

P.E.R.C. NO. 2003-75

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF ALLENDALE,

Appellant,

-and-

Docket No. IA-2002-032

PBA LOCAL 217,

Respondent.

The Public Employment Relations Commission affirms an interest arbitration award rendered to settle contract negotiations between the Borough of Allendale and PBA Local 217. The Borough appealed from the arbitrator's denial of its proposal to eliminate longevity for new hires, contending that his factual conclusions were unsupported and that he did not give due weight to the statutory criteria. The Commission holds that the arbitrator's judgment concerning the total compensation package represents a reasonable determination of the issues and that he fully analyzed the statutory criteria and issued an award supported by substantial credible evidence.

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, Wiss, Cooke & Santomauro, attorneys
(Raymond R. Wiss, of counsel; Thomas K. Bouregy, Jr.,
on the brief)

For the Respondent, Loccke & Correia, attorneys
(Richard D. Loccke, of counsel; Michael A. Bukosky, on
the brief).

DECISION

The Borough of Allendale appeals from an interest arbitration award involving a negotiations unit of approximately 11 police officers. N.J.S.A. 34:13A-16f(5)(a).

The arbitrator resolved the unsettled issues by conventional arbitration, as he was required to do absent the parties' agreement to use another terminal procedure. The parties' final offers were as follows.

The Borough proposed a three-year contract from January 1, 2002 through December 31, 2004. Effective January 1 of each contract year, it proposed a 3% annual increase on the salary guide steps for Academy, Balance of First Year, and Second Year.

For all other steps, it proposed a 3.75% annual increase. It also proposed to raise the clothing allowance from \$750 to \$775 effective January 1, 2003 and to \$800 effective January 1, 2004. Finally, it sought to eliminate the longevity benefit for all new hires, effective September 1, 2002.

The PBA also proposed a three-year contract from January 1, 2002 through December 31, 2004. For each year, it proposed a 5% increase for all steps. In addition, it sought one additional personal day; codification of the Borough's practice of supplying body armor to unit members; and a "preservation of rights" clause. Finally, it proposed contract language on "Term and Renewal," providing that if a successor agreement is not executed before the end of the contract, the expired agreement shall continue in full force and effect until a new agreement is signed.

The arbitrator awarded a three-year contract that, as proposed by the Borough, increased the Academy, Balance of First Year and Second year steps by 3% each year. For all other steps, he granted a 4% increase each year. He also awarded the Borough's clothing allowance proposal and the PBA's proposals for an additional personal day and for "Term and Renewal" language. All other proposals were denied.

The Borough appeals from the arbitrator's denial of its longevity proposal, contending that his factual conclusions were

unsupported and that he did not give due weight to the statutory criteria. N.J.S.A. 34:13A-16g. It asks that we modify the award to eliminate longevity for new hires.^{1/}

The PBA counters that the arbitrator fully considered the Borough's evidence and arguments and reached a reasonable determination of the issues after considering all of the relevant criteria. It also notes that the arbitrator's award was dated February 1, 2003 but was not appealed until February 20. It asks us to resolve whether the appeal was timely filed. See N.J.S.A. 34:13A-16f(5)(a) (appeal must be filed within 14 days after receipt of award).

We address this procedural point first. The arbitrator's award was received by the Commission on February 5, 2003, when it was sent to the parties via overnight mail. It was received by them on February 6. Therefore, the appeal deadline was February 20 and the Borough's appeal is timely. We turn to the substance of that appeal.

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

^{1/} We deny the Borough's request for oral argument. The matter has been fully briefed.

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. granted, 175 N.J. 76 (2002); City of Clifton, P.E.R.C. No. 2002-56, 28 NJPER 201 (¶33071 2002); 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 a salary award is not a precise mathematical process and, 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, 25 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; Borough of Lodi, P.E.R.C. No. 99-28, 24 NJPER 466 (¶29214 1998).

The primary issues in the arbitration proceeding were across-the-board salary increases and the Borough's proposal to eliminate longevity for new hires. The parties waived the submission of evidence, testimony and argument with respect to the CAP law, N.J.S.A. 40A:4-45.1 et seq., and two statutory factors: N.J.S.A. 34:13A-16g(5), the lawful authority of the employer, and N.J.S.A. 34:13A-16g(6), the financial impact of the award. They stipulated that, while overall economic impact on a municipality is always a factor, neither proposal would have an adverse impact on the governing body, its residents or taxpayers.

The Borough argued that its wage proposal would maintain unit members' base salaries at the midrange of comparable municipalities and provide an increase of more than twice the increase in the cost of living. It argued that its proposal was closer than the PBA's to the 4% increases received by non-unionized employees and the 3.5% increase received by Department of Public Works (DPW) employees, the Borough's only other negotiations unit.

