

P.E.R.C. NO. 2012-59

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

OCEAN COUNTY PROSECUTOR,

Respondent,

-and-

Docket No. IA-2011-006

OCEAN COUNTY PROSECUTOR'S  
DETECTIVES & INVESTIGATORS  
ASSOCIATION, PBA LOCAL 171,

Appellant.

SYNOPSIS

The Public Employment Relations Commission affirms an interest arbitration award establishing the terms and conditions of employment for a new agreement between the Ocean County Prosecutor and the Ocean County Prosecutor's Detectives & Investigators Association, PBA Local 171. The PBA appealed the award of the employer's proposal to require 15 years of County service in order to be eligible for retiree health benefits; the step delay in year 3; and the step freeze at the expiration of the contract. The Commission affirms the award as it is supported by substantial credible evidence and the PBA is relying on new arguments and evidence in its appeal.

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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Appellant.

Appearances:

For the Respondent, Apruzzese, McDermott, Mastro & Murphy, attorneys (Robert T. Clarke, of counsel and on the brief; Robert J. Merryman, on the brief)

For the Appellant, Loccke, Correia, Limsky & Bukosky, attorneys (Merick H. Limsky, of counsel and on the brief)

DECISION

The Ocean County Prosecutor's Detectives & Investigators Association, PBA Local 171 appeals from an interest arbitration award involving a unit of approximately 51 investigators employed by the Ocean County Prosecutor's Office.

The arbitrator issued a conventional award as he was required to do absent the agreement of the parties' to another terminal procedure.<sup>1/</sup> A conventional award is crafted by an

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<sup>1/</sup> Effective January 1, 2011, all interest arbitration proceedings must be by conventional arbitration. P.L. 2010, c. 105.

arbitrator after considering the parties' final offers in light of statutory factors. The parties' final offers are as follows.

The PBA proposed:

1. A four-year agreement from April 1, 2010 to March 31, 2014 with 3.5% across-the-board increases at all steps of the salary guide.

The Prosecutor proposed:

1. A two-year agreement from April 1, 2010 to March 31, 2012.
2. Salary

Article 6, Section shall be deleted and replaced with the following language:

Effective April 1, 2010, those employees eligible to move to the next step on the salary schedule set forth in the Collective Bargaining Agreement as Appendix A shall move. Those employees at step 9 shall remain at that salary.

Effective April 1, 2011, the salary schedule set forth in the Collective Bargaining Agreement as Appendix A shall be eliminated. The starting annualized salary for a new hire shall be \$49,275 after the completion of probation. During probation an employee shall receive an annualized salary of \$36,889. Any employee at an annualized salary of \$49,275 or higher shall receive a two (2%) percent increase retroactive to April 1, 2011. If the employee has already received an increase greater than two (2%) percent because of step advancement, the employee shall reimburse the County

the difference between two (2%) of his/her March 2011 salary and the April 1, 2011 salary received as a result of the advancement on the salary schedule. Said reimbursement shall occur over a 12-month period, in equal deductions from the employee's periodic compensation.

3. Longevity:

Effective April 1, 2011, Article 14 shall be deleted from the Agreement and replaced with the following:

All employees hired on or after April 1, 2011 shall not be eligible for longevity pay. Any employee hired before April 1, 2011 shall receive longevity pay based upon the following schedule:

15 years - \$4,000  
20 years - \$5,000  
25 years - \$6,000

4. Holidays:

Article 7, paragraph 1, shall be deleted and replaced with the following:

Each full-time employee covered by the Agreement shall receive the State employees' holiday schedule with pay.

5. College Credit:

Article 16 shall be deleted from the Agreement.

