

P.E.R.C. NO. 2012-60

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF RAMSEY,

Respondent,

-and-

Docket No. IA-2012-015

RAMSEY PBA LOCAL NO. 155,

Appellant.

SYNOPSIS

The Public Employment Relations Commission remands an interest arbitration award. The PBA asserted that the arbitrator computed base salary for 2011 in error by miscalculating when step movements occurred. In its response, the Borough certified that the PBA's contention as to when step movement occurred was in error, however, it also admitted that the scattergram submitted to the arbitrator contained inaccurate salary/step movement with regard to two officers. On remand, the arbitrator should provide a revised analysis for the Borough's 2011 expenditure for base salary which reflects accurate figures for the salary/step movement for two officers as certified by the Borough.

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, Ruderman & Glickman, attorneys
(Mark Ruderman, of counsel)

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

DECISION

Ramsey PBA Local No. 155 appeals from an interest arbitration award involving a unit of approximately 28 police officers including two Lieutenants, seven Sergeants and 19 patrol officers.^{1/}

The arbitrator issued a conventional award as he was required to do pursuant to P.L. 2010, c. 105, effective January 1, 2011. A conventional award is crafted by an arbitrator after considering the parties' final offers in light of statutory factors.

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

The issues in dispute during the interest arbitration proceedings involved various economic and non-economic subjects. However, the issues on appeal center around wage increases and longevity only. For 2012, 2013 and 2014, the Borough proposed 0% increases with increments of 2.67%, 1.57% and 1.94% respectively. It also proposed a 12-step salary guide with new employees not having the ability to advance to Senior Officer level. Additionally, it proposed the freezing of longevity for current employees and the elimination of longevity for new employees. The PBA proposed a 2.5% across-the board wage increase for each year of the contract.

The arbitrator issued a 76-page Opinion and Award. He awarded a contract with a term of three years from January 1, 2012 through December 31, 2014. He found that maintaining the current salary guide would have exceeded the lawful maximum by \$6,245. Therefore, he awarded 0% increases and made temporary reductions to step movement and longevity payments during the term of the contract to comply with the statutorily mandated base salary cap. He also eliminated longevity for newly hired officers and Senior Officer Level pay.

The PBA appeals asserting that the arbitrator erroneously calculated base salary for 2011 which affected the remainder of the calculations used for his wage increase analysis. It also contends that the arbitrator did not provide adequate support for

the elimination of longevity pay for newly hired officers. The Borough in its response admits that the scattergram it submitted to the arbitrator did not contain accurate information reflecting step movement for two of the seven officers moving through the salary guide. It also asserts that the arbitrator adequately supported his decision to eliminate longevity for new employees.

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. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by P.L. 1976, c. 68 (C.40A:4-45.1 et seq.).

(2) Comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings 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; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.

(b) In public employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.

(c) In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L. 1995, c. 425 (C.34:13A-16.2); provided, however, that each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.

(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. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by P.L. 1976, c. 68 (C.40A:4-45.1 et seq.).

(6) The financial impact on the governing unit, its residents, the limitations imposed upon the local unit's property tax levy pursuant to section 10 of P.L. 2007, c. 62 (C.40A:4-45.45), and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take into account, to the extent that evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element or, in the case of a county, the county purposes element, required to fund the employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers of the local unit; the

impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in a proposed local budget.

(7) The cost of living.

(8) The continuity and stability of employment including seniority rights and such other factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours, and conditions of employment through collective negotiations and collective bargaining between the parties in the public service and in private employment.

(9) Statutory restrictions imposed on the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by section 10 of P.L. 2007, c. 62 (C.40A:4-45.45).

[N.J.S.A. 34:13A-16g]

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). 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. 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, 26 NJPER 242 (¶30103 1999).

P.L. 2010, c. 105 amended the interest arbitration law, and N.J.S.A. 34:13a-16.7 now provides:

a. As used in this section:

"Base salary" means the salary provided pursuant to a salary guide or table and any amount provided pursuant to a salary increment, including any amount provided for longevity or length of service. It also shall include any other item agreed to by the parties, or any other item that was included in the base salary as understood by the parties in the prior contract. Base salary shall not include non-salary economic issues, pension and health and medical insurance costs.

