

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF BERGENFIELD,

Respondent,

-and-

Docket Nos.      IA-2019-007;  
                         CO-2019-288

PBA LOCAL 309,

Appellant/  
Charging Party.

SYNOPSIS

The Public Employment Relations Commission affirms an interest arbitration award in the matter of Borough of Bergenfield and PBA Local 309, as clarified on remand of the Appellate Division of the Superior Court. The Commission finds that the interest arbitrator issued a clarification, not a new award, and did not exceed his authority under the court's remand to clarify whether the PBA's proposed draft of the salary term accurately reflected the salary term the interest arbitrator wrote for the parties. The Commission finds that the interest arbitrator properly answered the court's narrow question, clarifying that the PBA's inclusion of the past practice language in the salary term was not an accurate reflection of the Award, and that he specifically did not include that language that in the salary provision of the award. The Commission further finds that it was not error for the interest arbitrator to also clarify that, in order for the CNA's salary provision to have accurately reflected the award, it should have stated that "Increments shall not be paid in accordance with past practice during the term of this agreement, but shall be paid as follows . . . ."

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, McCusker Anselmi Rosen Carvelli, PC  
(John L. Shahdanian II, of counsel)

For the Appellant/Charging Party, Loccke, Correia &  
Bukosky LLC (Michael A. Bukosky, of counsel)

DECISION

On October 5, 2021, the New Jersey Superior Court, Appellate Division, in an unpublished opinion, In re Borough of Bergenfield, 2021 N.J. Super. Unpub. LEXIS 2398 (App. Div. Dkt No. A-3495-19), reversed our decision, P.E.R.C. No. 2020-50, 46 NJPER 516 (¶114 2020), and vacated our order directing the Borough of Bergenfield (Borough) to sign a collective negotiations agreement (CNA) drafted by PBA Local 309 (PBA) that memorialized an interest arbitration (IA) award (IA-2019-007).<sup>1/</sup>

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<sup>1/</sup> Our decision held that the Borough committed an unfair labor practice in violation of N.J.S.A. 34:13A-5.4a(6) by refusing to sign the draft CNA which, the Commission held, accurately reflected the IA award by its inclusion of the phrase  
(continued...)

The court remanded with direction that the parties return to the interest arbitrator to clarify his award. The court did not retain jurisdiction. On October 8, we remanded the matter to the interest arbitrator, instructing him as follows:

As you may already be aware, the Appellate Division issued the attached decision on October 5, 2021, remanding this matter back to you. Specifically, on page 18 the court directs "for the parties to return to the interest arbitrator to clarify the award [on whether the PBA's proposed draft of the salary term is an accurate reflection of the salary term the interest arbitrator wrote for the parties]."

On January 14, 2022, the interest arbitrator issued a 9-page clarification.<sup>2/</sup> On January 20 the PBA filed with us "an appeal of the interest arbitrator's modification of his award and/or a request for [the] Commission's review under its unfair labor practice jurisdiction, and/or request to reopen this matter in some fashion on grounds of fundamental fairness." On January 28 the Borough filed a reply.

In determining to remand the matter to the interest arbitrator, the Appellate Division recounted the facts and issues in dispute regarding the initial IA award as follows:

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1/ (...continued)  
"increments shall be paid in accordance with past practice" from the parties' prior CNA.

2/ Prior to issuing his clarification, the interest arbitrator requested and received written position statements from the parties, and thereafter heard oral argument via Zoom on December 20, 2021.

[The interest arbitrator] entered a salary award, representing "the maximum salary increases that can be awarded under the cap on base salary increases<sup>3/</sup> with discretion limited to the distribution of those amounts" of:

2018 0% salary increase, full step increases, longevity and senior officer differential.

2019 0% salary increase, step increases October 1, 2019, longevity compensation and senior officer differential in accordance with the terms of the Agreement.

2020 0% salary increase, no step movement, longevity and senior officer differential in accordance with the terms of the Agreement.

The arbitrator also included two other provisions in the award important to this dispute. First, he noted that "[a]ll provisions of the existing agreement shall be carried forward except for those which have been modified by the terms of this Award." Second, he "calculated the net, annual economic change in base salary over the three-year term of the new agreement, as follows: 2018 - \$248,815.26; 2019 - \$54,769.18; 2020 - \$13,888.75 (pursuant to N.J.S.A. 34:13A-16.7 A and B)."

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3/ As discussed elsewhere in the court's decision, the IA award was governed by the Police and Fire Public Interest Arbitration Reform Act, N.J.S.A. 34:13A-14a to - 21, requiring the award to comply with the Property Tax Levy Cap, N.J.S.A. 40A:4-45.44 to - 45.47, and was "issued in accordance with the 2% hard cap limitation" of N.J.S.A. 34:13A-16.7 as well as "the 16g interest arbitration criteria to the extent deemed relevant," N.J.S.A. 34:13A-16(g). 2021 N.J. Super. Unpub. LEXIS 2398 at \*3 (quoting the initial IA award).