6. Health Benefits:

Article 13, Health Benefits shall be changed to "Hospital Surgical, Major Medical, Prescription and

Retirement Benefits." Section 1, delete A through E and replace with the following:

- A. All full-time employees shall be permitted to enroll in the health benefits two (2) months from their date of hire. The County of Ocean currently provides medical coverage to the County employees through the New Jersey State Health Benefits Program as supplemented by NJ Local Prescription Drug Program and Chapter 88 P.L. 1974, as amended by Chapter 436 P.L. 1981. The parties recognize that the State Health Benefits Program is subject to changes enacted by the State of New Jersey that may either increase or decrease benefits, including employee premium sharing.
- B. The County shall not change the health insurance coverage referred to in paragraph A except for a Plan that is equivalent to the plan in effect at the time of the change. The parties recognize that if the County leaves the State Health Benefits Plan the HMO plans offered by the new plan provider may be different.
- C. All current and future employees who retire on or after April 1, 2010 in order to be eligible for health benefits upon retirement, must have served a minimum of fifteen(15) years with the County and have twenty-five (25) years or more of service credit in a State or locally administered retirement system at the time of retirement.

Effective April 1, 2010, the following changes will affect all new hires:

Employees will be offered the NJ Direct 15 plan, or its replacement. New Hires may elect a higher level of coverage at their expense. Continuation of spousal coverage after the death of the retiree

will no longer be offered at the County's expense. The County will no longer reimburse retiree Medicare Part B premiums.

- D. An eligible employee may change his/her coverage only during the announced open enrollment period for each year after having been enrolled in the former plan for a minimum of one (1) full year. Regardless of this election, employees are specifically ineligible for any deductible reimbursement.
  
- E. When an employee is granted the privilege of a leave of absence without pay for illness, health coverage will continue at County expense for the balance of the calendar month in which the leave commences plus up to three (3) additional calendar months next following the month in which the leave commences. After that time has elapsed, if necessary, coverage for an additional period of eighteen (18) months may be purchased by the employee under the C.O.B.R.A. plan.

In the case of consecutive leaves of absence without pay, it is understood and agreed that the responsibilities of the County to pay for benefits remains limited to the original period of up to four (4) months.

Delete Section 5 and replace with the following:

Employees after the first month following their full months of employment shall be eligible for the same prescription benefits as are provided to County employees in general.

The arbitrator issued a 119-page Opinion and Award. He noted the record consisted of witness testimony and hundreds of documentary exhibits totaling thousands of pages in support of their last offers. After summarizing the parties' arguments on their respective proposals, the arbitrator analyzed the proposals within the statutory factors and awarded a three-year agreement effective April 1, 2010 through March 31, 2013 with the following terms:

1. Salary and Salary Guide:

- (a) Effective April 1, 2010, Step 9, the maximum step on Appendix A, the Salary Guide, shall be increased by 2.0%. All other steps shall be frozen.
- (b) Effective April 1, 2011, Step 9, the maximum step on Appendix A, the Salary Guide, shall be increased by 2.0%. All other steps shall be frozen.
- (c) Effective April 1, 2012, Step 9, the maximum step on Appendix A, the Salary Guide, shall be increased by 2.0%. All other steps shall be frozen. Article 6, Section 1 shall be modified to make the "automatic annual step guide" salary increases effective January 1, 2013.
- (d) Article 6, Section 1 of the CNA shall be modified as follows:

Section 1: The annual salaries for employees covered by this contract shall be set forth in Appendix A

annexed. The Salary Guide is an automatic annual step guide with movement from one step to the next effective April 1 of each year. This shall be applicable to annual step guide movement in 2010-2011 and 2011-2012.

In 2012-2013, the "automatic annual step guide" salary increases shall not be paid on April 1, 2012. The "automatic annual step guide" salary increases shall be delayed until January 1, 2013. Effective February 1, 2013, the continued application of the April 1<sup>st</sup> increment payment date shall be suspended. This suspension shall be effective until the parties reach a voluntary agreement for a successor CNA or by the terms of an interest arbitration award.

- (e) Effective April 1, 2012, all new hires will be hired pursuant to a new Salary Guide (Appendix A-1) which will include two additional steps. The "Probation" step shall be eliminated and replaced by Step 1 which shall be a full, twelve-month step. Thus, the new Salary Guide shall have twelve steps to maximum. The new Step 1 shall be \$38,000. All other steps shall be equalized between Step 1 and Step 12, the maximum step of \$96,350. The Senior Investigator stipend shall be eliminated for new hires.
- (f) All salary increases are fully retroactive to the above effective dates.