"Non-salary economic issues" means any economic issue that is not included in the definition of base salary.

b. An arbitrator shall not render any award pursuant to section 3 of P.L. 1977, c. 85

(C.34:13A-16) which, on an annual basis, increases base salary items by more than 2.0 percent of the aggregate amount expended by the public employer on base salary items for the members of the affected employee organization in the twelve months immediately preceding the expiration of the collective negotiation agreement subject to arbitration; provided, however, the parties may agree, or the arbitrator may decide, to distribute the aggregate monetary value of the award over the term of the collective negotiation agreement in unequal annual percentages. An award of an arbitrator shall not include base salary items and non-salary economic issues which were not included in the prior collective negotiations agreement.

In New Milford, P.E.R.C. No. 2012-53, ___ NJPER ___ (¶ ___ 2012), we amended our review standard to include that we must determine whether the arbitrator established that the award will not exceed the statutorily mandated base salary cap of 2% per year or 6% in the aggregate for a three-year award.

Computation of Base Salary

The PBA contends that the arbitrator made errors in computing base salary for 2011. Specifically, it asserts that the arbitrator relied on the figures provided by the Borough and assumed that each officer on the salary guide was on the same step for the entire year instead of only moving onto the step after the officer's anniversary date.

The Borough responds by providing the certification of its Chairman of Finance and Administration in which he certifies that step increments are provided on an officers' first anniversary

date, but all successive increment movement occurs on January 1. The certification further provides that out of the seven officers on step movement, five of the officers' step movement was accurately portrayed in the Borough's scattergrams submitted to the interest arbitrator. However, the scattergrams did not accurately reflect step movement for the officer hired on February 12, 2010 and the officer hired on August 15, 2011. For the officer hired on February 12, 2010, he moved from Patrolman 1st to Patrolman 2nd on February 13, 2011. He progressed from Patrolman 2nd to Patrolman 3rd on January 1, 2012. However, the scattergram placed this officer at Patrolman 2nd in 2011 and Patrolman 3rd in 2012. For the officer hired on August 15, 2011, he earned \$12,260 at the Patrolman 1st salary from August 15 through December 31, 2011. He will progress from Patrolman 1st to Patrolman 2nd on August 16, 2012. However, the scattergram placed this officer at Patrolman 1st in 2011 and Patrolman 2nd in 2012. The Borough asserts that using figures based on actual salary paid for 2011 causes the wages increase set out in the Award to exceed the 2% base salary cap.

Using precise figures for the two officers whose salaries/step movement were not accurately reflected on the scattergram submitted to the arbitrator is necessary to establish the baseline for the Borough's total base salary expenditures for 2011, as required by N.J.S.A. 34:13a-16.7 (b). Therefore, the

award must be remanded to the arbitrator on this issue so that he can make recalculations to accurately reflect the figures certified by the Borough and to assure that any change in wage increases awarded will not exceed the 2% base salary cap.

The PBA also contends that the arbitrator should have taken into account the retirement of a Lieutenant and two promotions in projecting salary costs for 2012. In New Milford, we determined that reductions in costs resulting from retirements or otherwise, or increases in costs stemming from promotions or additional new hires, should not affect the costing out of the award. N.J.S.A. 34:13a-16.7 (b) speaks only to establishing a baseline for the aggregate amount expended by the public employer on base salary items for the twelve months immediately preceding the expiration of the collective negotiation agreement subject to arbitration. The statute does not provide for a majority representative to be credited with savings that a public employer receives from any reduction in costs, nor does it provide for the majority representative to be debited for any increased costs the public employer assumes for promotions or other costs associated with maintaining its workforce.

Elimination of Longevity for New Hires

The PBA asserts that the arbitrator did not adequately explain why he eliminated longevity for newly hired officers. However, the arbitrator's decision was based on substantial credible evidence in the record. He found longevity to be a

"slowly-shrinking" factor in municipal compensation schemes. He placed significant weight on internal and external comparables. He found that 10 out of the 67 municipalities submitted by the Borough as comparables on longevity either do not have longevity, or have restrictions denying the benefit to new hires. He also placed weight on the Borough's un rebutted argument that Local 155 is the only unit out of the six units in the Borough who has not agreed to eliminate longevity for new hires. (Award at 60 - 61).

We remand the Award for the arbitrator to provide a revised analysis for the Borough's 2011 expenditure for base salary which reflects accurate figures for the salary/step movement for the officer hired on February 12, 2010 and the officer hired on August 15, 2011. The arbitrator may make any changes he deems appropriate as a result of his revised analysis.

ORDER

The Award is remanded to the arbitrator for a new award within 45 days of this decision. Any additional appeal by the parties must be filed within seven calendar days of service of the new award.

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 24, 2012

Trenton, New Jersey