P.E.R.C. NO. 2003-33

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF UNION,

Appellant,

-and-

Docket No. IA-2001-46

UNION COUNTY CORRECTIONS OFFICERS,
PBA LOCAL NO. 199,

Respondent.

SYNOPSIS

The Public Employment Relations Commission vacates and remands an interest arbitration award issued to resolve negotiations between the County of Union and Union County Corrections Officers PBA Local No. 199. The Commission remands the award to the arbitrator for reconsideration and issuance of a new opinion and award no later than 60 days from this decision, absent an extension for good cause shown. The County appealed the award, contending that the arbitrator violated N.J.S.A. 34:13A-16d(2), N.J.S.A. 34:13A-16g and N.J.S.A. 2A:24-8 because he did not provide a reasoned analysis; consider the pattern of settlement in the County; individually analyze the County's operational proposals; or calculate the net annual economic changes for each year of the agreement. It also argued that the arbitrator made a mistake of fact in awarding the contract term and that, contrary to Commission case law, he presumed that interest arbitration was an inappropriate forum for considering the County's health benefits and operational proposals. The Commission concludes that the award must be vacated and remanded for reconsideration because, first, by emphasizing that the health benefits changes sought were best achieved in negotiations, the arbitrator appears to have applied an improper presumption that the proposals should not be awarded in interest arbitration. Second, the arbitrator did not fully discuss, or explain how he analyzed and weighed, the parties' arguments and evidence concerning internal settlements. A remand is also required because the arbitrator did not analyze the County's operational proposals and did not explain his salary award.

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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Respondent.

Appearances:

For the Appellant, Schenck, Price, Smith & King, attorneys (Kathryn V. Hatfield, of counsel)

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

DECISION

Union County appeals from an interest arbitration award involving a negotiations unit of approximately 200 corrections officers. 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). The parties' final offers were as follows.

The County proposed a four-year contract from 2001 through 2004, with a 1.5% across-the-board salary increase effective January 1, 2001 and a 1.5% increase effective June 23, 2001. For 2002 through 2004, it proposed increases of 4% for officers at the maximum guide step and 3.5% increases for officers "in guide." Almost all officers are at the maximum step. The

County also proposed to increase the clothing allowance by $25 in each of the first three years of the agreement.

The County proposed health benefits changes for both new and current employees. For current employees, it proposed, effective January 1, 2002, to increase prescription co-payments and institute an employee contribution towards health benefit premiums. Employees earning under $65,000 would pay a $10 per month premium contribution; those earning between $65,000 and $75,000 would pay $25; and those earning over $75,000 would pay $35. In 2003 and 2004, employees earning over $75,000 would pay $40 per month. For members of Horizon PPO (Blue Select), the County proposed a $5 doctor visit co-pay for 2002; a $10 co-pay for 2003 and 2004; and, for all unit members, an increase in the out-of-network cost share from 80/20 to 70/30. The County also proposed a health benefit buyout option where an officer covered under his or her spouse's plan could decline additional health coverage and receive $2,500 annually. Effective January 1, 2003, the County proposed to reduce the deductible for any single benefit period.

The County also proposed that, effective January 1, 2002, new employees would be limited to a choice of Physician's Health Service (PHS) or Blue Choice coverage, unless they opted to pay the difference between these plans and their chosen plan. Those choosing PHS or Blue Choice would pay $15 per month for single coverage and $25 per month for family coverage. Those

contributions would be increased by the proportionate annual increase in the plan cost.

The County also proposed enhancements to sick leave, retiree and vacation benefits, but linked these enhancements to the award of the noted health benefits proposals. Thus, it proposed to increase its subsidy of retiree health benefits from approximately 25% to approximately 75%; raise the maximum reimbursement for unused sick leave, on a graduated basis, for those with more than 200 accumulated sick days; and grant additional vacation days for each year of service from 25 through 30.

