

P.E.R.C. NO. 2007-33

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SOMERSET COUNTY SHERIFF'S OFFICE,

Appellant,

-and-

Docket No. IA-2005-083

SOMERSET COUNTY SHERIFF'S
FOP LODGE #39,

Respondent.

DECISION

The Public Employment Relations Commission affirms an interest arbitrator's award issued to settle successor contract negotiations between the Somerset County Sheriff and a unit of Sheriff's Officers represented by Somerset County Sheriff's Officers FOP Lodge #39. The arbitrator issued a conventional award absent the parties' agreement to use another terminal procedure. The employer has appealed the arbitrator's salary ruling asserting that he gave undue controlling weight to evidence of the County's internal settlement patterns. The employer also asserts that the arbitrator did not properly calculate the total net economic changes for each year of the agreement. The Commission has considered all of the employer's arguments and concludes that the employer has not presented a basis for disturbing the arbitrator's judgment, discretion and labor relations expertise. The Commission also holds that the arbitrator satisfied his obligations under N.J.S.A. 34:13A-16d(2) to determine that the total net annual economic changes for each year of the agreement are reasonable.

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, Drinker Biddle & Reath LLP,
attorneys (Daniel F. O'Connell and Marion B. Johnson,
on the brief)

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

DECISION

On September 20, 2006, the Somerset County Sheriff's Office
appealed from an interest arbitration award involving a unit of
approximately 53 Sheriff's Officers represented by Somerset
County Sheriff's Officers FOP Lodge #39. See N.J.S.A.

34:13A-16f(5) (a). 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).

Both parties sought a three-year contract from January 1,
2005 through December 31, 2007. The remaining elements of their
final offers were as follows:

The employer proposed that effective January 1, 2005, January 1, 2006, and January 1, 2007, officers would receive a 1% adjustment in addition to step increases for steps 1-11. Step increases for steps 1-10 are 3.5% and 4% for step 11. Officers at step 11 as of December 31, 2005 would receive a 3.3% increase as of January 1, 2006; and officers at step 11 as of December 31, 2006 would receive a 3.3% increase as of January 1, 2007. The employer also proposed that it be awarded flexibility in changing health insurance carriers.

The FOP proposed that officers would receive a 6% across the board increase effective January 1, 2005 and 5% across the board increases effective January 1, 2006 and January 1, 2007. In addition, it proposed modifying the 3.75% longevity benefit to move the last two steps from the 25th and 24th years to the 23rd year.

Finding that the County was on sound financial footing and giving substantial weight to internal settlements and settlement patterns within the County's law enforcement units, the arbitrator awarded 3.5% increases for officers at steps 1 through 10 and 4% increases for officers at step 11 effective January 1, 2005, January 1, 2006 and January 1, 2007, exclusive of step increases. He rejected the FOP's longevity proposal and granted the employer's health benefits proposal, noting in both instances that his rulings were consistent with the benefits and provisions

covering other law enforcement officers employed by the Sheriff's Office and the County.^{1/}

The employer has appealed the salary ruling. The FOP did not cross-appeal that ruling or the health insurance or longevity rulings.

The standard for reviewing interest arbitration awards is well established. We will not vacate an award unless the appellant demonstrates that: (1) the arbitrator failed to give "due weight" to the subsection 16g factors judged relevant to the resolution of the specific dispute; (2) the arbitrator violated the standards in N.J.S.A. 2A:24-8 and -9; or (3) the award is not supported by substantial credible evidence in the record as a whole. Teaneck Tp. v. Teaneck FMBA, Local No. 42, 353 N.J. Super. 289, 299 (App. Div. 2002), aff'd o.b. 177 N.J. 560 (2003), citing Cherry Hill Tp., P.E.R.C. No. 97-119, 23 NJPER 287 (¶28131 1997). Because the Legislature entrusted arbitrators with weighing the evidence, we will not disturb an arbitrator's exercise of discretion unless an appellant demonstrates that the arbitrator did not adhere to these standards. Teaneck, 353 N.J. Super. at 308-309; Cherry Hill.

Arriving at a salary award is not a precise mathematical process. Given that the statute sets forth general criteria

^{1/} The parties agreed to modifications in the Overtime, Personnel Files and FOP Rights provisions.

rather than a formula, the setting of wage figures necessarily involves judgment and discretion and an arbitrator will rarely be able to demonstrate that an award is the only "correct" one.