(g) Effective April 1, 2012, the longevity schedule for new hires shall be as follows:

Completion of 15 years	2% of base rate
Completion of 20 years	4% of base rate
Completion of 25 years	6% of base rate

2. The language of Article 13, Health Benefits, shall be replaced by the following:

**ARTICLE 13**

**HOSPITAL, SURGICAL, MAJOR MEDICAL, PRESCRIPTION**

**AND RETIREMENT BENEFITS**

Section 1:

All full-time employees covered by this bargaining unit shall be permitted to enroll in health benefits two (2) months from their date of hire.

A. The County of Ocean currently provides medical coverage to the County employees through the New Jersey State Health Benefits Program as supplemented by NJ Local Prescription Drug Program and Chapter 88 P.L. 1974, as amended by Chapter 436 P.L. 1981. The parties recognize that the State Health Benefits Program is subject to changes enacted by the State of New Jersey that may either increase or decrease benefits.

B. The County shall not change the health insurance coverage referred to in paragraph A except for a Plan that is equivalent or better. Provided, however, that the parties expressly recognize that the components of HMO plans are changed periodically by the plan providers and that the County has

no control over or any obligations regarding such changes.

- C. All employees current and future who retire on or after January 1, 2013, in order to be eligible for the lifetime health benefits upon retirement, must have served a minimum of fifteen (15) of the required twenty-five (25) years with the County. This applies to all types of retirements, including disability.
  
- D. An eligible employee may change his/her coverage only during the announced open enrollment period for each year after having been enrolled in the former plan for a minimum of one (1) full year. Regardless of this election, employees are specifically ineligible for any deductible reimbursement.
  
- E. When a member of this bargaining unit is granted the privilege of a leave of absence without pay for illness, health coverage will continue at County expense for the balance of the calendar month in which the leave commences plus up to three (3) additional calendar months next following the month in which the leave commences. After that time has elapsed, if necessary, coverage for an additional period of eighteen (18) months may be purchased by the employee under the C.O.B.R.A. plan.
  
- F. In the case of consecutive leaves of absence without pay, it is understood and agreed that the responsibilities of the County to pay for benefits remains limited to the original period of up to four (4) months.

G. Effective April 1, 2012, the following changes will affect all new hires:

1. Employees will be offered to NJ Direct 15 plan, or its replacement. New Hires may elect a higher level of coverage at their expense.
2. Continuation of spousal coverage after the death of the retiree will no longer be offered at the County's expense.
3. The County will no longer reimburse retiree Medicare Part B premiums.

Sections 2, 3 and 4 shall remain unchanged. Section 5 shall be deleted from the CNA effective May 1, 2012.

3. All other proposals of the County and the PBA are denied.

The PBA appeals the arbitrator's award of the Prosecutor's proposal requiring 15 years of County service in order for an employee to be eligible for retiree health benefits. It further appeals the step delay in the third year and the step freeze in the years after the expiration of the contract. The Prosecutor has not appealed the award.

N.J.S.A. 34:13A-16g requires that an arbitrator shall state in the award which of the factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor. The statutory factors are as follows:

- (1) The interests and welfare of the public . . . ;
- (2) Comparison of the wages, salaries, hours, and conditions of employment of the employees with the wages, hours and conditions of employment of other employees performing the same or similar services and with other employees generally:
  - (a) in private employment in general . . . ;
  - (b) in public employment in general . . . ;
  - (c) in public employment in the same or comparable jurisdictions;
- (3) the overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received;
- (4) Stipulations of the parties;
- (5) The lawful authority of the employer . . . ;
- (6) The financial impact on the governing unit, its residents and taxpayers . . . ;
- (7) The cost of living;
- (8) The continuity and stability of employment including seniority rights . . . ; and
- (9) Statutory restrictions imposed on the employer. . . .

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. 298, 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.