The County also sought the award of several proposals that it describes as "operational." It proposed to delete the requirement that it provide personal liability insurance for officers; eliminate certain positions from the seniority and shift bidding procedures; and delete a clause allowing officers on overtime at specific posts to switch posts. It also sought contract clauses that would provide that an officer who refuses overtime three times in a three-month period is ineligible for voluntary overtime for the following three months; require that personal and religious leave be taken in no less than one-half day increments; mandate that an officer who is unable to work a holiday due to illness submit a doctor's note and be charged a sick day; and specify that progressive discipline may begin if an officer is late for a regularly scheduled shift three times during a calendar year. In addition, the County sought to eliminate

officers' entitlement to an additional holiday when non-essential County employees receive an extra day off; reduce the number of required labor-management committee meetings; eliminate full release time for the PBA president and delegate; and delete a clause giving officers the right to interchange scheduled days off. Finally, it sought to require that an officer work four hours overtime before receiving an overtime meal allowance.

The PBA proposed a three year contract from 2001 through 2003 with 5% increases in each year. It also sought to increase the 10-year senior officer differential from $1365 to $1520 and the 15-year differential from $2365 to $2500. It proposed that the 20-year differential be increased by the same percentage as base salaries were increased, as provided in the expired contract. In addition, the PBA sought a $1500 stipend for employees in the Special Operations Unit (SOU) and an increase in the County contribution to the PBA Insurance Development fund from $135 to $158 per employee. It proposed that any overtime worked could, at the employee's option, be paid either at time and one-half or placed in a compensatory time off bank of up to 100 hours, with time off subject to the employer's approval. It also sought orthodontic coverage funded by employees through payroll deductions -- an arrangement it maintained was in effect for some other County employees. It proposed that grievances pursued to arbitration be heard by a member of the Commission's arbitration panel, instead of by one of the five arbitrators designated in the

agreement. Finally, it sought time off for one employee per shift to pick up food for other officers.

The arbitrator awarded a three-year contract from 2001 through 2003 with 4% across-the-board increases for all unit members for each year of the agreement. He also awarded the County's clothing allowance proposal. All other proposals were denied.

The County appeals, contending that the arbitrator violated N.J.S.A. 34:13A-16d(2), N.J.S.A. 34:13A-16g and N.J.S.A. 2A:24-8 because he did not provide a reasoned analysis; consider the pattern of settlement in the County; individually analyze the County's operational proposals; or calculate the net annual economic changes for each year of the agreement. It also argues that he made a mistake of fact in awarding the contract term and that, contrary to Commission case law, he presumed that interest arbitration was an inappropriate forum for considering the County's health benefits and operational proposals. It asks that we vacate the award and remand the case to a different arbitrator.[1/]

The PBA counters that the arbitrator carefully analyzed the County's wage and health benefits proposals in accordance with the statutory criteria; explained his rationale for awarding a three-year contract; and effectively found that the net annual economic changes for each year of the agreement were reasonable.

1/ We deny the County's request for oral argument. The case has been thoroughly briefed.

It maintains that the arbitrator never stated that any County proposals were improper subjects for interest arbitration, but simply found that there was insufficient evidence to support the County's operational and health benefits proposals, as well as its own economic and non-economic proposals. It argues that, if a remand is directed, it should be to the same arbitrator.

The standard for reviewing interest arbitration awards is now established, and was recently affirmed by the Appellate Division. We will vacate an award if 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., P.E.R.C. No. 2000-33, 25 NJPER 450 (¶30199), aff'd in part, rev'd and remanded in part on other grounds, 353 N.J. Super. 289 (App. Div. 2002), certif. pending, S.Ct. Dkt. No. 53,497; City of Clifton, P.E.R.C. No. 2002-56, 28 NJPER 201 (¶33071 2002), app. pending App. Div. Dkt. No. A-4573-01T2; 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.

