P.E.R.C. NO. 2012-15

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MERCER COUNTY PROSECUTOR,

Appellant,

-and-

Docket No. IA-2010-069
IA-2010-070

PROSECUTOR'S DETECTIVES AND INVESTIGATORS PBA LOCAL 339 and PROSECUTOR'S SUPERIOR OFFICERS ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission affirms an interest arbitration award establishing the terms and conditions of employment for successor agreements between the County of Mercer and the Prosecutor's Detectives and Investigators PBA Local 339 and the Prosecutor's Superior Officers Association. The employer appealed the award arguing that the arbitrator did not properly consider or give due weight to the interest and welfare of the public in deciding the wage award; did not adequately explain where the County is going to find the money to fund the increases; did not properly consider or give due weight to the financial impact factor; did not properly consider or give due weight to the lawful authority factor; and did not consider or give due weight to the statutory restrictions factor. The Commission affirms the award noting that it defers to the arbitrator's judgment in his application of the statutory factors and his confidence that the award will not present a cap limitation issue for the employer.

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, Genova, Burns & Giantomasi, attorneys (Brian W. Kronick, of counsel; David K. Broderick, on the brief)

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

DECISION

On September 16, 2011, the Mercer County Prosecutor ("employer") appealed from an interest arbitration award involving units of 38 detectives and investigators and 13 superior officers employed by the Mercer County Prosecutor's office and represented by the Prosecutor's Detective and Investigators PBA Local 339 and the Prosecutor's Superior Officers Association. ("Associations") 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).[1/] 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 employer proposed a three-year agreement covering January 1, 2010 through December 31, 2012 with: a 0% wage increase on base pay and a step freeze for 2010; 0% increase on base pay with movement on the steps for 2011; and a 2% total cost increase, inclusive of step increments, longevity and law enforcement longevity for 2012. It further proposed: that Article 6.3 be amended to reflect the past practice that step movement shall be on July 1 of each year; deletion of Health Benefits language related to the employer paying full and partial cost for certain plans; amending Article 7.5 to provide for the payment of accumulated unused sick time up to a maximum of $15,000; a new dental program provision to provide for three (3) types of coverage: (1) Basic Dental Coverage (as defined by the current dental contract); (2) Premium Dental Insurance; and (3) Eastern Dental Insurance with the County paying the cost of the basic dental program and the employee responsible for the difference in premium of the other plans. Finally, the employer proposed combining Lincoln's Birthday and Washington's Birthday

1/ Effective January 1, 2011, P.L. 2010, c. 105 eliminated all other methods of interest arbitration and only provides for conventional arbitration.

into one President's Day Holiday and removing the day after Thanksgiving as a paid holiday.

The Associations proposed a four-year contract with a duration from January 1, 2010 through December 31, 2013 and providing for 3.5% across-the-board wage increases effective January 1 of each year. The Associations also proposed: changing the definition of "reasonable notice" for schedule changes to be 72 hours from the start of the previously scheduled shift or the new shift designated, whichever occurs first; inclusion of "stepmother, stepfather or any other relative who lives in the employee's household" to the definition of bereavement leave; provide that an employee may request personal leave at any time subject to managerial discretion and approval; eliminate the prohibition on taking a personal day in conjunction with vacation; and provide that seniority shall be given preference in layoffs, recall, vacation, and scheduling.

On September 6, 2011, the arbitrator issued an 82-page Opinion and Award. He noted the record contained extensive and voluminous documentary evidence, direct testimonial evidence from several witnesses and testimony contained in the transcripts of a parallel proceeding that was incorporated into the record by stipulation.

After summarizing the parties' offers and reviewing in detail their respective supporting arguments, the arbitrator

awarded a four-year agreement covering January 1, 2010 through December 31, 2013 with a 0% salary increase for 2010, 2% for 2011, 2.5% for 2012 and 2.5% for 2013. He also awarded: the employer's proposal to reflect the existing past practice that step movement be applied annually on July 1; that the Health Benefits provisions for the contracts be modified to expressly provide that the health benefits program shall be consistent with P.L. 2010, c. 2[2/] and P.L. 2011, c. 78[3/]; added stepmother and stepfather to the list of immediate family members in the Bereavement provision; that personal days may be taken in conjunction with vacation leave subject to prior Departmental approval; and revised Article 11.2 (PBA) and Article 10.2 (SOA) to include the following clause:

2/ P.L. 2010, c. 2 took effect on May 21, 2010. It provides:

> Commencing on the effective date of P.L. 2010, c.2 and upon the expiration of any applicable binding collective negotiations agreement in force on that effective date, employees of an employer other than the State shall pay 1.5 percent of base salary, through the withholding of the contribution, for health benefits coverage provided under P.L. 1961, c.49 (C.52:14-17.25 et seq.), notwithstanding any other amount that may be required additionally pursuant to this paragraph by means of a binding collective negotiations agreement or the modification of payment obligations.

3/ P.L. 2011, c. 78 took effect on June 28, 2011 and provides for increased pension and health care contributions from public employees.

> Seniority will be given preference in layoffs, recall, vacation and scheduling, provided that it is expressly understood that the prosecutor has the authority, *as a matter of sole discretion*, to determine exceptions to the use of seniority based on personnel needs relating to specific skill sets, experience and/or specialized training. Such discretion shall not be unreasonably exercised.