Neither party appealed the award. . . . When the PBA presented a draft CNA for signature to the Borough, after the time for any appeal had expired, the Borough objected to the language proposed in Article III, Section 2 concerning the payment of salary increments. Specifically, the PBA's proposed draft provided:

Increments shall be paid in accordance with past practice except that during the year 2019 only the Salary Step Increases, where applicable, shall be effective October 1, 2019. For the year 2020 there shall be no Step movement for salary increases.

[2021 N.J. Super. Unpub. LEXIS 2398 at \*6-\*8.]

The court found that the PBA "proposed a salary term that incorporated a 'past practice' clause the interest arbitrator did not include in his salary provision," id. at \*15, and further specified the issue to be decided by the interest arbitrator on remand:

[The parties'] dispute is over whether the interest arbitrator awarded bargaining unit members an amount of money in 2019 equal to what they would have received under the expired 2017 CNA had the 2019 step increase been delayed until October 1, in other words the monetary equivalent of a one-quarter step, or whether he decreed that those members would ascend on October 1, 2019 to their next step "in accordance with past practice" and remain there for 2020, the last year of the contract.

. . . We decide only that the parties have a legitimate dispute over whether the PBA's proposed draft of the salary term is an accurate reflection of the salary term the

interest arbitrator wrote for the parties.  
As . . . Bergenfield could only be compelled to sign a contract that accurately reflected the interest arbitration award, we vacate PERC's order compelling the Borough to sign the PBA's draft and remand with directions for the parties to return to the interest arbitrator to clarify the award.

[2021 N.J. Super. Unpub. LEXIS 2398 at \*17-\*18 (emphases supplied).]

On remand, after considering the parties' arguments, the interest arbitrator responded to the court's direction, in pertinent part, as follows:

AWARD

The Award at issue was governed by the Police and Fire Public Interest Arbitration Reform Act, N.J.S.A. 34:13A-14a to - 21, requiring it comply with the Property Tax Levy Cap, N.J.S.A. 40A:4-45.44 to - 45.47, and the 2% hard cap limitation of N.J.S.A. 34:13A-16.7 as well as the relevant 16g interest arbitration criteria.

On October 5, 2021, the Appellate Division vacated PERC's Order compelling the Borough to sign the PBA's draft collective negotiations agreement and remanded it with directions for the parties to return to the interest arbitrator to clarify the Award. The Appellate Division determined that this "is a dispute over whether the draft contract presented by the PBA to Bergenfield accurately reflects the interest arbitration award rendered in the compulsory interest arbitration."

In my Award, because of the implication of the 2% hard cap, I specifically did not include the language that "[i]ncrements shall be paid in accordance with past practice" in the salary provision. If I intended for PBA members to receive "full step" increases in

2019 I would have used the same language for 2019 as I used when I awarded the full step increase in 2018. As such, the PBA's inclusion of such language was not an accurate reflection of the Award, especially in light of its interpretation of the language of the delayed 2019 step increase. Rather, I delayed the award of the steps until October 2019, and provided the cost of same (\$44,751.83), one-quarter of the step in 2019 due to the implication of the 2% hard cap. In 2020, the 2% hard cap limitations left no additional money to apply to a step increase beyond that paid to the PBA in 2018 and 2019. The Appellate Division correctly interpreted my Award and how I applied the 2% salary cap in the salary award, and the PBA's draft collective negotiations agreement and interpretation did not accurately reflect my Award.

[Clarification of IA Award at 9 (emphases added).]

The above-quoted follows the "Discussion and Analysis" portion of his clarification, in which the interest arbitrator stated, among other things, "As directed by the Appellate Division, I have clarified the Award." Id. at 7. The interest arbitrator also stated in the "Discussion and Analysis" section:

Using the PBA's draft language, the CNA salary provision should therefore read as follows:

## **Section 2**

Increments shall not be paid in accordance with past practice during the term of this agreement, but shall be paid as follows; 2018-full step increases; 2019- step increases October 1, 2019 in the amount of \$44,751.83; 2020-no step increases.

The PBA now objects that the interest arbitrator made mistakes of law, in that he issued not a clarification but a "newly written award," which he was not authorized to do and which is contradictory on its face. The PBA contends the interest arbitrator created a new "quarter step" which was not mentioned in his prior award and is not provided for either in the award or in the parties' existing salary chart. The PBA asserts that under the award (as clarified) it is not clear at what step the interest arbitrator is placing unit members on the guide, or if "an employee is granted a new step increment placement but only paid a quarter of same." The PBA concedes that the concepts of "paper steps" (the grant of a step increase while only being paid a certain amount or nothing at all) and delayed steps are not unknown, and that the latter are very common in interest arbitration matters. The PBA faults the interest arbitrator for not simply stating that in 2019 "there is a paper step movement and no pay and a cash payment of only a percentage of the step," if that is what he meant.

The PBA further contends that salary guide placement impacts items such as overtime, health benefit premium contributions and longevity payments, and that the award does not make it clear from what step such payments are to be calculated, or what employees' step placements will be in 2020, 2021 and upon the expiration of the contract. The PBA contends that not knowing such placements renders it impossible to cost out or negotiate successor contracts.