Within this framework, we have interpreted Reform Act provisions and provided direction concerning the analysis required of arbitrators. An arbitrator must provide a reasoned explanation for an award and state what statutory factors he or she considered most important in arriving at the award, 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; Borough of Lodi, P.E.R.C. No. 99-28, 24 NJPER 466 (¶29214 1998).

We have also required arbitrators to apply the traditional arbitration principle that a party proposing a change must justify it. Teaneck; Cherry Hill. However, when an unsettled issue is submitted to interest arbitration, an arbitrator may not presume that interest arbitration is an inappropriate forum for granting or denying particular proposals. Cherry Hill. We have vacated and remanded for reconsideration awards that did not conform to these principles which shape, in part, our approach to this appeal.

Within this framework, we conclude that the award must be vacated and remanded for reconsideration because, first, by emphasizing that the health benefits changes sought were best achieved in negotiations, the arbitrator appears to have applied an improper presumption that the proposals should not be awarded in interest arbitration. Second, he did not fully discuss, or explain how he analyzed and weighed, the parties'

arguments and evidence concerning internal settlements. A remand is also required because the arbitrator did not analyze the County's operational proposals and did not explain his salary award. Given this remand, and the fact that arbitrators often arrive at a conventional award by awarding some of each party's proposals, the arbitrator may also reconsider the PBA's economic and non-economic proposals. We detail the considerations that lead us to this conclusion.

Health Benefits Proposals

Before the arbitrator, the County asserted that its health benefits proposals had been accepted by six other negotiations units, including three law enforcement units. The County maintained that these units had also accepted the salary, sick leave, retiree health benefit and vacation proposals that it was offering this unit. It urged the arbitrator to maintain this alleged pattern and argued that to do otherwise would disrupt labor relations stability because it would discourage future settlements and undermine the morale of employees in other units.

With respect to health benefits, the County maintained that the award of its proposals would help offset its escalating health care costs. It maintained that its premium costs had increased 10.5% overall during 2001 and that, by 2003, its proposals would require an annual $300 contribution toward health care premiums for those current unit members making over $65,000 per year.

The PBA countered that the settlements the County reached with other law enforcement units in fact supported the award of its offer, because the County had agreed to substantial economic benefits in addition to the package offered to this unit. Further, during cross-examination, the PBA asked what savings the County would realize if the arbitrator awarded the County's health care proposals to this unit. The County responded that it could not provide that estimate, but that it would save 6% of its prescription plan costs and 2% of its other health care costs if all units were covered by the proposals. County witnesses agreed that the impact of the prescription drug changes would vary according to the age and health of an employee and his or her dependents. A County witness acknowledged that the maximum enhanced sick leave buyout would be available only if an employee had accrued all sick days for 26.7 years.

Against this backdrop, the arbitrator reasoned as follows in denying the County's health benefits proposals:

> The County's health care proposal seeks significant changes in the provision of employee health insurance. It would for the first time require employee contributions to health insurance, along with a variety of other changes. Although it is claimed that the costs would be minimal to employees, the County seeks these changes because it complains of major increases in the cost of providing health insurance. Given the significance of these changes and the fact that the current health benefits enjoyed by employees are the result of past collective bargaining between the parties, any effort to accomplish this through interest arbitration carries a substantial burden of showing that the proposal is the more

> reasonable offer -- by a significant margin. See generally Township of Randolph and Randolph FOP Lodge 25, PERC Docket Nos. IA-95-73, IA-95-79 (Light 1996).
>
> A careful review of the evidence presented does not persuade me that the County has met its burden of establishing the necessity for its health care proposal. The County has demonstrated that the cost of health insurance is rising at a rate higher than the cost of living and that this results in steadily increasing costs to the County. It has also shown that a majority of the County's employees have accepted its proposed changes in health insurance. These facts are obviously significant and make the matter one appropriate for collective bargaining. The PBA, of course, has not accepted these proposals. It was not shown that corrections officers in other jurisdictions have accepted such changes to their health insurance coverage. [Arbitrator's opinion, pp. 50-51]