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. Borough of Lodi, P.E.R.C. No. 99-28, 24 NJPER 466 (¶29214 1998). Therefore, within the parameters of our review standard, we will defer to the arbitrator's judgment, discretion and labor relations expertise. City of Newark. 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 argues that the award must be vacated because the arbitrator failed to give due weight to the statutory criteria and issued an award that failed to consider the impact of its decision. Specifically, the PBA asserts that in requiring 15 years of service for current employees to receive health benefits in retirement- including disability retirement - the arbitrator completely ignored the impact of the decision on nine unit members who will now have to work well beyond twenty-five years prior to retirement. It objects to the great weight the arbitrator gave to the internal settlement pattern of other County units who have agreed to the 15-year floor for retiree health benefits and asserts the 9 members were induced to accept employment with the County because there was not a service requirement, but only twenty-five years in the pension system for retiree health benefits eligibility. It further alleges that this provision creates an early retirement incentive. In support of its argument, the PBA has submitted certifications from unit members who came from other law enforcement agencies. The certifications state that they would not have accepted their positions if they were advised that their retiree health benefits were in jeopardy. Due to these alleged promises, the PBA asserts that the arbitrator did not consider the lawful authority of the employer in awarding the Prosecutor's proposal.

The Prosecutor responds that the PBA's appeal is procedurally deficient; the arbitrator adequately addressed all of the statutory criteria; the arbitrator did not exceed his authority and considered the lawful authority of the employer in modifying the eligibility criteria for retiree health benefits; and the award is supported by substantial credible evidence in the record.

The PBA argued below that the Prosecutor's retiree health benefits proposal is not mandatorily negotiable as it is preempted by P.L. 2011, c. 78 which made changes to public employee pension and health benefit contributions. The arbitrator rejected this argument noting that the PBA did not file a scope of negotiations petition with this Commission and did not cite any legal authority to support this position. In his discussion of the retiree health benefits, the arbitrator stated:

The County argues that pattern of settlement is entitled to great weight by the Arbitrator. Interest arbitration awards and PERC decisions are replete with references to "pattern" bargaining and maintaining uniformity of benefits. The County notes that when an employer has demonstrated a clear pattern of settlement with respect to changes in benefits, the Arbitrator should give significant weight to such pattern. The County disputes the PBA's assertion that the County did not negotiate changes in health benefits with its non-police negotiations units. The County cites ten CNAs showing "nearly identical changes to health benefits as those sought by the County in its final offer in this proceeding were the bargaining

units." The County also notes that the CNAs between the County and other bargaining units, which were added to the record after the hearing date, also contain the same changes in health benefits contained in the County's final offer. The County submits that these agreements show a clear pattern of settlement has been established with respect to the County's proposed health benefits changes.

A review of the County CNAs in the record shows that the County health benefits proposal is similar, but not identical, to the language in the CNAs with other bargaining units. (C-122). The County's argument regarding pattern of settlement and uniformity of benefits means that any changes, if awarded, must be identical to the current language in the negotiated CNAs, not the similar, but identical language, in its last offer.

[Award at 110-11].

The arbitrator then analyzed the contracts in evidence and determined that a pattern of settlement with twelve county-wide negotiations units including the Prosecutor's Clerical Association and the need to establish uniformity in health benefits within the Prosecutor's Office among the Investigators, the Sergeants, Lieutenants, and Captains favored a modification to conform the language included in the civilian CNAs and the Prosecutor's superior officer bargaining units. The arbitrator made the changes effective January 1, 2012 to give current employees proper notice of the change.



We find that the arbitrator adequately evaluated all the statutory criteria; explained why he gave more weight to some factors and less to others; and issued a comprehensive award that reasonably determined the issues and is supported by substantial credible evidence as to the health benefits award. We do not perform a de novo review of the evidence and defer to the arbitrator's judgment, discretion and labor relations expertise where he weighed all the statutory criteria and his award is supported by evidence in the record as a whole. City of Newark. Health benefit proposals are mandatorily negotiable as long as they are not specifically preempted by statute. Where a statute sets forth a minimum contribution, an arbitrator must consider a party's proposal to exceed that contribution. See Essex Cty., P.E.R.C. No. 2011-92, \_\_\_ NJPER \_\_\_ (¶\_\_\_ 2011) (award remanded for arbitrator to consider County's proposal for premium sharing in excess of 1.5%).