The PBA asserts that the interest arbitrator was directed to clarify his award, not re-write it, which he did by stating that the CNA's salary provision should include the statement that "increments shall not be paid in accordance with past practice during the term of this agreement, but shall be paid as follows; 2018-full step increases; 2019- step increases October 1, 2019 in the amount of \$44,751.83; 2020-no step increases." The PBA insists that this is a "fundamental and significant rewriting of the award and fundamentally changes what he had determined in the past." The PBA contends the arbitrator inserted this new language, while the PBA was given no notice of it or opportunity to submit evidentiary materials in opposition to it. This unfairly prejudices the PBA with respect to future contracts.

The Borough replies, in pertinent part, that it is clear from the interest arbitrator's clarification that there was to be no step "movement" and that only a monetary amount equal to one-quarter step was to be paid in 2019. Therefore the PBA's assertion that the interest arbitrator created a new "quarter step" on the salary guide is factually incorrect and legally unsupported. If PBA members were to "ascend" on the step guide in 2019, the Borough would have paid well more than the legally permissible spend under the 2% hard cap. The Borough contends that the clarification was correctly issued and in accordance with the orders, guidance and direction of both the Appellate Division and PERC; and that it

clearly articulated that the PBA's proposed draft of the salary term was not an accurate reflection of the salary term that the interest arbitrator intended and wrote for the parties.

#### ANALYSIS

We find that the interest arbitrator issued a clarification, not a new award, and he did not exceed his authority under the court's remand. The Appellate Division, without retaining jurisdiction, remanded to the interest arbitrator to clarify his award on a specific issue. This is akin to when the Commission remands an IA award for clarification. In such cases, as we have done here, we permit limited briefing by the parties as to any objections to the clarified award. See, e.g., Passaic County Sheriff's Office, P.E.R.C. No. 2021-54, 48 NJPER 36 (¶9 2021) (affirming IA award following remand to clarify award's net annual economic changes and costs of base salary items); Mercer County Prosecutor's Office, P.E.R.C. No. 2021-42, 47 NJPER 465 (¶109 2021) (same).

Here, the clarification on remand was limited to a narrow question as identified by the Appellate Division: whether the PBA's proposed draft of the salary term accurately reflected the salary term the interest arbitrator wrote for the parties. In order to decide that question, the court directed the interest arbitrator to clarify: (1) whether he awarded unit members an amount of money in 2019 equal to what they would have received under the expired 2017

CNA had the 2019 step increase been delayed until October 1, in other words the monetary equivalent of a one-quarter step; or (2) whether he decreed that those members would ascend on October 1, 2019 to their next step "in accordance with past practice" and remain there for 2020, the last year of the contract.

We find that the interest arbitrator resolved that question by providing the requested clarification:

In my Award,. . . I specifically did not include the language that "[i]ncrements shall be paid in accordance with past practice" in the salary provision. If I intended for PBA members to receive "full step" increases in 2019 I would have used the same language for 2019 as I used when I awarded the full step increase in 2018.

[Clarification of IA Award at 9.]

The interest arbitrator explained that his clarification was based on his application of and adherence to the statutory 2% hard cap limitation on salaries, which allowed one-quarter of the step in 2019, and no additional money to apply to a step increase beyond that paid to the PBA in 2018 and 2019. Id. As such, the interest arbitrator properly answered the court's narrow question, clarifying that the "PBA's inclusion of such [past practice] language was not an accurate reflection of the Award." For the same reasons, we find that it was not error for the interest arbitrator to also clarify that, in order for the CNA's salary provision to have accurately reflected the award, it should have stated that "Increments shall not be paid in accordance with past practice

during the term of this agreement, but shall be paid as follows; 2018-full step increases; 2019- step increases October 1, 2019 in the amount of \$44,751.83; 2020-no step increases."

ORDER

The interest arbitration award, as clarified on remand of the Appellate Division, is affirmed.<sup>4/5/</sup>

BY ORDER OF THE COMMISSION

Chair Weisblatt, Commissioners Bonanni, Ford, Jones, Papero and Voos voted in favor of this decision. None opposed.

ISSUED: February 24, 2022

Trenton, New Jersey

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<sup>4/</sup> The parties are also in interest arbitration (IA-2021-016) with respect to a successor to the 2018-2020 agreement that is the subject of the clarified award at issue here. On November 23, 2021 (P.E.R.C. No. 2022-23), we remanded an initial award in that other matter to the interest arbitrator for submission of additional evidence on the issues of healthcare contributions and revised final offers, with instructions that if the court-ordered clarification of the award in this matter (IA-2019-007) is appealed, then the arbitrator (in IA-2021-016) shall issue a remand decision within 90 days of the Commission's decision in this matter.

<sup>5/</sup> The PBA's unfair practice charge (CO-2019-288) was disposed of by the Appellate Division's reversal of our decision in P.E.R.C. No. 2020-50, 46 NJPER 516 (¶114 2020).