The arbitrator then found that there was no CAP issue regarding the health care proposals but that the financial impact criterion weighed in favor of them because they would reduce costs. He concluded that the cost of living was not "directly relevant" because it did not pertain to future savings and that the County had not shown that failure to award the changes would affect the continuity and stability of employment. He then stated:

> I consider most important the interest and welfare of the public criterion. An award in favor of the County would cause a major change in an important employee benefit through arbitration, rather than negotiation. This would be a detriment to the public given its likely effect on the bargaining unit and the morale of its employees. The County's proposal is far reaching and, as such, is most appropriately dealt with by the parties through the process of collective bargaining. It would not be appropriate to direct such changes

> through the issuance of an interest arbitration award, absent more of a showing for their necessity than was made in this case. [Arbitrator's opinion, pp. 51-52]

At the conclusion of the award, he added that other units' acceptance of the County's health care proposals was supportive but not persuasive and stated that the County had not proved the necessity and reasonableness of the significant givebacks it sought.2/

Although we express no view on the merits of the County's health benefits proposals, a remand is necessary because, first, the arbitrator appears to have applied an improper presumption in considering them. Second, a remand is required so that the arbitrator can more fully discuss, and explain how he analyzed and weighed, the parties' evidence and arguments concerning the internal settlements.

With respect to the first point, the arbitrator appropriately placed the burden on the County to justify its proposals. Cherry Hill; see also Teaneck; Clifton. That burden reflects a traditional arbitration principle and is consistent with the fact that interest arbitration is an extension of the negotiations process and that, within the context of the statutory criteria, an interest arbitrator should fashion an award that the

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2/ The arbitrator noted that the County had tied its offer of enhanced sick leave, retirement, and vacation benefits to the award of its health proposals (Arbitrator's opinion, pp. 56-57).

parties, as reasonable negotiators, might have agreed to. Clifton.

Our concern with the arbitrator's analysis is that he did more than state that the County had the burden of justifying the proposals in the context of the statutory criteria. In emphasizing that the proposals were best achieved in negotiations, he appears to have required the County to surmount an additional hurdle of showing why the proposals should be granted in interest arbitration rather than obtained through negotiations. Further, after noting that the County had proffered "significant" evidence concerning its rising health costs and the acceptance of the proposal by other units, the arbitrator found that this evidence made the proposals appropriate for negotiations.3/ Reading the above-quoted discussion as a whole, we are not satisfied that the arbitrator fully considered the proposals and weighed the evidence offered by the County against that presented by the PBA, free of any presumption that the proposals should not be awarded in interest arbitration. Stated another way, the arbitrator's discussion is reminiscent of the analysis we disapproved in Cherry Hill. In that case, we vacated and remanded the award because we were not

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3/ He also noted that "it was not shown" that corrections officers in other jurisdictions had accepted similar changes. The appellate record does not include any indication whether such officers have or have not agreed to premium co-payments or the other changes sought by the County.

satisfied that the arbitrator had fully considered the employer's health benefits proposals in light of his comments that such changes should not be awarded by an arbitrator. The same result is required here.

A remand is also required for a fuller discussion of the internal settlements. The following principles underpin this conclusion.

N.J.S.A. 34:13A-16g(2)(c) requires arbitrators to compare the wages, salaries, hours and conditions of employment of the employees in the proceeding with those of employees performing similar services in the same jurisdiction and with "other employees generally" in the same jurisdiction. Thus, this subfactor requires the arbitrator to consider evidence of settlements between the employer and other of its negotiations units, as well as evidence that those settlements constitute a pattern. See N.J.A.C. 19:16-5.14(c)(5) (identifying a "pattern of salary and benefit changes" as a consideration in comparing employees within the same jurisdiction). Pattern is an important labor relations concept that is relied on by both labor and management.

