

P.E.R.C. NO. 2013-79

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF ATLANTIC CITY,

Appellant,

-and-

Docket No. IA-2013-011

ATLANTIC CITY POLICE SUPERIOR  
OFFICERS ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission affirms an interest arbitration award establishing the terms of a successor agreement between the City of Atlantic City and the Atlantic City Superior Officers Association. The City appealed the award, arguing that the arbitrator failed to consider the statutory criteria when he did not award the City's proposal to freeze police captain salaries and reduce salary for newly hired officers. The Commission finds that the arbitrator considered all of the N.J.S.A. 34:13A-16g statutory factors, and that the award is supported by substantial credible evidence.

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, Ruderman & Glickman, attorneys  
(Steven S. Glickman, of counsel)

For the Respondent, O'Brien, Belland, & Bushinsky,  
attorneys (Jeffrey R. Caccese, of counsel)

DECISION

On March 27, 2013, the City of Atlantic City ("City")  
appealed from an interest arbitration award involving a unit of  
approximately 9 police captains represented by the Atlantic City  
Police Superior Officers Association ("SOA").<sup>1/</sup> The arbitrator  
issued a conventional award as he was required to do pursuant to  
P.L. 2010, c. 105. A conventional award is crafted by an  
arbitrator after considering the parties' final offers in light  
of statutory factors. We affirm the award.

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<sup>1/</sup> We deny the City's request for oral argument. The issues  
have been fully briefed.

The SOA proposed a three-year agreement with a duration commencing January 1, 2013 through December 31, 2015 with 2% across-the-board wage increases effective January 1 of each year. The SOA proposed no other changes to the parties' agreement.

The City proposed a three-year agreement with 0% across-the-board wage increases; a reduced salary and elimination of longevity for employees hired on or after January 1, 2013; freezing longevity for current employees; new education and training incentives; limiting terminal leave to \$15,000; deleting command differential; revising the overtime eligibility calculation; reduction in vacation time for new captains; eliminating personal days; and eliminating shift differential.

On March 14, 2013, the arbitrator issued a 106-page opinion and award. He summarized the parties' offers and reviewed in detail their respective arguments supporting their proposals. He awarded the following substantive changes:

1. Duration - January 1, 2013 through December 21, 2015;
2. Wages - 2013 - 2% retroactive to January 1, 2013;  
2014 - 2% across-the-board  
2015 - 1.88% across-the-board

The existing captains salary of \$129,741.04 shall be frozen for all new employees hired by Atlantic City Police Department after January 1, 2013; and subsequently promoted to the rank of captain.

All current employees hired prior to January 1, 2013 shall receive the pay rates established by

this Award. Furthermore, any employee hired by the Atlantic City Police Department prior to January 1, 2013 and subsequently promoted to the rank of Captain, shall be subject to the new pay rate in the instant award.

3. Article XIII, Special Leaves

Section B. Funeral leave shall be amended to include language reading "5 consecutive working days of paid leave in the event of the death of a member of the officer's immediate family."

The definition of "immediate family" will be modified to include *Domestic or Civil Union* partner.

The final sentence of Article XIII, Section B with respect to an additional two (2) working days of paid leave being granted for travel of more than two hundred and fifty (250) round trip miles for viewing and funeral, shall be changed so that the miles will be calculated based on vehicular travel using MapQuest.

4. Article XV Longevity shall be amended as follows:

Section B shall be modified to read- "For all *Employees promoted before January 1, 2013* ...the practice governing longevity shall be as follows:

New Section C to state:

The following longevity schedule shall apply to all employees newly hired after January 1, 2013, and subsequently promoted to the rank of Captain:

<u>Years</u>	<u>Payment</u>
5	\$2,595.00
10	\$5,190.00
15	\$7,784.00
20	\$12,974.00

All current employees hired before January 1, 2013 shall continue to receive longevity according to the existing schedule contained in the expired CNA.

All City employees hired before January 1, 2013, but promoted after January 1, 2013 will receive longevity pay in accordance with the previous percentage schedule based on years of service.

5. Article XVII Education and Training Incentives is amended to include:

A New paragraph shall be inserted stating:

All current employees hired prior to January 1, 2103, will continue to receive previous educational incentives existing under the terms set forth in the expired CNA. Furthermore, those employees hired prior to January 1, 2013 will remain eligible to receive the educational incentive under the previous schedule set forth in the expired CNA. All employees hired after January 1, 2013 [who] receive police science or related training and incentives as set forth below shall be acknowledged with special salary increments, based upon the following "new" schedule scale:

- A) Upon the completion of an Associate's Degree or sixty-four (64) credits, of which fifteen (15) credits must be in professionalism (job related) courses and/or job related training, the employee shall receive a \$2,600.00 additional increment ion base salary.
- B) Upon the completion of a Bachelor's Degree or one hundred and twenty-eight (128) credits, of which thirty (30) credits must be in professionalism (job related) courses and/or job related training, the employee shall receive a \$1,000.00 additional increment on his/her base salary.
- C) Upon the completion of a Master's Degree or one hundred and seventy-five (175) credits, of which thirty-six (36) credits must be in professionalism (job related) courses and/or job related training, the employee shall receive a \$1,000.00 additional increment on his/her base salary.