With respect to its longevity proposal, the Borough maintained that, by 1999, longevity for new hires had been eliminated for all other Borough positions, including the DPW unit, and that there was a growing trend among other Bergen County jurisdictions to modify or eliminate longevity for police officers. It argued that longevity is a vestige of a time when

public employees did not receive compensation commensurate with private sector employees, with the result that a "hidden" compensation system of allowances and stipends was instituted to reward long-term employees. The Borough maintained that longevity was both costly and outmoded, given the significant increases in public employee salaries over the past few decades.

The PBA countered that unit members' salaries were lower than those of police officers in the immediate geographic area, and below the average of the Bergen County municipalities the PBA had selected as comparables. The PBA noted that the 15% increase it proposed over the contract term would still not bring them up to this average, and it questioned why the Borough had proposed an increase lower than what it had granted the Borough's non-contractual employees.

The PBA also stressed that the department was an active one and that the size of the force had decreased (from 16 in 1988 to 11 in 2002) while the Borough's population had expanded. It noted that three officers had left the department in the six months preceding the hearing, seeking greater opportunities in larger departments. It maintained that the Borough's longevity proposal would only increase the department's retention problems and that the Borough had not met its burden of justifying the elimination of the benefit. It disputed that there was a trend to remove longevity. With respect to Borough employees, it

contended that the police chief's longevity was not eliminated but rather was rolled into his base salary.

Against this backdrop, the arbitrator applied the traditional arbitration principle that a party seeking a change in an existing term or condition of employment has the burden of showing a need for the change. With respect to salary, he found that the parties' respective comparables showed very similar average increases, and that his 4% award would maintain the department's midrange position. He found no basis to award the PBA's proposed 5% increases, so as to narrow the gap with the highest paid communities, and no grounds to award the Borough's 3.75% proposal, thereby widening it. He awarded the PBA's proposal to increase personal days to two, noting that the parties' agreement provided financial and operational limits on the use of such days and that DPW members already received three days. He also awarded the PBA's "term and renewal" clause, reasoning that it was a common one that codified what the parties are required to do under the Act.

Similarly, the arbitrator granted the Borough's proposal to increase the clothing allowance by \$50 over the term of the agreement, noting that data submitted showed that the pre-award allowance was \$126 below average. He denied the PBA's "preservation of rights" proposal, finding that the PBA had not offered examples of incidents or grievances that justified

inclusion of the suggested language. Similarly, he found that the PBA had not shown a need for its "body armor" proposal (Arbitrator's opinion, pp. 39; 44-45; 51). Finally, the arbitrator determined that the evidence did not support award of the Borough's longevity proposal.

In analyzing this issue, the arbitrator concluded that the proposal would reduce long-term compensation for new hires and contribute to the Borough's retention problems. He stated that the "record is clear" that the Borough continues to lose young officers to neighboring communities, adding that turnover is expensive; results in a less experienced officer; and thereby jeopardizes the Borough's ability to provide high quality services.

The arbitrator also found that the Borough had not shown that there was a trend among Bergen County municipalities to eliminate longevity for police officers and that "there was no such trend." The arbitrator added that the Borough had offered no quid pro quo for its longevity proposal, unlike one community where he had served as arbitrator, where longevity for current employees was dramatically increased in exchange for reducing it for new hires. He added that the record did not show whether other communities cited by the Borough had provided incentives to eliminate longevity or provide a two-tiered system. However, he later commented that such incentives were offered "in many of

these jurisdictions." As discussed in more detail later, the arbitrator gave more weight to longevity benefits received by police officers in other municipalities, than to the fact that other Borough employees no longer received longevity.

Finally, the arbitrator reasoned that, in a small department like Allendale, the savings to be realized by eliminating longevity for new hires was small and had to be weighed against the "adverse effects that a dual compensation system might yield between employees who must work together on behalf of the public's welfare and safety." In summarizing the rationale for the entire award, the arbitrator noted that the awarded increases, together with the retention of longevity, would allow the Borough to recruit and retain officers (Arbitrator's opinion, pp. 51-54).

The Borough argues that the arbitrator improperly speculated that award of its longevity proposal would increase turnover; disregarded internal and external comparability evidence; made inconsistent findings about whether other jurisdictions had offered financial incentives to modify longevity benefits; did not take into account the savings that would be realized from the proposal; and erred in suggesting that award of the proposal would create intra-departmental tensions.

The PBA counters that the arbitrator reasonably exercised his discretion and labor relations expertise in fashioning an

overall award that addressed the inter-related compensation issues of salary and longevity. It contends that the Borough's financial arguments are irrelevant given the parties' stipulations with respect to N.J.S.A. 34:13A-16g(5) and (6), and that the arbitrator fully evaluated evidence concerning internal and police comparability.