In addition, a settlement pattern is encompassed in N.J.S.A. 34:13A-16g(8), as a factor bearing on the continuity and stability of employment and as one of the items traditionally considered in determining wages. In that vein, interest arbitrators have traditionally recognized that deviation from a settlement pattern can affect the continuity and stability of

employment by discouraging future settlements and undermining employee morale in other units. Compare Fox v. Morris Cty., 266 N.J. Super. 501, 519 (App. Div. 1993), certif. denied, 137 N.J. 311 (1994) (in applying N.J.S.A. 34:13A-16g(8), arbitrator should have considered effect of award on employees in other units); see also Anderson, Krause and Denaco, Public Sector Interest Arbitration and Fact Finding: Standards and Procedures, 48.05[6], contained in Bornstein and Gosline Ed., Labor and Employment Arbitration (Matthew Bender 1999) (citing arbitrators' statement that their award, which took pattern into account, would prevent disruption of future employer-wide negotiations and also commenting that arbitrators are generally hesitant to award increases that would disturb a pre-arbitration settlement pattern absent a showing that a break in the pattern is required to address a specific problem).

The Reform Act does not specify the weight that must be given to internal settlements. But it does require that an arbitrator carefully consider evidence of internal settlements and settlement patterns, together with the evidence on all of the other statutory factors, and articulate the reasons for adhering or not adhering to any proven settlement pattern.

While this arbitrator stated that other units' acceptance of the proposals was "supportive but not persuasive," he did not make findings as to whether the settlements differed from the offer to this unit; the significance of any differences; and whether in

fact there was a settlement pattern among the County's negotiations units. On remand, he should make those determinations; discuss and apply the above-noted principles concerning pattern and internal comparability; and explain how he has weighed the County's arguments and evidence concerning the settlements vis-a-vis the PBA's.

Finally, we note that the arbitrator also denied the PBA's proposal for orthodontic coverage, reiterating that health insurance was an appropriate topic for negotiations and stating that neither party had convinced him of the reasonableness of its proposals in this area (Arbitrator's opinion, p. 52). Because we are vacating the award and remanding the entire case to the arbitrator, he has the discretion to reconsider the PBA's health benefits proposal and analyze it in accordance with this opinion.4/

Operational Proposals

We also conclude that, in addressing the County's operational proposals, the arbitrator did not resolve the unsettled issues. Therefore, a remand is also required on this ground.

The arbitrator stated that it was inappropriate for an interest arbitrator to rewrite a contract and that the long list of proposals was properly dealt with in negotiations. He added that

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4/ It appears from the PBA's final offer that it may also have sought eye care coverage. This point may be clarified on remand.

there was only one day of hearing; that the County's proposals were extensive and complex; and that some of them were not supported by evidence. He reached similar conclusions concerning the PBA's proposals concerning food pickup; insurance defense fund contributions; and grievance arbitration procedures (Arbitrator's opinion, pp. 53-55).

The record shows that County witnesses testified as to the reasons the County sought various changes, and the PBA vigorously cross-examined those witnesses. N.J.S.A. 34:13A-16d(2) requires the arbitrator to resolve the unsettled issues, and our review of the record does not support a conclusion that there was insufficient evidence to make a determination on the entire group of proposals. Indeed, the arbitrator stated that the County had offered legitimate concerns in support of some of its proposals. Therefore, if the County offered evidence and reasons in support of a proposal, the arbitrator is required on remand to discuss that evidence and make a reasoned determination whether or not to award the proposal. We recognize the principle that benefits and provisions agreed upon through years of collective negotiations should not ordinarily be undone in a single contract. On remand, the arbitrator may take this principle into account, but he must fully discuss the evidence on all of the County's operational proposals and explain his basis for accepting or rejecting

them.5/ Again, because we are vacating the award and remanding the case to the arbitrator, he may reconsider the PBA's insurance, food, and grievance arbitration proposals.

Salary proposals

We next consider the County's argument that the arbitrator did not explain his salary award and did not adequately consider the settlements with other County units in reaching that award.

