

P.E.R.C. NO. 2013-27

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF MORRIS,
MORRIS COUNTY SHERIFF'S OFFICE,

Appellant,

-and-

Docket No. IA-2012-035

PBA LOCAL 298,

Respondent.

SYNOPSIS

The Public Employment Relations Commission affirms an interest arbitration award setting the terms and conditions of employment for a unit of correction officers represented by PBA Local 298 and employed by the Morris County Sheriff's Office. The County appealed the arbitrator's award of salary increments in the first year of the new agreement. The Commission holds that the arbitrator complied with the statutory requirements and adequately explained why he deviated from the County's internal settlement pattern.

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, Knapp, Trimboli & Prusinowski,
attorneys (Stephen Trimboli, of counsel)

For the Respondent, Lindabury, McCormick, Estabrook &
Cooper, attorneys (Donald B. Ross, of counsel)

DECISION

The County of Morris and Morris County Sheriff's Office appeal from a supplemental interest arbitration award involving a negotiations unit of correction officers represented by PBA Local 298. We had remanded the arbitrator's initial award, after both parties cross-appealed, for issuance of the supplemental award. P.E.R.C. No. 2013-3, 39 NJPER 81 (¶31 2012).

In its original appeal, the PBA raised a generalized argument asserting that the award was not based on substantial credible evidence in the record and did not comply with the analysis required by the interest arbitration statute. The County's cross-appeal was limited to the arbitrator's award of

step movement from the expired contract, which it contends was not based on substantial evidence in the record.

We remanded the award and instructed the arbitrator to provide an independent analysis of each of the statutory factors and to explain how the evidence and each relevant factor were considered in arriving at his award. We also observed that the arbitrator justified his award of increments in 2011 based upon the County's refusal to accept the PBA's offer to eliminate two health plans and his finding that the parties agreed to 2011 increments in their prior agreement. We opined that the award was unclear as to which of the statutory factors were implicated in the 2011 increment analysis and required the arbitrator to discuss these issues on remand. Finally, we directed the interest arbitrator to cost out both step movement and percentage increases for each year of the contract.

On September 28, 2012, the arbitrator issued his opinion and award on remand. He provided a more extensive analysis of the statutory factors, but did not change the terms of his award. The County appeals on the single issue of the arbitrator's award of step increments for 2011. The PBA did not cross-appeal.

The County argues that in awarding step increments for 2011, the award was procured by undue means and the arbitrator imperfectly exercised his powers that a mutual, final and

definite award on the matter submitted was not made. The points asserted by the County are as follows:

THE AWARDING OF STEP INCREMENTS FOR 2011 SHOULD BE VACATED UNDER N.J.S.A. 2a:24-8(a) AND (d). THE AWARD WAS PROCURED BY UNDUE MEANS, AND THE ARBITRATOR SO IMPERFECTLY EXERCISED HIS POWERS THAT A MUTUAL, FINAL AND DEFINITE AWARD ON THE MATTER SUBMITTED WAS NOT MADE.

THE AWARDING OF STEP INCREMENTS FOR 2011 SHOULD BE VACATED DUE TO THE ARBITRATOR'S FAILURE TO GIVE DUE WEIGHT - OR, INDEED, ANY WEIGHT - TO THE STATUTORY CRITERIA OF SECTION 16g.

THE AWARDING OF STEP INCREMENTS FOR 2011 SHOULD BE VACATED DUE TO THE ARBITRATOR'S FAILURE TO CONSIDER THE LOCAL TAX LEVY CAP.

THE ARBITRATOR'S DETERMINATION TO AWARD STEP INCREMENTS IN 2011 SHOULD BE SET ASIDE BECAUSE IT IS NOT BASED ON SUBSTANTIAL CREDIBLE EVIDENCE ON THE RECORD BELOW.

THE ARBITRATOR'S DETERMINATION TO AWARD STEP INCREMENTS IN 2011 SHOULD BE SET ASIDE BECAUSE OF HIS FAILURE TO GIVE SUFFICIENT WEIGHT TO THE INTERNAL PATTERN OF SETTLEMENT.

THE COMMISSION SHOULD MODIFY THE AWARD TO COMPLY WITH THE PROVEN INTERNAL PATTERN OF SETTLEMENT ON 2011 STEP INCREMENTS.

The PBA responds by pointing out that the County expresses dissatisfaction with only one aspect of the award - the 2011 increments. The PBA asserts that the award favored the County and not the PBA, but should be affirmed as the arbitrator substantially complied with the requirements of the interest arbitration statute.

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. . . .

