbitrator. If the parties are unable to agree on a replacement arbitrator, an arbitrator shall be appointed by lot. The remand shall be decided on the existing record, unless the arbitrator requires additional submissions.

BY ORDER OF THE COMMISSION

Commissioners Eaton, Fuller, Krengel, Voos and Watkins voted in favor of this decision. None opposed. Commissioner Colligan recused himself.

ISSUED: October 28, 2010

Trenton, New Jersey