The arbitrator thoroughly summarized the parties' arguments and evidence on their respective proposals and the statutory criteria (Arbitrator's opinion, pp. 14-40). Then, with respect to each statutory factor, the arbitrator recapped the parties' arguments; stated his view of the evidence on that factor; and noted whether a factor favored either party's offer. (Arbitrator's opinion, pp. 43, 49).

In setting forth his salary award, the arbitrator stated:

> Both offers, for the purpose of reaching the most reasonable resolution, are not acceptable. I have reviewed all of the economic data presented, the testimony offered, the CPI figures, recent settlements and awards among County correction departments and municipal police officers, the increases negotiated by other County bargaining units,

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5/ We agree with the PBA that an arbitrator need not apply every statutory criterion to every facet of every proposal. Cherry Hill. An arbitrator has the discretion to decide that a particular dispute is best analyzed by applying the relevant factors to a cluster of related issues, as long as he or she considers all the evidence and arguments presented. Ibid.

> the general public and private sector increases within the state, and the economic condition of the County. I have considered the numerous documents and pages of transcripts submitted by the parties. I have determined that the most reasonable wage increase is as follows:
>
> Effective and retroactive to January 1, 2001 - 4.0%
>
> Effective and retroactive to January 1, 2002 - 4.0%
>
> Effective January 1, 2003 -- 4.0% [Arbitrator's opinion, p. 53]

From the foregoing, it is difficult to assess what factors the arbitrator weighed most heavily and how he weighed and balanced the other factors. While the arbitrator applied the statutory factors to the parties' evidence and offers, the rationale for the awarded increases would have been better conveyed if, in setting out his award, he had explained how it was shaped and supported by the statutory criteria. On remand, the arbitrator should explain his award, as opposed to the parties' evidence, in the context of the statutory criteria. That discussion should also be informed by the analysis and findings concerning the internal settlements which we have already directed the arbitrator to undertake.6/ Again, because we are vacating the award and remanding the case to the arbitrator, he may reevaluate the PBA's proposals concerning

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6/ The County and the PBA both state that the PBA proposed 5% increases for 2001 through 2003. These representations are consistent with the PBA's final offer, which is included in the appellate record. However, the arbitrator stated that the PBA's proposal was 4% in the third year of the agreement. This point should be clarified on remand.

the senior officer differential, SOU stipend, and compensatory time bank.

We address three final issues concerning the remand. First, in arriving at his second award, the arbitrator must calculate the total net annual economic changes for each year of the agreement and determine that those changes are reasonable. N.J.S.A. 34:13A-16d(2). Fulfilling that obligation requires the arbitrator to state the new dollar costs for each year of the agreement. Teaneck; Rutgers, the State Univ., P.E.R.C. No. 99-11, P.E.R.C. No. 99-11, 24 NJPER 421 (¶29195 1998).

Second, with respect to the contract's duration, the County argued that a three-year term would return the parties to negotiations too soon. The arbitrator noted that that result might not be "such a negative," given the extensive number of issues that the parties were unable to resolve.

The arbitrator may reevaluate the contract term in light of the parties' arguments and our direction that he more fully discuss some of the proposals submitted. However, the County has not shown that he made a "mistake of fact" in stating that three-year contracts were the norm in the public and private sectors. We take administrative notice that, in the over six years since the Reform Act has been in place, interest arbitrators have awarded three-year contracts more frequently than four-year contracts although, as the County notes, four-year contracts were awarded somewhat more often in the January 2000 through April 2001 period.

Third, the remand shall be decided on the present record, unless the arbitrator requires additional submissions.

We now address the County's argument that this matter should be remanded to a different arbitrator.

N.J.S.A. 34:13A-16f(5)(a) authorizes us to remand an award to the same arbitrator or to another arbitrator. The County maintains that the arbitrator did not adhere to Cherry Hill and cannot be impartial because he is philosophically opposed to awarding health benefits changes in interest arbitration. It stresses that the one day hearing was transcribed; no credibility determinations are required; and a new arbitrator could decide the matter quickly, without the need for a new hearing.