N.J.S.A. 34:13A-16g(2) requires the arbitrator to make a comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of other employees. While an arbitrator must be careful to avoid whipsawing when analyzing the wages of other employer units, interest arbitrators have traditionally found that internal settlements are a significant factor. See Somerset Cty. Sheriff's Office and Somerset Cty. Sheriff FOP, Lodge No. 39,

P.E.R.C. No. 2007-33, 32 NJPER 372 (¶156 2006), aff'd 34 NJPER 21(¶8 App. Div. 2008). We determine that the arbitrator made findings of fact regarding the settlements the County has reached with other units and adequately analyzed the evidence of internal comparability in his 16g(2) analysis. The arbitrator was conscious of the award's impact on the current employees as he delayed implementation of this provision until 2013 to ensure the employees have proper notice of the change.

As to the PBA's argument that 9 members were promised that their retiree health benefits would not change and therefore the arbitrator exceeded his authority in changing these vested rights, we determine that this is the first time this argument has been specifically raised. We have reviewed the record and have determined that the certifications of the employees were not submitted to the arbitrator nor was there specific testimony or argument in this regard. The Prosecutor's retiree health benefits proposal was clearly within its final offer and this argument should have been made to the arbitrator. We will not consider this new evidence, readily available to the PBA at the time of the hearing, on appeal.<sup>2/</sup>

We also reject the PBA's argument that because the Prosecutor did not require its health benefit proposal to apply

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<sup>2/</sup> We neither rule on the merits of any individual causes of action these employees may pursue in another forum, nor does our decision prevent the parties from further negotiating with regard to these employees.

to disability retirements, the arbitrator exceeded his authority in awarding this aspect of the award. As noted above the Prosecutor did in fact propose under Health Benefits Paragraph C that "all current and future employees who retire..." (Emphasis Added). The arbitrators reference to "disability retirees" merely aligns the language of his award with that contained in other Ocean County contracts in the record upon which he relied. Thus the claim by the PBA that the arbitrator went beyond the proposal of the Prosecutor is unfounded and must be rejected.

The PBA next challenges the arbitrator's awarding of a step delay in the third year and the step freeze in the years after the expiration of the contract. Specifically, the PBA argues that the arbitrator does not have authority to make any award or decision for the period of time after the expiration of the agreement he is ruling upon and that the award was procured by undue means in violation of N.J.S.A. 2A:24-8a.

In his discussion of step movement, the arbitrator stated:

The cumulative salary savings generated by a new salary schedule also benefits the bargaining unit as a whole. Salary schedules that allow accelerated movement to the maximum step will eventually undermine the ability of the parties to negotiate salaries for maximum step Investigators since a significant expenditure of available funds will be needed to pay less experienced officers high salaries. As maximum salaries have increased significantly in the last 15-20 years, it follows that additional steps must be added to ensure that experienced Investigators continue to receive competitive salary increases. Ignoring this issue will

create serious problems for the parties in future negotiations. This is becoming increasingly important as resources decline and the cost of annual increments becomes a bigger part of the funds available for salary increases. During the last several years, it has become commonplace to see arbitrated and negotiated contracts with extended salary schedules for new hires. The above analysis is applicable to my decision to delay the payment of step increases to January 1, 2013 and the suspension of their application on April 1, 2013 until such time as the parties reach a voluntary agreement or an interest arbitrator issues an award.

[Award at 87-88].

The arbitrator then reasoned that the delay of the automatic increments from April of 2012 to January of 2013 and the "freezing" of the step increase system after the last awarded increment will assist the parties in reaching an agreement if the 2% cap on base salaries, inclusive of incremental costs, pursuant to P.L. 2010, c. 105 applies to the next contract.

We reject the PBA's argument. The arbitrator properly elucidated his reasoning for both the deferral of the last payment of step movement increases from April of 2012 to January of 2013 and his award to, in effect, freeze step movement thereafter. Contrary to the PBA's assertion neither of these aspects of the arbitrator's salary award constituted a decision for a time frame which exceeded the date of the expiration of the agreement which he was ruling upon.

ORDER

The interest arbitration award is affirmed.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Eskilson, Krengel and Voos voted in favor of this decision. None opposed. Commissioners Jones and Wall recused themselves.

ISSUED: May 3, 2012

Trenton, New Jersey