Borough of Lodi, P.E.R.C. No. 99-28, 24 NJPER 466 (¶29214 1998);

Borough of Allendale, P.E.R.C. No. 98-123, 24 NJPER 216 (¶29103

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, 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-16(g); N.J.A.C. 19:16-5.9; Lodi. Once an

arbitrator has provided a reasoned explanation for an award, an

objection will not be entertained unless an appellant offers a

particularized challenge to the arbitrator's analysis and

conclusions. Cherry Hill; Lodi; Newark.

The employer's main argument is that the arbitrator gave undue controlling weight to evidence of the County's internal settlement patterns. It asserts that after deciding that neither

party's wage proposal was reasonable, the arbitrator focused almost exclusively on evidence of internal settlements and the County's ability to pay. It then asserts that the arbitrator failed to properly consider and weigh evidence regarding: private sector employment; comparables in other public sector jurisdictions; stability of the work force and that Sheriff's Officers are not underpaid; and the value of benefits received by Sheriff's officers. The employer also asserts that the arbitrator did not properly calculate the total net economic changes for each year of the agreement.

Interest arbitrators have traditionally found that internal settlements involving other uniformed employees are of special significance. Essex Cty. Sheriff's Office, P.E.R.C. No. 2005-52, 31 NJPER 86, 92 (¶41 2005). Maintaining an established pattern of settlement promotes harmonious labor relations, provides uniformity of benefits, maintains high morale, and fosters consistency in negotiations. Ibid. In this case, the arbitrator determined that each party's proposal would alter the relationships among the County's various law enforcement units and undermine the need for reasonable consistency during the collective negotiations process absent a demonstrated need for deviation. He fashioned a result that "ensures reasonable consistency be maintained among the law enforcement units while honoring the need for the adjustment of differences in individual

units that are justified in order to accommodate specific problems" (Arbitrator's award at 38). And he concluded that the deviation from internal comparability sought by the employer had the potential to undermine the continuity and stability of employment that is desirable in the negotiations process by attempting to tie a result to external evidence while paying little attention to internal negotiations patterns. He specifically found that the County's law enforcement units shared strong common interests and performed coordinated and integrated work and that the relationship between the units of Corrections Officers and Sheriff's Officers and the County's negotiated agreement with that unit deserved the most weight and provided an appropriate model for structuring this award. The arbitrator's decision to give significant weight to the employer's own internal settlements was a proper exercise of his discretion. Essex Cty. Sheriff's Office.

As for a comparison with private sector employment, the employer acknowledges that the arbitrator took note of its submissions demonstrating that its proposed increases compare favorably with private sector increases and CPI adjustments over the past several years. Specifically, the arbitrator noted the employer's evidence that a New Jersey Department of Labor report indicated that private sector wages in Somerset County increased by only 0.9% in 2004, and the state-wide private sector wage

increase was 3.6% and the local government average was 3.2%. The arbitrator also noted that the employer had submitted data compiled by the Bureau of National Affairs for 2005 that indicates that average contract settlements were 3.3% for state and local governments and 3.1% for all settlements. In fashioning his award, the arbitrator found that all of the statutory criteria have some relevance, directly or indirectly, when setting salary modifications. However, he concluded that the cost of living and private sector data could not be found to be controlling given an award consistent with internal law enforcement settlements, all of which are at levels above the cost of living.

The employer argues that increases in private sector wages of only 0.9% and average settlements for state and local governments of 3.3% are probative of the need for increased fiscal conservatism within Somerset County, even in light of its current financial standing.^{2/} It contends that the arbitrator failed to explain why the County citizens cannot say "no" to an award that maintains a pattern among the County's negotiations units. However the employer has not justified why its own internal settlement pattern should not be maintained and why

^{2/} Although Somerset County had the lowest private sector wage increase in the State in 2004, 0.9% compared with a statewide average of 3.6% and a local government average of 3.2%, its citizens enjoyed the highest average annual wages of \$62,888 in 2004.

consideration of private sector wages should outweigh the impact of the employer's own settlements with other negotiations units. Accordingly, we reject this challenge to the award.

