

P.E.R.C. NO. 2013-81

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 affirms a supplemental interest arbitration award establishing the terms of a successor agreement between the City of Camden and the Camden Organization of Police Superiors (COPS). COPS appealed the award, arguing that the arbitrator failed to compare COPS's wage proposal to other voluntary settlements entered into by the City, and that other recent arbitration awards were paid in full by the City. The Commission finds that the arbitrator properly applied all of the N.J.S.A. 34:13A-16g statutory factors and explained the weight afforded to each factor, including expanded analysis of the remanded issues.

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

This case involves Camden Organization of Police Superiors appeal of a supplemental interest arbitration award issued to resolve successor negotiations with the City of Camden.<sup>1/</sup> On January 25, 2013, we issued a decision remanding the case to the arbitrator to issue a supplemental decision. P.E.R.C. No. 2013-49, 39 NJPER 318 (¶109 2013). In the original award, the

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<sup>1/</sup> The supplemental award sets out that sometime after the December 17, 2012 issuance of the original award, the City police department was shut down. Police functions in Camden have been taken over by the County. The arbitrator noted that for those City officers who were offered employment by the County, it was without any carryover of benefit entitlements from their previous employment with the City.

arbitrator granted the City's proposal to freeze wages on the current salary schedule and for a \$15,000 payout limit for accumulated vacation and holiday pay for retirees. The arbitrator found that the City had been unable to fund other recent arbitration awards involving other negotiations units. COPS disputed this finding. On remand, we asked the arbitrator to verify if in fact these awards had been paid. We also asked him to clarify his findings on the \$15,000 limit for accumulated vacation and holiday pay for retirees. Additionally, we asked him to comment on 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. Finding that the arbitrator provided adequate analysis on the statutory factors and responded on remand to the issues identified in our January 25, 2013 decision, we now affirm the award.

COPS continues to assert that other recent arbitration awards have been paid in full by the City, and that the arbitrator failed to compare COPS's wage proposal to other voluntary settlements entered into by the City. It further asserts that the arbitrator did not apply the statutory factors properly.

The City responds that the arbitrator gave due weight to the statutory factors and applied those factors in accordance with

the substantial credible evidence in the record, and that he properly responded to each of the issues on remand.

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).

We find that the arbitrator properly applied each of the statutory factors and explained the weight he afforded to each of the factors. The arbitrator found the interests and welfare of the public to be the paramount factor that was given the most consideration, and reaffirmed this position in his supplemental award. He noted that the City is in abject poverty and heavily dependent on Federal and State government for financial support, and that such support has been more than 80% of the City's budget for several years. He also found that the support programs have begun to show long range shrinkage and in some cases a complete discontinuance of funding. He found that some of the State funding for hiring new police officers is conditioned upon permanent offers of employment to those officers. He also noted the City's high level of unemployment, as evidenced by the fact that property taxes represent only about 17% of the City's income.

With regard to comparison of wages, he found that other police are the only relevant comparisons. He found that these superior officers are well paid in comparison with other police officers within a reasonable area where data had been provided. Regarding the overall compensation presently received, he found that given the City's dire financial condition, there was no evidence of availability of funds to award any increases, and that the primary focus if funds did become available should be to hire new officers. He also found that his awarding no increases under the contract was important when considering the continuity and stability of employment, so as not to endanger to loss of State or federal funding that is conditioned upon the City permanently hiring officers. Given the City's dire financial condition, he did not place great weight on the cost of living factor since he found that the City could not absorb the impact of any increases to be paid under the Award. He found that given that he awarded the City's proposal of freezing the salary schedule, the lawful authority of the employer, the financial impact on the governing unit and the residents, and the statutory restrictions imposed on the City was given no weight.

In his supplemental award, the arbitrator expanded on the issues that we identified as needing clarification in our January 25, 2013 decision. He found that COPS' assertion that the City had paid in full recent arbitration awards was without merit and

that any payments were made after he issued his original award and therefore are outside of the record presented to him. He confirmed the \$15,000 limitation for the accrual of accumulated vacation and holiday time for retirees. In response to 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, he found that this information was not presented to him during the initial arbitration hearing. Additionally, he stated that white and blue collar employees are not an appropriate comparison for police superiors who enjoy more generous wages and benefits. We also asked him to clarify his findings on COPS' proposal that all supervisory officers be appointed based on established Civil Service rules or regulations. He found that such proposal was within the purview of the Civil Service Commission and that COPS had presented no evidence that the City had violated any Civil Service standards or promotional examinations. Given the expanded analysis provided by the arbitrator on the remanded issues, we now affirm the award.

ORDER

The award is affirmed.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau and Eskilson voted in favor of this decision. Commissioner Jones voted against this decision. Commissioner Voos abstained from consideration. Commissioner Wall was not present.

ISSUED: May 13, 2013

Trenton, New Jersey