

P.E.R.C. NO. 2009-23

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF POMPTON LAKES,

Respondent,

-and-

Docket No. IA-2007-055

POMPTON LAKES PBA LOCAL NO. 161,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission affirms an interest arbitration award on remand. The PBA had appealed only the health insurance portion of the initial award. The Commission concluded that the initial award did not adequately explain his reasons for awarding the health benefit change under the statutory factors and vacated and remanded the case to the arbitrator to provide a reasoned explanation for his award. The Commission finds that in his second decision, the arbitrator adequately explained his reasons for awarding the health benefit change under the subsection 16g factors.

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 Respondent, Struble Ragno, attorneys (Joseph J. Ragno, Jr., of counsel)

For the Charging Party, Loccke, Correia, Schlager, Limsky & Bukosky, attorneys (Richard D. Loccke, of counsel)

DECISION

On August 13, 2008, Pompton Lakes PBA Local No. 161 appealed an interest arbitration award involving a unit of approximately 25 police officers employed by the Borough of Pompton Lakes. See N.J.S.A. 34:13A-16f(5)(a). The award was issued by the interest arbitrator after a remand of an initial award. P.E.R.C. No. 2008-58, 34 NJPER 90 (¶38 2008) ("Pompton Lakes I"). We affirm the second award.

In the initial award, the arbitrator awarded a four-year contract with wage increases of 4% in the first year and 4.25% in the remaining three years. He also awarded premium sharing for

the first time for employees choosing certain health insurance plans.

The employer had proposed to continue providing fully-paid health care benefits by paying the full premium cost of NJ PLUS for all levels of coverage. If a unit member decided to choose another plan, the member would be responsible for the additional premium above the cost of NJ PLUS. In addition, the Borough offered an opt-out provision at 50% of the NJ PLUS rate for any member with another bona fide health care plan. The PBA opposed any change in the existing benefit.

Under the arbitrator's initial award, only NJ PLUS and the Aetna HMO would be provided without cost. Employees choosing a plan with a higher premium would be required to pay the difference. No extra credit would be given if the cost of the Aetna HMO falls below that of NJ PLUS.

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. 289, 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.

The PBA appealed only the health insurance portion of the initial award arguing that it was not supported by substantial credible evidence in the record as a whole; failed to give due weight to certain subsection 16g factors; and failed to apply subsection 16c. In Pompton Lakes I, we concluded that the arbitrator did not adequately explain his reasons for awarding the health benefit change under the statutory factors. We vacated the award and remanded the case to the arbitrator to provide a reasoned explanation for his award and to state what statutory factors he 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.

On July 23, 2008, the arbitrator issued his second award. He considered each of the nine statutory factors and explained which of the facts were of the greatest importance and which he considered not to have a great bearing on this dispute. We briefly summarize that analysis.

1. The interests and welfare of the public. The arbitrator considered this factor to be of great importance because this is basically a financial matter, but one that could affect the loyalty and performance of this key group of employees.

2. Comparison of the wages, salaries, hours and conditions of employment . . . with . . . employees performing the same or similar services and with other employees generally. The arbitrator found that neither party made comparisons to private sector employees and that the health insurance issue is isolated from his salary award, which the parties have accepted.

3. The overall compensation presently received The arbitrator found the overall compensation factor to be of great importance in the original decision, but not for the remaining issue of health benefits alone.

4. Stipulations of the parties. There were none.

5. The lawful authority of the employer. The arbitrator found that nothing in the resolution of this dispute would impact this factor.

6. The financial impact on the governing unit, its residents and taxpayers. The arbitrator found this factor to be of great importance because of the long-range potential impact of costs related to health care.

7. The cost of living. The arbitrator stated that neither party expressed a position based on cost of living changes.

8. The continuity and stability of employment The arbitrator stated that the single element of the award that could provoke some disenchantment would be the changes in health care insurance plans. He found this factor to be of moderate concern and stated that it had to be considered along with the interests and welfare of the public.

9. Statutory restrictions imposed on the employer. The arbitrator stated that the resolution of the health care issue would not materially impact on the employer's ability to contain expenditures within those guidelines.

In his discussion, the arbitrator explained that his decision was based on the record as well as evaluations of likely long-term effects based on past trends. He stated that the PBA refused to compromise on the issue of health benefits, claiming that the award of the employer's proposal for employee contributions to the premiums of certain health plans would substantially limit employees' free choice as to providers of health services and require employees to change doctors with whom they had established relationships. The arbitrator explained that he was not able to produce precise data about the future costs of health insurance, but thought that he had made sound judgments as to the probability of insurance costs likely

continuing to rise at rates faster than the cost of living or wages.

The arbitrator dealt in some detail with the Borough's need for greater attention to its fiscal health. He noted that its pension contributions had increased; assessed valuations had risen only 8.5% between 2002 and 2007; the net asset valuation of real property improved only 1.9% from 2004 to 2007 and the increase from 2005 to 2007 was just over .5%; and the balance remaining after transfers deteriorated from \$1,580,893 in 2002 to \$378,105 in 2007. The arbitrator also noted that three employees would be returning to work after long suspensions with costs upwards of \$200,000 plus the addition of their salary and benefits to the payroll. The testimony of the Borough's Financial Officer added to the arbitrator's conclusion that significant attention should be given to the interests and welfare of the public and the financial impact on the government and the taxpayers.

