

P.E.R.C. NO. 2008-58

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF POMPTON LAKES,

Respondent,

-and-

Docket No. IA-2007-055

POMPTON LAKES PBA LOCAL NO. 161,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission vacates an interest arbitration award and remands the matter to the arbitrator for reconsideration. The arbitrator awarded a four-year contract with wage increases of 4% in the first year and 4.25% in the remaining three years. He also awarded premium sharing for the first time for employees choosing certain health insurance plans. The PBA has appealed only the health insurance award arguing that it is not supported by substantial credible evidence in the record as a whole; fails to give due weight to certain subsection 16g factors; and fails to apply subsection 16c. The Commission, concluding that the arbitrator did not adequately explain his reasons for awarding the health benefit change under the statutory factors, vacates the award and remands to the arbitrator for a more thorough application of the statutory factors.

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, Struble Ragno, attorneys (Joseph J. Ragno, Jr., of counsel)

For the Charging Party, Loccke, Correia, Schlager, Limsky & Bukosky, attorneys (Gregory G. Watts, of counsel)

DECISION

On January 8, 2008, Pompton Lakes PBA Local No. 161 appealed an interest arbitration award involving a unit of about 25 police officers employed by the Borough of Pompton Lakes. 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). He awarded a four-year contract with wage increases of 4% in the first year and 4.25% in the remaining three years. He also awarded premium sharing for the first time for employees choosing certain health insurance plans.

The PBA appeals only the health insurance award arguing that it is not supported by substantial credible evidence in the record as a whole; fails to give due weight to certain subsection 16g factors; and fails to apply subsection 16c. The Borough has not cross-appealed. After considering the PBA's arguments and the Borough's responses, we vacate the award and remand to the arbitrator for a more thorough application of the statutory factors.

The Borough provides health insurance through the State Health Benefits Program. The Borough proposed to continue to provide fully-paid health care benefits on an equalized basis by paying the full premium cost of NJ PLUS for all levels of coverage. If a member decided to choose another plan, the member would be responsible for the additional premium above the cost of NJ PLUS. In addition, the Borough offered an opt out provision at 50% of the NJ PLUS rate for any member with another bona fide health care plan. The PBA opposed any change in the existing benefit.

Under the arbitrator's award, only NJ PLUS and the Aetna HMO will be provided without cost. Employees choosing a plan with a higher premium will be required to pay the difference. No extra credit is given if the cost of the Aetna HMO falls below that of NJ PLUS. The option to make a change in selection of a plan is not changed.

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.^{1/}

Arriving at an economic award involving health benefits is not a precise mathematical process. Given that the statute sets forth general criteria rather than a formula, the treatment of health benefit proposals involves judgment and discretion and an arbitrator will rarely be able to demonstrate that an award is

^{1/} The PBA argues that the award violates N.J.S.A. 34:13A-16c because it differs from the Borough's final offer. However, a conventional award is not necessarily flawed if it goes outside the boundaries of the parties' positions. See Hudson Cty. Prosecutor, P.E.R.C. No. 98-88, 24 NJPER 78 (¶29043 1997).

the only "correct" one. See 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-16g; N.J.A.C. 19:16-5.9; Lodi.

The PBA's appeal focuses on health benefits. The arbitrator recognized that the key objective of the Borough was to continue to provide fully-paid health benefits on an equalized basis. The Borough's evidence showed that the cost of providing health insurance represented 10% of the Borough's total revenue in 2007, up from 7.1% in 2002. The Borough also showed a 73% increase in dollar cost for health benefits since 2002. The five-year increases in the offered plans were: 138% for the Traditional Plan; 98% for NJ PLUS; 92% for Cigna; 86% for Amerihealth; 76%

for Oxford; and 74% for Aetna. The arbitrator recognized that the increases far exceeded the cost-of-living or wage increases for the same period. For some employees, health care costs could reach 25% of their wages.

In exercising his authority to fix an award in light of the parties' offers, the arbitrator determined that the only solution was to limit the plan choices offered without cost to the employees. The arbitrator noted that premiums vary by as much as \$7,188 per plan. He awarded the NJ PLUS and Aetna HMO plans without cost. The remaining plan choices would require cost sharing of the difference in premiums. The arbitrator estimated a \$63,000 annual savings to the Borough at 2007 rates upon implementation of his award.

The PBA argues that the arbitration award is not supported by the record because it does not include the requisite health care data, calculations and projections. Specifically, the PBA contends that the arbitrator based his award on speculation about the rising costs of health care that was not presented by the parties; the employer did not present any factual data to support its health benefits proposal; calculations were not made on future health benefit costs; the arbitrator improperly weighed the value and preference of the officers for specific plans based upon the Borough's enrollment statistics; and the arbitrator did

not apply the statutory factors in his analysis of the health benefit award.

The Borough responds that the arbitrator did not speculate on health care costs and made comparisons of available plans in rendering his award. The Borough argues that the PBA did not offer evidence to the arbitrator regarding health insurance to refute the evidence it submitted. The Borough contends that it provided a substantial amount of information concerning the costs of health care including: the manner that health care electives are selected, the history of premium increases, the impact on total Borough appropriations, the potential projected costs of health care based on historic levels of increase, and a comparison of health benefits with other PBA locals. The Borough also submitted a document describing each of the available plans. The Borough asserts that it is impossible for anyone, including the arbitrator, to predict the future costs of health plans and that it provided history and census data that was more than sufficient to support the award.

We have reviewed the award and find that the arbitrator did not adequately explain his reasons for awarding the health benefit change under the statutory factors. For example, in discussing the interests and welfare of the public, the arbitrator stated that his consideration of that issue required salary and benefits that compare favorably with nearby

communities. However, the arbitrator did not explain how this benefit change compares with the neighboring communities he determined were comparable, nor did he compare the benefit levels with those of other Borough employees, or explain why that comparison is not relevant. In addition, the arbitrator did not state the total net economic effect of his award and how this aspect of the award affects that calculation. See N.J.S.A. 34:13A-16g; N.J.A.C. 19:16-5.9. When an arbitrator has not thoroughly explained the reasoning for an award in the context of the statutory factors, we will remand the award for a more thorough analysis. Salem Cty., P.E.R.C. No. 98-107, 24 NJPER 162 (¶29079 1998). On remand, the arbitrator must provide a reasoned explanation for his award and state what statutory factors he 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. Lodi. If he believes that any factor was not relevant, he must satisfactorily explain why. N.J.S.A. 34:13A-16g.

The PBA has argued that only the health benefit award is being appealed and therefore we should remand only the health benefit award to the arbitrator. Because the award of health benefits has economic consequences that may affect other parts of the award, we will vacate the award and remand to the arbitrator for a new award containing a thorough discussion of the statutory

factors. North Hudson Reg. Fire & Rescue, P.E.R.C. No. 2004-17, 29 NJPER 428, 452 (¶146 2003) (on appeal, an interest arbitration decision will not vacate one piece of an award without requiring a re-examination of the award as a whole). We stress that we express no opinion on the merits of the initial award or the parties' proposals. We direct that the arbitrator issue a new opinion and award in this matter no later than 60 days from the date of this decision.

ORDER

The award is vacated and remanded to the arbitrator to issue a new opinion and award in this matter no later than 60 days from the date of this decision in accordance with this decision.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Branigan, Fuller and Watkins voted in favor of this decision. None opposed. Commissioners Buchanan and Joanis were not present.

ISSUED: April 24, 2008

Trenton, New Jersey