All other proposals were denied due to the arbitrator finding that there was not sufficient evidence to support their implementation.

The employer appeals contending that the arbitrator did not properly apply the statutory criteria in issuing the award. Specifically, the employer argues: that the arbitrator did not properly consider or give due weight to the interest and welfare of the public in deciding the wage award; did not adequately explain where the County is going to find the money to fund the increases; did not properly consider or give due weight to the financial impact factor; did not properly consider or give due weight to the lawful authority factor; and did not consider or give due weight to the statutory restrictions factor. The Associations respond that the arbitrator properly considered those statutory factors.

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, P.E.R.C. No. 99-97, 26 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.

The employer objects to two aspects of the award - wages and duration. It asserts that the arbitrator did not properly apply the interest and welfare of the public, financial impact, and the lawful authority of the employer because the arbitrator ignored the evidence of the employer's precarious financial situation that includes increased labor and public safety costs, decreasing revenues and a budget deficit. Further, it asserts that the arbitrator did not adequately explain where the County would get the money to fund the wage increases.

We reject these grounds for appeal. The arbitrator found that his award would not present a problem with respect to the Cap Law limitations on the County's budget as the overall County budget will be reduced from receiving significant health benefit

contributions, the incremental costs of the award are low because most members of the unit do not receive increments, and there will be personnel changes as the unit ages. The arbitrator stated:

> [T]here is absolutely nothing to indicate that the package awarded herein will present a Cap problem. The evidence of the history of retirements and other personnel changes, with lower cost replacements, provides reason in combination with other factors, to confidently find that these increases present no Cap problems.
>
> [Award at 42].

The arbitrator reviewed the financial information set forth by the County and found that the cost of each percentage awarded equaled 0.0155% of the total County budget. The employer has not disputed these figures or pointed to any record evidence to establish that the award itself places it outside the cap. Further, the tax levy cap is applied to the County budget as a whole and not to each of its components. Town of Kearny, P.E.R.C. No. 2011-37, 36 NJPER 413 (¶160 2010). We must defer to the arbitrator's expertise and review of the evidence. Since the arbitrator has found that the award will not present a Cap limitation problem, we defer to his judgment.

It is also not the obligation of an interest arbitrator to direct an employer as to how to fund an award. An interest arbitration award is not unreasonable even though an employer may be forced to make economies in order to implement the award.

Kearny; 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 employees should be laid off, or whether budgetary appropriations for non-payroll costs should be reduced. Id. We recognize that any salary increase places pressure on a public employer's cap limitations. However, the employer has not presented any specific evidence or argument for us to conclude that the arbitrator erred in his finding that the award would not present a cap problem.

The employer also argues that the arbitrator did not take into consideration the effect the award will have on other negotiations units and the costs associated with other negotiations. The Associations respond that the evidence did not support this argument as there is no established history of pattern negotiations between the Prosecutor's employees and corrections personnel.[4/]

We reject this argument. In discussing his wage award, the arbitrator stated:

> The calculations are based upon the two bargaining units that are the parties to this impasse but the judgments made herein are made with the understanding that these two

4/ Even though the County funds the Prosecutor's office, the Prosecutor is a separate employer. See Middlesex Cty. Prosecutor, P.E.R.C. No. 91-22, 15 NJPER 491 (¶21214 1990) aff'd 255 N.J. Super. 333 (App. Div. 1992).

> units do not function alone in a vacuum but that they are part of a more complex labor relations structure within an overall County budget.
>
> [Award at 59-60].

The arbitrator clearly took the effect his award may have on impasses with other County law enforcement units into consideration. We find that he adequately evaluated all the statutory criteria; explained why he gave more weight to some factors and less to others; and issued a comprehensive award that reasonably determined the issues and is supported by substantial credible evidence in the record as to the wage award. The arbitrator only had jurisdiction to decide the impasse on the evidence and record between these parties. He may subjectively consider that there are costs associated to other units in his award, but to consider evidence presented as to other units and for practical purposes - a separate employer - would be outside his authority. Essex Cty, P.E.R.C. No. 2011-92 __ NJPER ___ (¶_____ 2011).

The employer also objects to the arbitrator's award of a fourth year arguing that it could potentially be damaging to the County's financial well-being. However, the arbitrator found that it was in the public interest to order a four-year contract to provide an opportunity for the employer to face the 2012 and 2013 budgets with knowledge as to personnel costs so that it may construct future budgets with a greater degree of certainty as a

three-year agreement would put the parties right back in negotiations next year.

We reject this argument. There is no per se bar to awarding terms and conditions of employment for future years based on the record evidence and current economic trends. We recognize that there can only be limited hard economic data for 2012 and 2013. We have continually held that the collective negotiations process contemplates the parties agreeing to future years even though no one can predict with any assurance the exact budget circumstances a public employer will face in future years. Kearny; City of Asbury Park, P.E.R.C. No. 2011-17, 36 NJPER 323 (¶126 2010). Here, the employer presented volumes of documents and it has not pointed to any particular evidence in the record that requires rejecting the contract term that was awarded.

ORDER

The interest arbitration award is affirmed.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Krengel and Voos voted in favor of this decision. Commissioners Bonanni and Eskilson voted against this decision. Commissioners Jones and Wall were not present.

ISSUED: October 14, 2011

Trenton, New Jersey