

P.E.R.C. NO. 2011-80

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF HUNTERDON,

Appellant,

-and-

Docket No. IA-2009-067

FOP LODGE 29,

Respondent.

SYNOPSIS

The Public Employment Relations Commission affirms an interest arbitration award. The County of Hunterdon appealed an award of an incremental salary guide for correction officers represented by FOP Lodge 29. The Commission finds that the arbitrator had the authority to award the salary guide and that the award was based on 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.

P.E.R.C. NO. 2011-80

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF HUNTERDON,

Appellant,

-and-

Docket No. IA-2009-067

FOP LODGE 29,

Respondent.

Appearances:

For the Appellant, Gaetano M. DeSapio, attorney

For the Respondent, Markowitz & Richman, attorneys  
(Matthew D. Areman, of counsel)

DECISION

The County of Hunterdon appeals from an interest arbitration award involving a negotiations unit of approximately 30 correction officers.<sup>1/</sup> 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).<sup>2/</sup> A conventional award is crafted by an arbitrator after considering the parties' final offers in light of nine statutory factors. We affirm the

---

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.

award. We note that we are constrained by our review standard to affirm the award. See 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 ten-step salary schedule with annual increments, but to forego retroactive pay for 2009. The FOP also proposed a \$200 increase in the Uniform Maintenance Allowance from \$600 to \$800 beginning January 1, 2011.

The County proposed a 7.5% salary increase for officers receiving less than \$40,500 annually over three years in equalized payments of 2.5% per year effective in 2009. For officers receiving more than \$40,500 annually, the County proposed wage increases averaging between 9.38% and 23.10% over three years. The County also proposed that effective January 1, 2011, it would 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 October 31, 2010, the arbitrator issued an 86-page Opinion and Award. He noted that the record was extensive, containing 90 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	46,000	46,000	46,000
6	43,000	43,000	43,000
5	40,500	40,500	40,500
4	38,900	38,900	38,900
3	37,500	37,500	37,500
2	33,648	33,648	33,700
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 a \$100

increase in the Uniform Maintenance Allowance effective January 1, 2011 and the County's proposal for a two-week salary hold-back to be implemented with the first payday in 2011.

The County appeals contending that the arbitrator exceeded his authority in awarding a salary guide and even if the arbitrator had the authority to award a salary guide, it was contrary to the credible evidence in the record.

The FOP responds that the County ignored Commission precedent that establishes the arbitrator's authority to award a salary system and the arbitrator's award in adopting the FOP's proposal for a salary guide is supported by substantial credible evidence in the record.

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. Under 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 was properly before the arbitrator pursuant to Commission case law.

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 Correction 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 thoroughly discussed each factor with respect to his award of the salary guide and 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 jail facility in order to maintain high standards of safety and supervision; the cost of the salary guide was less than the County's proposal; and the arbitrator explained his basis for selecting the salaries inserted at each step of the guide.

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

The evidence in the record establishes that all other Correction 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 Correction's Officers. This is a term and condition of employment received by all other Correction 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 Correction Officers in all other correctional facilities throughout the State should be denied to 30 Correction Officers in Hunterdon County. 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 62].

The arbitrator then reviewed the evidence in the record that the FOP presented which established a 60-70% turnover rate for Correction Officers in the past ten years. Between 2000 and 2010, approximately 100 officers were hired for a 30-officer unit and 28 of the current officers were hired after January 1, 2000. 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 Correction officers. The arbitrator then addressed 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. 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 and that the County's non-police units did not have an issue with turnover.<sup>3/</sup> 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. Newark.

The arbitrator's statement that "[t]he County bears a heavy burden in convincing an arbitrator that a term and condition of employment enjoyed by thousands of other Correction Officers in all other correctional facilities throughout the State should be denied to 30 Correction Officers in Hunterdon County," did not shift the burden of proof to the County in awarding the salary

---

<sup>3/</sup> We note that the arbitrator also awarded an incremental salary guide to the County's Sheriff's Officers. That award was also appealed and affirmed by the Commission. P.E.R.C. No. 2011-\_\_ , \_\_ NJPER \_\_ (¶\_\_ 2011)

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 establishing the turnover rate. Thus, the FOP provided substantial evidence in the record to support the award of a 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 and financial impact on the governing unit, its residents and taxpayers, 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 thousands 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 greater than the average State-wide increases in 2008, 2009 and 2010. It must be noted that those statistics cited by the County as a comparison do not include increment costs. We also note that the base salaries are the lowest in the State and therefore a 3.73% to 11.45% increase depending on the step of the guide yields a total cost of \$236,336 for a three-year agreement- a figure the County does not dispute is \$100,000 less than its offer. We recognize that any salary increase places pressure on

a public employer's budget. However, an interest arbitration award with a cumulative cost that is less than the County's final offer in total cost and percentage raise is not unreasonable and should not create unexpected pressure to the County.

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 Eskilson voted against this decision. Commissioner Bonanni was not present.

ISSUED: May 26, 2011

Trenton, New Jersey