The arbitrator also noted that between 2002 and 2007, the property tax rate increased 31% and that the Borough has little prospect of large new ratables. He concluded that the economic future was beginning to look bleak; costs were rising; sources of income falling; cash balances were dropping dramatically to a dangerously low level; and significant new expenses were threatening.

Given these conclusions, the arbitrator looked to savings in the area of health benefits, subject to the Borough's determination to continue a policy of providing at least one fully-paid health insurance plan. The arbitrator explained that total health insurance costs had increased 73% from 2002 to 2007. The Borough's proposal to provide only NJ PLUS at no cost would have reduced its annual cost by \$63,264 or 22.5%. This saving would be equivalent to a reduction of 2.94% of the combined cost of payroll and health insurance for these officers or 3.4% of just payroll costs in 2006.

The arbitrator did not award the Borough's proposal. However, his award would save approximately \$60,000 in the first year and \$75,000 in the following year and would substantially offset the basic wage increases awarded.

The arbitrator found that from 2002 to 2007, the rate for the Traditional Plan increased 138%, while the increase for NJ PLUS was 98%. Because the base rate for the Traditional Plan was higher than the NJ PLUS plan in 2002, the cost growth in dollars was more than the 40 percentage points would suggest. As for future cost increases, the arbitrator stated that NJ PLUS and Aetna could be expected to continue their record of more efficient services and lower costs.

As for quality of services, the arbitrator found nothing to suggest that the Aetna HMO is not the equivalent of the Cigna

HMO, for which employees would now be required to pay a portion of the premium. He further detailed the many ways he found NJ PLUS to be equal to or better than the Traditional Plan. The arbitrator found that the change in the health plan will not have a major impact on employees except as to choice of providers. He concluded that the threat to the Borough's fiscal foundations outweighed the inconvenience and resistance to change affecting some employees. Finally, the arbitrator stated that the substance of the PBA's positions was considered and that the relative position of these employees as contrasted with the comparable group will not change appreciably. Their top pay will remain ahead of the vast majority of those communities and their benefits will be very comparable.

The PBA argues that the record lacks the factual detail necessary to calculate the cost of the health benefits proposal. It further argues that the record lacks any supportive comparability data upon which assessments can be made. The PBA asserts that the Borough is simply attempting to achieve a form of "beachhead" and get through arbitration what does not exist elsewhere. Finally, the PBA contends that because the State Health Benefits Program has eliminated the Traditional Plan and NJ PLUS and replaced them with NJ DIRECT 10 and 15, the arbitrator's award cannot be implemented. Finally, the PBA argues that certain "misplaced" comments in the arbitration award

suggest a loss of objectivity and require that any remand be to a different arbitrator.

The Borough responds that it proposed to continue paying the full cost of NJ PLUS and to offer several richer plans with employees paying any additional premium. The Borough recounts the evidence on costs of the current plans and recent increases in those costs. It states that the arbitrator was provided with a recent arbitration award from the Borough of Ringwood that provided for a substantially similar health care provision and dozens of contracts of other municipalities. It states that neither party produced testimony or evidence about health care premiums of other municipalities presumably because premiums under the State Health Benefits Program are set by the Program. As for internal comparability, the Borough states that neither party argued this point in arbitration, but that there is only one other negotiations unit in the Borough; that unit is in negotiations; and the Borough has offered the same proposal.

The Borough asserts that the arbitrator awarded the substance of its proposal and expanded upon it. It contends that the arbitrator carefully reviewed the historical data supporting the Borough's claim that health care costs were rising exorbitantly and that excellent coverage could be provided at no cost to employees. It concludes that the arbitrator determined that the Borough's position was reasonable and factual.

The Borough argues that the PBA has failed to satisfy any plausible showing that the arbitrator violated N.J.S.A. 2A:24-8 or 9 or failed to comply with the requirements of our initial decision. Finally, the Borough contends that the award can now be implemented more easily because there are fewer plans from which to now choose. According to the Borough, NJ DIRECT 15 effectively replaces NJ PLUS; Aetna remains an offered plan; and NJ DIRECT 10 or Cigna are available for a premium cost at the expense of the employee.

As we outlined above, the arbitrator has now addressed each statutory factor and explained its relevance and weight. He has explained his analysis of the Borough's current economic situation. He has examined the costs of health benefits and projected, to the extent possible, the future costs of the different plans. While the arbitrator did not provide a detailed explanation about internal and external comparability on the health benefits issue, the Borough has explained without contradiction that the parties did not present evidence or argument on those considerations.

We conclude that the arbitrator has complied with his requirements under the statute and as outlined in our initial decision. Within the parameters of our review standard, we defer

to the arbitrator's judgment, discretion, and labor relations expertise.^{1/}

ORDER

The arbitrator's award is affirmed.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Branigan, Buchanan, Fuller, Joanis and Watkins voted in favor of this decision. None opposed.

ISSUED: November 25, 2008

Trenton, New Jersey

^{1/} Given this result, the PBA's request to remand to another arbitrator is moot.