The arbitrator properly placed the burden on the Borough to justify its longevity proposal, see Teaneck, 25 NJPER at 455, and we find no basis to disturb his conclusion that the record did not support award of the proposal. In reviewing the arbitrator's award, we stress that the arbitrator's longevity ruling was one aspect of an overall award. Longevity and salary increases are interrelated elements of the department's compensation structure, as the Borough argued before the arbitrator (Arbitrator's opinion, P. 13). Thus, the issue is not whether an abstract case can be made for eliminating prospective longevity but whether the decision not to award the Borough's proposal is reasonable under all the circumstances here, including a salary award that is 0.75% more than the Borough's proposal for the contract term but 3% less than the PBA's offer.

A key element of the arbitrator's analysis was his undisputed finding that three officers had left the department in a six month period in order to pursue better career and promotional opportunities in larger departments. Also central to

his analysis was his conclusion that eliminating prospective longevity would diminish the unit's overall compensation, which in turn could exacerbate the Borough's retention problems. We decline to disturb that judgment: while the Borough argues that there is no evidence that the officers left because of inadequate salary or longevity, the arbitrator could reasonably infer that better opportunities could include greater compensation and, further, that a reduction in the unit's compensation package vis-a-vis that in comparable communities could prompt a new officer to seek out other opportunities.^{2/} Stated another way, the arbitrator reasonably determined that the objective of the award as a whole should be to maintain unit members' current level of benefits so that the Borough could recruit and retain new officers. The arbitrator thoroughly analyzed the parties' evidence and arguments on the relevant criteria in explaining how he arrived at this objective and in determining whether the Borough had met its burden on its longevity proposal.

For example, the arbitrator reasonably exercised his discretion in concluding that the Borough's arguments concerning the cost, nature, and history of the longevity benefit did not warrant its elimination for new hires in this case. The Borough

^{2/} The Borough states that patrolman Michael Blondin testified that he left the Borough because of more opportunity for advancement; better pay; and tuition reimbursement and compensation for college credits.

stipulated that the PBA's proposal to retain longevity - and provide 5% salary increases - would not have an adverse financial impact. In this posture, the arbitrator reasonably decided to place more weight on maintaining benefit levels and preserving the Borough's ability to recruit and retain officers than on reducing future costs. We note that any cost savings would not occur until a new officer was hired and completed four years of service - the point when longevity benefits begin under the parties' agreement.^{3/}

The arbitrator also fully considered the Borough's arguments concerning internal comparability. He reasoned as follows:

The Borough cites the elimination of longevity for prospective employees in the Blue Collar (DPW) bargaining unit. The statute requires that this internal comparability be given weight but it cannot be given as much weight as comparability with other police officers in Bergen County. Its value is also diminished by the apparent cost to the Borough to eliminate it for new hires. A review of the CBA with the Blue Collar/DPW bargaining unit shows that salaries increased by 14.9% in 2000 followed by 3.5% increases in 2001, 2002 and 2003. A significant part of the 14.9% increase can be attributed to the "rolling in" of the employees' longevity at that time but the increase is significant and may have included additional incentives for current employees to eliminate longevity for future employees. [Arbitrator's opinion at p. 51]

^{3/} The Borough notes that, under the award, the total annual costs for the three officers receiving the maximum longevity is \$23,481. However, an officer must have twenty years of service to achieve maximum longevity.

We would not endorse an analysis that found that internal comparability could never be given as much weight as police comparables. Compare Union Cty., P.E.R.C. No. 2003-33, 28 NJPER 459 (¶33169 2002). (Reform Act requires arbitrator to consider internal settlements and state reasons for adhering or not adhering to any proven settlement pattern). However, reading the award as a whole, it is evident the arbitrator decided in this particular case to give more weight to police as opposed to internal comparables to further his goals of maintaining benefit levels and preventing turnover.

In reaching this decision, he appropriately considered the total economic package received by the DPW unit at or around the time that longevity for prospective and current employees was eliminated. The Borough argues that DPW unit salaries were increased in 2000, not as a quid pro quo for eliminating longevity for prospective employees, as the arbitrator implied, but because the unit was underpaid. However, the salient point is that longevity and base salary are part of an overall compensation package and, therefore, the arbitrator appropriately analyzed the longevity and salary provisions of the DPW contract together.