[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). 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 an economic award is not a precise mathematical process. Given that the statute sets forth general criteria rather than a formula, the treatment of the parties' proposals involves judgment and discretion and an arbitrator will rarely be

able to demonstrate that an award is the only "correct" one. See Borough of Lodi, P.E.R.C. No. 99-28, 24 NJPER 466 (¶29214 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, 26 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.

In cases where the 2% salary cap imposed by P.L. 2010, c. 105 applies, we must also determine whether the arbitrator established that the award will not increase base salary by more than 2% per contract year or 6% in the aggregate for a three-year contract award. The 2% salary cap does not apply to this award as the parties' prior agreement expired on December 31, 2010.

The County's sole issue on appeal is its objection to the arbitrator's awarding of step increments in 2011. Specifically, the County argues that the arbitrator erred in deviating from a universal internal settlement pattern it established for 2011

with all other bargaining units, both uniform and civilian. This pattern included not only a salary freeze, but a surrender of step increments that year. Here, the arbitrator awarded a 0% increase for 2011, but moved the officers one incremental step on the guide. For 2012 and 2013, the arbitrator awarded 2% wage increases, but froze increments. The arbitrator's reasoning in his initial award on the pattern of settlement began with the contract duration. He adopted the County's proposal of a three-year agreement based, in part, on pattern. He reasoned:

The County insists that its proposals should be granted and that those of the Union be rejected. In part this is predicated upon the fiscal conditions which have become key to the financial future of the County. The administration has taken many steps to eliminate excess or non-essential spending and to preclude the further pressure as to increasing need for raising taxes. In an effort to demonstrate that this policy was not directed exclusively at these negotiations the County presented a great deal of information showing how the same constraints were exercised in negotiations involving many employing units of the County. In fact the singular argument substantiating the several important dimensions of these negotiations which was constantly brought into focus was the asserted pattern of settlements principally focused on economic matters. In those negotiations there was particular success in the contracts including no wage increase and no step movement for the 2011 year followed by a continuation of the no increment posture for 2012 and 2013 but with 2% across-the-board pay increases effective as of January 1, 2012 and January 1, 2013.

This thesis, described as a pattern sufficiently universally achieved and recognized, should preclude the granting of any greater awards in proceedings which involved this employer and other units of its organized employees. There was also offered and pressed, the argument that general acceptance of such patterns is virtually mandated in the field of labor relations, in order that there be no disruption of the Employer's relationship with those employees and the representatives of same. In effect, the Employer's negotiator was avowing that I had no alternative course of action but to confirm the varied terms of other agreements made with its other employees and to award same. In general I support that thesis but am guided by its premises and a question of relevance to the issue at bar.

In the situation before me proposed I find that some elements of exception are worthy of consideration though I do not agree with most of the conclusions reached by the County and its varied units of employees. For instance I find there to be compelling reason to limit this Agreement to the three year period. Key to this conclusion is the combination of consideration as to the intent of the Legislature to provide a specific period during which fiscal limitations are placed on the parties. To extend the contract period purposely to avoid those sanctions would require an over-riding and compelling rationale which I do not find to exist here. Instead I find that the approval of an extended Agreement would be inconsistent with the normal term of contracts between this Employer and its employees and serve only to avoid the Legislature's directives. Therefore I shall limit the contract period to three years.

[6/18/12 award at 3-4]

The arbitrator further addressed pattern in the inverse. The arbitrator then explained that during the proceedings, the

PBA had proposed the elimination of two of the more expensive health plans - the Medallion and Wrap Around Plans. The County proposed the elimination of the Wrap Around Plan, but continuing the Medallion Plan with greater employee premium contributions. The arbitrator expressed disappointment in the County's proposal because the elimination of the plans for this unit could pave the way for the complete elimination of the costly plans in the future based on pattern and therefore awarded the elimination of the plans for this unit.

As to increments, the arbitrator deviated from the pattern for 2011, but followed it for 2012 and 2013. The arbitrator reasoned in his initial award that:

A further element in this thinking has to do with the claim of the PBA wherein they indicated the prior Agreement made provision for increments to be paid beyond the expiration date of the Agreement unless there would be a formal notification from the County as to a demand for discontinuing that plan. It is claimed that such a notification was never timely served on the union and thus the increments should have been paid in 2011. Instead, the County is said to have simply let it be known that there would be no increments paid to all County employees, paying no attention to its contractual obligation to the PBA. Thus I find the increment monies which would have been paid in the year 2011 should be paid from the savings realized in exchange for continued enrollment in the [less expensive] health benefit plans. It is noteworthy that the Medallion and Wraparound health benefit plans were admitted to having become a thing of the past except for Morris County, particularly as the County resisted the overture of the

PBA to eliminate them in this proceeding and especially so since there was a significant monetary advantage to be realized by accepting the PBA's overture.

