

P.E.R.C. NO. 2013-49

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF CAMDEN,

Respondent,

-and-

Docket No. IA-2013-007

CAMDEN ORGANIZATION OF
POLICE SUPERIORS,

Appellant.

SYNOPSIS

The Public Employment Relations Commission remands an interest arbitration award for clarification regarding the City of Camden's fiscal crisis, specifically whether recent arbitration awards involving other units have been unpaid due to lack of funds. Moreover, on remand, the arbitrator is directed to provide clarification and/or detailed explanation or response regarding the following: 1) the application of the \$15,000 limit for payment of accumulated vacation and holiday credits; 2) the union's proposal regarding appointment of officers to Civil Service titles only; 3) the union's assertion that he failed to consider evidence that the City recently volunteered to provide other employees with wage increases; and 4) and the union's assertion that he failed to address its severance proposal.

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, Brown & Connery, LLP, attorneys
(William M. Tambussi, Michael J. DiPiero and Michael J.
Watson, of counsel)

For the Appellant, Alterman & Associates, LLC,
(Christopher A. Gray, of counsel)

DECISION

Camden Organization of Police Superiors (COPS) appeals from
an interest arbitration award involving a unit of approximately
31 police superior officers.^{1/ 2/} The arbitrator issued a

1/ We deny COPS request for oral argument. The matter has been
fully briefed.

2/ We note that the brief filed by COPS on December 27, 2012
included references to exhibits that were not included with
its brief. On January 8, 2013, we requested that COPS file
an amended brief to include the referenced exhibits that
were left out of its initial filing. On January 9, COPS
filed an amended brief. The amended brief included the
referenced exhibits that were left out of its initial
filing, but also included additional documents that were not
referenced as exhibits in its initial brief. Any additional
documents not referenced as exhibits in COPS initial brief
were struck from the record, as were additional arguments
(continued...)

conventional award as he was required to do pursuant to P.L. 2010, c. 105, effective January 1, 2011.^{3/} A conventional award is crafted by an arbitrator after considering the parties' final offers in light of statutory factors. We vacate and remand the award because the arbitrator failed to articulate the substantial, credible evidence on which he relied.

The issues in dispute during the interest arbitration proceedings involved various economic and non-economic subjects. On December 17, 2012, the arbitrator issued an 11-page Opinion and award. He awarded a contract with a term of January 1, 2009 to December 31, 2013. The issues on appeal center around the following issues:

1) Wages

COPS proposed: 3.75% in 2009, 2.50% in 2010, 2.00% in 2011, 2.00% in 2012, 0.25% in 2013 and 0% in 2014.

City proposed: Freezing of wages on the current salary schedule.

Arbitrator awarded: City's proposal

2) Pay outs for accumulated time:

City proposed: \$15,000 payout limit for accumulated vacation and holiday pay for retirees.

2/ (...continued)
included in its Amended Notice of Appeal.

3/ This award is not subject to the 2% base salary cap because the prior contract did not expire on January 1, 2011 or later.

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3.

Arbitrator awarded: City's proposal

3) Appointment process:

COPS proposed: addition of language that "all supervisory officers will be appointed based on established Civil Service Commission Standards and Promotional exams. No police Administration created ranks such as: Executive Officers, Commander or Team Leader will be utilized or recognized.

Arbitrator awarded: Unclear

COPS appeals asserting generally that the arbitrator did not adequately address the statutory factors and that the award is not based on substantial credible evidence in the record. More specifically, COPS argues that the arbitrator mistakenly believed that the City hasn't paid other awards which were paid in full, and that he failed to consider evidence that the City has recently agreed to provide other City employees with wage increases similar to those sought by COPS. COPS also asserts that the arbitrator failed to consider its proposals regarding severance and appointment to Civil Service titles only. It further argues that the arbitrator's award on the \$15,000 cap on accumulated vacation and holiday time was unclear. Moreover, it asserts that the arbitrator did not address his position regarding the City's failure to produce key witnesses requested by COPS.

The City responds that the arbitrator's award is supported by substantial credible evidence in the record and the arbitrator gave due weight to each of the statutory factors.

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).

The arbitrator refers throughout his award to the fiscal crisis in which the City finds itself, and points to recent arbitration awards involving other negotiating units which were unpaid due to lack of funds. Indeed, the prevalent theme throughout the award is the arbitrator's belief that the City did not have available funding to provide any increased costs that he might award. In its brief on appeal, COPS vehemently argues that all awards from previous arbitrators were in fact paid in full. During the hearings, the City denied that one of the awards had been paid, and asserted that the other was paid in part due to unexpected grants received by the City. Since the arbitrator's findings regarding the City's fiscal crisis in part relied upon its inability to fund these previous awards, clarification is needed regarding the payment status of these awards. On remand, the arbitrator should seek to verify if in fact these awards were paid, and the source of the funds utilized to make any payments

that have occurred. The arbitrator should also explain whether and how any new information or clarification coming to him during the remand affects his ultimate conclusion regarding the existence of the City's fiscal crisis and his ultimate award.

Also on remand the arbitrator must provide clarification and/or detailed explanation on the following issues:

- Whether the application of the \$15,000 limit for payment of accumulated vacation and holiday credits at retirement is prospective or retroactive. The arbitrator must identify and explain the "2006 freezes" he refers to in the award and elaborate on the interplay, if any, between the \$15,000 limit he awarded and the "2006 freezes."
- His finding that "the appointment of officers to alternate positions was ruled upon above." We infer that the arbitrator is referring to COPS proposed language for the appointment process to be limited to use of Civil Service titles only. However, it is unclear what was ruled upon above and the arbitrator must elaborate on what his finding is on this issue.

- COPS assertion that he failed to consider evidence that the City has recently voluntarily agreed to provide other employees with wage increases that were on par with those requested by COPS.
- COPS assertion that he failed to address its severance proposal.

ORDER

The award is vacated and 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, Boudreau, Eskilson, Jones, Voos and Wall voted in favor of this decision. None opposed.

ISSUED: January 25, 2013

Trenton, New Jersey