We next consider the employer's argument that the arbitrator failed to properly weigh evidence demonstrating that Sheriff's officers are not underpaid and are a stable work force. The arbitrator noted that the employer offered evidence that the salary and benefits of Sheriff's Officers compare favorably with the salary and benefits of other officers in other counties and that maximum salaries are \$4348 above the State average. However, he concluded that the County gave virtually no weight to internal comparisons with other law enforcement agencies administered by Somerset County: Corrections, Corrections Superiors, Sheriff's Officer Superiors and Prosecutor's Officers. In addition, because the impact of an award on the continuity and stability of employment cannot be precisely measured, we will not disturb an arbitrator's award for concluding that reducing relative compensation for one of an employer's negotiations units would strain the ongoing relationship between those negotiations units. Again, the County has not presented a basis for disturbing the arbitrator's judgment, discretion and labor relations expertise.

We next consider the employer's argument that the arbitrator failed to properly weigh evidence of the value of overtime and

other benefit time received by Sheriff's officers. It recites the relative costs of the two parties' proposals on overtime, benefit time, and benefit costs and asserts that the arbitrator did not explain why they were or were not relevant to his decision. We disagree. The arbitrator noted that the County estimated that the cost of overtime under its proposal would increase by \$4,484 while under the FOP proposal it would increase by \$27,157. He also noted the County's estimates that the cost of paid time off for personal days, vacation days, bereavement leave, sick days and holidays would increase by \$4,916 under its proposal and \$18,989 under the FOP's proposal. After reviewing all the evidence, arguments and statutory criteria, the arbitrator found that the FOP's salary proposal was unreasonable and not supported by application of the statutory criteria. Likewise, he found that the employer's proposal was unreasonable when viewed in its totality. The arbitrator then issued an award based on sound labor relations principles and a reasonable exercise of his statutory discretion in judging the relative importance of the statutory criteria.

Finally, we consider the employer's argument that the arbitrator did not properly calculate the total net economic changes for each year of the agreement pursuant to N.J.S.A. 34:13A-16d(2). It asserts that the arbitrator did not consider

the total "new money" costs for each year of the agreement, including salary step movement and longevity costs.

As for salary step movement, the arbitrator laid out the costs of the award for each year of the agreement for employees at the maximum step of the guide and for employees moving up the guide. The arbitrator found that the cost of the award will be \$36,873 for the 14 employees who were at or who reached maximum in 2005, \$49,320 for the 18 employees who were at or who reached maximum in 2006, and \$59,808 for the 21 employees who will be at or who will reach maximum in 2007. For those employees at steps 1 through 10, the 3.5% increase will cost approximately \$66,000 in 2005, \$68,000 in 2006, and \$70,000 in 2007. In addition, he found that the step movement towards maximum will represent additional costs of approximately \$85,000 in 2004, \$77,000 in 2005, and \$69,000 in 2007. The interest arbitrator then addressed the eight statutory criteria again, specifically finding that the costs could be "borne without conflicting with the County's statutory spending limitations and without adverse financial impact on the governing body, its residents and taxpayers" (Arbitrator's award at 40).

As for longevity, the arbitrator rejected the FOP's proposal to modify the 3.75% longevity benefit to move the last two steps from the 25th and 24th years to the 23rd year. Therefore, the award made no changes in the longevity benefit that generated any

new costs and the arbitrator was not required to include longevity in his calculation of the net annual economic changes.^{3/}

The employer has thus provided no support for its argument that the arbitrator did not properly calculate the net economic changes. Accordingly, we hold that the arbitrator satisfied his obligation under N.J.S.A. 34:13A-16d(2). Rutgers, The State Univ., P.E.R.C. No. 99-11, 24 NJPER 421, 424 (¶29195 1998); Union Cty., P.E.R.C. No. 2004-58, 30 NJPER 97 (¶38 2004) (arbitrator effectively found that net economic changes were reasonable).

ORDER

The arbitrator's award is affirmed.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Buchanan, Fuller and Watkins voted in favor of this decision. None opposed. Commissioner DiNardo was not present.

ISSUED: November 21, 2006

Trenton, New Jersey

^{3/} We calculate that the longevity costs generated by the changes in base salary would increase the total three-year cost of the award by approximately \$3500.