6. Article XIX Terminal leave With Pay, shall be amended to indicate:

Under section B "Plan B" -

The accumulated sick leave lump sum payment shall be capped at \$15,000.00 for all employees hired into the Atlantic City Police Department after January 1, 2013, and subsequently promoted to the rank of Captain.

All current Captains hired prior to January 1, 2013, will continue to receive the terminal leave pay outs contained in the expired CNA. Furthermore, all those employees hired into the ACPD prior to January 1, 2013, but subsequently promoted to the rank of captain shall receive the Terminal Leave payouts in the expired CNA.

7. Replace Article XXVII Personnel Officer with Personnel Committee
8. Article XXVII Sick and Injured shall be modified to include the following language at the end of paragraph 2:

A cap of \$15,000 shall apply to all payments for accumulated sick leave made to employees hired by the City of Atlantic City after January 2, 2013 and subsequently promoted. Any current employees hired before January 1, 2013 who are subsequently promoted will be covered by the language in the expired CNA.

9. Article XXIX Vacations, shall be modified to reflect:

New Paragraph B:

Any employees hired after January 1, 2013 will be subject to the "new" vacation schedule of 25 days.

All current employees hired prior to January 1, 2013 will continue to receive the previous vacation as set forth in the expired CNA. Furthermore, those employees hired after January 1, 2013, will receive vacation leave

in accordance with the previous vacation schedule set forth in the expired CNA.

All other proposals were denied and dismissed and the expired agreement was carried forward except for those terms that were modified by the award. The arbitrator also certified that he had taken the statutory limitation imposed on the local tax levy cap into account and that the award explained how the statutory criteria factored into his final award.

The City's appeal focuses on the arbitrator's salary award. It asserts the arbitrator failed to consider the statutory criteria when he did not award the City's proposal to freeze the salary of police captains and reduce the salary for officers hired after January 1, 2013.

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 City objects only to the wage aspect of the award. It asserts the arbitrator should have awarded its proposal of no salary increases and a salary decrease for new captains. It asserts the record does not support the arbitrator's award in light of the economic pressure on the City. Specifically, the City lists each of the criteria and sets forth its general disappointment with the arbitrator's analysis of each factor. The only specific errors alleged that we can discern from the City's brief are that the award is not accurate as to the cost comparison the arbitrator made to the firefighters' unit and the arbitrator's finding that the City has significant financial flexibility to fund the award.

The SOA responds that the City is seeking a de novo review of the award; the arbitrator properly applied the statutory criteria; and the award is based on credible evidence in the record. The SOA further points to other aspects of the award it characterizes as favorable to the City, including capped terminal leave, reduced vacation leave, longevity increases, and education incentives for new hires.

The City has not met its burden on appeal. Our interest arbitration review standard vests the arbitrator with the responsibility to weigh the evidence and arrive at an award. We will not disturb the arbitrator's exercise of discretion in weighing the evidence unless an appellant demonstrates that the arbitrator did not adhere to the Interest Arbitration Act or the Arbitration Act, N.J.S.A. 2A:24-1 et seq., or shows that the award is not supported by substantial credible evidence. Teaneck. The arbitrator specifically addressed the City's financial data and recognized the budgetary constraints in awarding the salary increase. 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 of the statutory criteria and his award is supported by substantial evidence in the record as a whole. Newark. While this award may not be the only potential result from the record before him, it is supported by substantial credible evidence and we will not disturb the arbitrator's conclusions. Lodi; Newark.

The arbitrator's analysis of the costs of the award is exacting. The City disagrees with the weight that he gave to the comparison with the private sector, but that does not permit us to hold he is wrong. The arbitrator considered all of the statutory criteria and evidence - including the City's financial evidence. As set forth above, we do not substitute our judgment

on the weight given to a factor. Newark. The arbitrator found that the impact on the budget and taxpayers will be deminimis. We accept that finding.

Our review of the record confirms that the arbitrator 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 in the record. The City has not provided a plausible argument pointing to record evidence that meets our appeal standard that would require us to reverse the award.

ORDER

The interest arbitration award is affirmed.

BY ORDER OF THE COMMISSION

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

ISSUED: April 25, 2013

Trenton, New Jersey