[6/18/12 award at 5].

On remand, the arbitrator expanded his consideration of the statutory factors. He determined the interests and welfare of the public to be a factor requiring significant weight and noted that the County is fiscally well managed and so is the corrections facility. He noted that due to its unique nature, the corrections facility requires a full staff to meet its operational needs. Thus, the corrections staff were immune from the layoffs that affected virtually every other County department.^{1/} The arbitrator justified the awarding of the salary increments finding they were required by the prior agreement of the parties. He further noted that he deviated from the settlement pattern for 2011 because he did not find this unit to be on equal negotiations footing with the other County units. Other units were agreeing to wage freezes after suffering layoffs. This unit remained fully staffed and had members promoted. The arbitrator also noted that this unit agreed to major health care concessions that he awarded while the other

^{1/} The County reduced staffing by more than 400 positions which is equal to approximately 25% of staff while corrections remained fully staffed and the County promoted several officers.

units resisted. He further explained his deviation from the settlement pattern based upon this concession by the PBA.

We affirm the award. We do not agree with the County that the arbitrator exceeded his authority by awarding the 2011 increments or that he acted as a grievance arbitrator when he interpreted the prior contract language. The arbitrator's authority to set the terms and conditions of employment for 2011 far exceeded that of a grievance arbitrator. An interest arbitrator retains the conventional authority to make determinations outside the parties' final offers. See Hudson Cty. Pros., P.E.R.C. No. 98-88, 24 NJPER 78 (¶29043 1997) (conventional arbitration allows the arbitrator considerable discretion to fashion an award, although the arbitrator may not reach out and decide issues not presented by the parties). However, those determinations must be based on substantial credible evidence in the record as a whole. Teaneck. Here, the arbitrator relied upon the fact that the County must fully staff the jail; did not layoff any correction officers; and the health benefit concession to justify his awarding of an increment for 2011.

As to the County's insistence that the interest arbitrator must adopt its settlement pattern, we are not persuaded. Similar to how an arbitrator may not only focus on external comparisons under the 16g(2) criteria, it is also improper for an arbitrator

to only focus on the internal settlement pattern of the County with other units. PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71, 85-86; Washington Tp. v. New Jersey PBA Local 206, 137 N.J. 88 (1994); Fox v. Morris Cty., 266 N.J. Super. at 516-517; Cherry Hill. 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). Here, the arbitrator adequately recognized the settlement pattern and explained why he was deviating from it. While an internal settlement pattern is important, it is not determinative as no two units are exactly the same. Where an arbitrator has justified his deviation and the evidence supports it, we will defer to his expertise. Newark; See also Hudson Cty., P.E.R.C. No. 2013-7, ___ NJPER ___ (¶_____ 2012) (Award affirmed where arbitrator deviated from settlement pattern and ordered a freeze on increments at contract expiration); Hunterdon Cty. and FOP Lodge No. 94, P.E.R.C. No 2011-75, 37 NJPER 169 (¶55 2011) and 37 and P.E.R.C. No. 2011-80, 37 NJPER 205 (¶65 2011) aff'd 2012 N.J. Super. Unpub. LEXIS 1240 (Award affirmed where arbitrator deviated from settlement pattern and restored annual step increments to police unit based on

record where County had eliminated them from all contracts years prior). We note that we are not persuaded by the arbitrator's finding that this unit was not on equal negotiations footing with the other units.

We find the instant appeal to be without merit as the County asserts that the arbitrator did an adequate job on remand addressing the statutory factors - with the exception of the 2011 increments. The County's appeal reflects its disappointment that its proposal was not awarded. Interest arbitration is an extension of the negotiations process and, within the context of the statutory criteria, an interest arbitrator should fashion an award that the parties, as reasonable negotiators, might have agreed to. Clifton, P.E.R.C. No. 2002-56, 28 NJPER 201 (¶33071 2002) stay pend. appeal denied P.E.R.C. No. 2002-74, 28 NJPER 254 (¶33097 2002). Dissatisfaction with one aspect of an award does not meet our review standard.

As to the remaining arguments of the County, we have independently reviewed the record - including the impact of the award on the local tax levy cap and find the award does not cause a cap problem for the County. We note that the County has not provided any specific argument to establish that the award will cause a cap problem. Our review of the record confirms that the arbitrator evaluated all of 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 in the record.

ORDER

The interest arbitration award is affirmed.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Boudreau, Eskilson, Voos and Wall voted in favor of this decision. Commissioner Bonanni voted against this decision. Commissioner Jones abstained from consideration.

ISSUED: October 11, 2012

Trenton, New Jersey