The PBA counters that the County has not shown that the arbitrator would be unable to follow remand instructions; the Commission's practice has been to remand a matter to the original arbitrator; and, unlike the cases relied on by the County, the arbitrator did not refuse to hear the County's evidence or find that any of its witnesses were not credible. It argues that a new arbitrator would need time to become familiar with the record and suggests that a remand would require another hearing.

Our decision to vacate and remand the award is based on our conclusion that the arbitrator did not, as required by the Reform Act, resolve all the unsettled issues or fully discuss, and explain how he analyzed and weighed, the parties' evidence and

arguments. In addition, for the reasons stated earlier, we are not satisfied that he fully considered the County's health benefits proposals. In similar situations, we and the courts have remanded interest arbitration awards to the original arbitrator presuming, unless shown to the contrary, that the arbitrator would be able to take a "fresh look" at the case and reach a fair and impartial decision in accordance with Court or Commission guidance. See Fox v. Morris Cty., 266 N.J. Super. at 521-522; Cherry Hill (citing Fox); Lodi. Indeed, after vacating and remanding interest arbitration awards in PBA Local 207 v. Bor. of Hillsdale, 137 N.J. 71 (1994) and Washington Tp. v. New Jersey PBA Local 206, 137 N.J. 88 (1994), our Supreme Court disagreed with the Appellate Division that remands to different arbitrators were required. The Court so concluded even though it found that the arbitrators had not considered several of the statutory factors; had inappropriately relied on the employers' ability to pay; and had unduly emphasized comparisons with police salaries in other communities. Hillsdale, 137 N.J. at 86-87; Washington Tp., 137 N.J. at 92-93. Thus, the fact that an arbitrator has not applied the interest arbitration statute in the manner ultimately required by the Court or Commission does not necessarily disqualify him or her from reconsidering the matter.

Those instances where we or the courts have remanded cases to different arbitrators are distinguishable. In Borough of Bogota, P.E.R.C. No. 99-20, 24 NJPER 453 (¶29210 1998), we vacated

an arbitration award issued on remand, after we found that the second award did not adequately consider the private sector wage evidence that we had earlier directed the arbitrator to consider. By the time of the second Commission appeal, the 1996-1997 contract the arbitrator had awarded had expired and an interest arbitration petition for a successor contract had been filed. In these circumstances, we consolidated the 1996-1997 proceedings with the new interest arbitration and directed that they be heard by the new arbitrator appointed in that proceeding. There is no analogy here. The contract has not expired; there is no separate interest arbitration pending; and this is not an instance where the arbitrator issued two awards that did not comply with the Reform Act.

Nor are we persuaded that either Manchester Bd. of Ed. v. Thomas P. Carney, Inc., 199 N.J. Super. 266 (App. Div. 1985) or Carmichael v. Bryan, 310 N.J. Super. 34 (App. Div. 1998) requires a remand to a different arbitrator. Unlike the arbitration panel in Manchester, the arbitrator did not refuse to hear pertinent evidence and, unlike the judge in Carmichael, he did not make findings concerning witness credibility and intent.

In this posture, we have no reason to doubt that the arbitrator can reconsider this matter in accordance with the guidance we have provided. Accordingly, we direct that the arbitrator issue a new opinion and award within 60 days from the date of this decision, absent an extension of time for good cause shown.

ORDER

The award is vacated and remanded to the arbitrator for reconsideration in accordance with this opinion. The arbitrator shall issue a new opinion and award no later than 60 days from the date of this decision, absent an extension of time for good cause shown.

BY ORDER OF THE COMMISSION

Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, Katz, McGlynn, Ricci and Sandman voted in favor of this decision. Commissioner Mastriani abstained. None opposed.

DATED: October 31, 2002
Trenton, New Jersey
ISSUED: November 1, 2002