Between 1999 and 2000, DPW unit salaries increased by 14.9%; individual employees received raises of between 3% and 23.7%, depending on job classification and salary guide step; and the

2000 salary guides for new hires reflected the increases received by current employees. Therefore, an incumbent employee at grade 1, step 1 in 1999 had his salary increased from \$22,590 to \$27,945 when he moved to step 2 in 2000; a new employee hired at grade 1, step 2 in 2000 would receive a salary of \$27,945; and an individual hired at grade 1, step 1 would receive \$27,000. Thus, although prospective longevity was eliminated in 1999, it was followed shortly afterwards by an upward adjustment of the salary guide for new hires, presumably to make DPW salaries more competitive with those in comparable jurisdictions. In this posture, the arbitrator reasonably concluded that elimination of prospective longevity for the DPW unit occurred in a different context than was proposed for this unit, with more costs to the Borough and more benefits to the employees.^{4/}

Similarly, the arbitrator also analyzed the parties' evidence and arguments concerning the longevity benefits received by police officers in comparable communities. There is no

^{4/} The arbitrator stated that part of the 14.9% increase between 1999 and 2000 was attributable to rolling in existing employees' longevity into base salary. The Borough does not specifically dispute that statement but there is no stenographic transcript; the exhibits submitted do not address the point; and one Borough exhibit states that incumbent DPW employees "gave up" longevity in 2001. We can perform our review function without resolving this point, but we note that if longevity was rolled into base salary and the new hire salary guide adjusted to reflect those enhanced salaries, then longevity was not technically eliminated for either new or incumbent employees.

dispute that 5 of 36 departments in one comparability group, and 12 of the 71 departments in the County as a whole, have eliminated or modified longevity for prospective employees. The arbitrator acknowledged and considered this evidence and did not reject it, as the Borough asserts. However, these figures support his findings that "there is no trend" to eliminate longevity and that police comparability favored retaining the longevity benefit. While the Borough may be correct that its proposal was not "radical or groundbreaking", that in itself is not a basis to award it.

Further, we find no reversible error in the arbitrator's comments about the financial incentives that may have been offered in those jurisdictions where longevity benefits were reduced. The theme of these comments is the principle we have endorsed: that the significance of longevity changes should not be evaluated in the abstract, but must be viewed as part of the overall compensation package that is negotiated or awarded. Relying on his experience, the arbitrator appropriately cited the "trade-off" effected to achieve reduced longevity benefits in one jurisdiction. Moreover, because the burden was on the Borough to justify the proposal, it was also appropriate for the arbitrator to note that the record did not show whether or not longevity reductions in other jurisdictions had been accompanied by tradeoffs or union gains in other areas. The arbitrator's

observation reflects his judgment that one part of a compensation package should not be analyzed in isolation. His later comment that financial incentives were offered "in many of these jurisdictions" appears to refer to jurisdictions in general and to reflect this arbitrator's experience. In any case, however, the arbitrator could consider how award of the proposal would affect the unit's overall compensation and give weight to the fact that the Borough offered no trade-off for its proposal.

The Borough also questions the arbitrator's analysis to the effect that a two-tiered longevity system could adversely affect the morale of newly-hired employees, arguing that there is no factual basis to speculate that a police officer would not perform his job duties because of a compensation package of which he or she was aware when hired. The arbitrator did not suggest that police officers would not perform to expectations, but was concerned instead that a two-tiered system could affect morale, a factor included in the public interest, N.J.S.A. 34:13A-16g(1); Teaneck, 25 NJPER at 459. We find no fault with this analysis.

Finally, the Borough also maintains that the arbitrator's analysis put it in a "catch-22": if it offered incentives for current employees in exchange for the PBA agreeing to eliminate longevity for new hires, it would be criticized for creating a two-tiered system. If it did not, it would be criticized for not offering a trade-off. Therefore, it reasons, "[i]f PERC accepts


the Arbitrator's analysis, the Borough's proposal to eliminate longevity could never be accepted."

Preliminarily, we note that incentives or trade-offs need not create a two-tiered system but could enhance the compensation package for all prospective and incumbent employees. In any case, however, the arbitrator's award is not an abstract discussion of when proposals such as the Borough's may or may not be awarded; nor should it have been. The cited comments were in response to discrete Borough arguments - concerning savings and police comparability - about why the proposal should be awarded here. The arbitrator's rationale, however, never deviated: the proposal was not justified because it would diminish the unit's overall compensation in light of the salary increases awarded; that diminution was not required by the Borough's fiscal condition; and award of the proposal could exacerbate the Borough's retention problems. That judgment represents a reasonable determination of the issues and we will not disturb it. We also conclude that the arbitrator fully analyzed the statutory criteria and issued an award supported by substantial credible evidence. Therefore, we affirm the award.

ORDER

The award is affirmed.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, DiNardo, Katz, Ricci and Sandman voted in favor of this decision. None opposed. Commissioner Mastriani was not present.

DATED: April 24, 2003
Trenton, New Jersey
ISSUED: April 25, 2003