

P.E.R.C. NO. 2013-82

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF ATLANTIC CITY,

Appellant,

-and-

Docket No. IA-2013-016

ATLANTIC CITY POLICE BENEVOLENT
ASSOCIATION LOCAL 24,

Respondent.

SYNOPSIS

The Public Employment Relations Commission remands an interest arbitration award between the City of Atlantic City and Atlantic City Police Benevolent Association Local 24 to the arbitrator for reconsideration. The City appealed the award, objecting to the arbitrator's use of the PBA's incremental, longevity, and educational costs to make his calculations. The Commission finds that the arbitrator did not prorate the incremental costs, and that his explanation for his calculations based on his inability to decipher the City's calculations does not meet the standards of the amended interest arbitration law. The Commission directs the City, and all public employers in interest arbitration, to provide arbitrators with the required base salary information, in an acceptable and legible format.

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 (Mark Belland, of counsel)

DECISION

On April 19, 2013, the City of Atlantic City ("City")
appealed from an interest arbitration award involving a unit of
approximately 330 sworn police officers in the ranks of patrol
officer, sergeant, and lieutenant represented by the Atlantic
City Police Benevolent Association, Local 24 ("PBA").^{1/} 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

^{1/} We deny the City's request for oral argument. The issues
have been fully briefed.

light of statutory factors. We remand the award to the arbitrator.

The PBA proposed a three-year agreement with a duration commencing January 1, 2013 through December 31, 2015 with 2% wage increases effective January 1 of each year to be achieved through step increments and a 1.72% across-the-board increase in 2012 and 0% across-the-board increases for 2013 and 2104 . The PBA proposed other changes that are not in issue in this appeal.

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; and limiting terminal leave to \$15,000. The City proposed other changes that are not in issue in this appeal.

On April 11, 2013, the arbitrator issued a 145-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 to salary:

1. Duration - January 1, 2013 through December 21, 2015;
2. Wages - 2013 - 1.59% retroactive to January 1, 2013;
2014 - 0% across-the-board
2015 - 0% across-the-board

The matter of the guide application of the 2013 increase is remanded to the parties for implementation at the local level.

Jurisdiction is retained over the issue, in the event it can not be resolved.

All current employees hired prior to January 1, 2013 shall receive the pay rates established by this Award. Any police officer hired prior to January 1, 2013 and later promoted to the rank of Sergeant or Lieutenant shall also be covered by the guides appearing in the expired CNA, in addition to any increase provided in this award.

All employees hired after January 1, 2013, including the current or prospective March 2013 class of recruits shall be subject to the new guide.^{2/}

The arbitrator noted that all open proposals submitted that were not awarded were denied; any initial proposals that were not raised at hearing and discussed in the parties' briefs were considered abandoned; any proposal withdrawn at the hearing was not entertained; and all provisions in the prior agreement are carried forward except for those that have been 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 total net annual economic changes are reasonable under the statutory criteria.

The City's appeal challenges the 1.59% salary increase effective January 1, 2013. Specifically, the City objects to the arbitrator's use of the PBA's incremental, longevity, and

^{2/} The new ten-step salary guide has a starting salary of \$45,000 and a maximum salary of \$90,000. The new sergeant and lieutenant salary is \$100,000 and \$110,000 respectively.

educational costs to make his calculations rather than its calculations. It challenges the arbitrator's finding that all of the PBA's figures prove as not supported by the record. The City also provides in its appeal papers the certifications of Director of Revenue and Finance Michael P. Stinson and City Budget Officer Thomas Monaghan. Both certifications state that the City's calculations of incremental, longevity and educational incentive are accurate and the PBA's calculations are inaccurate.

The PBA responds that the City's appeal is a post-arbitration objection to the PBA's scattergram; the City has not specifically pointed to any errors in the PBA scattergram; the Commission cannot consider the City's certifications because they constitute post-arbitration testimony not subject to cross-examination; and the excerpts from the award cited by the City are out of full context.

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). 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).

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 to the salary award only. In Borough of New Milford, P.E.R.C. No. 2012-53, 38 NJPER 340, 344 (¶116 2012), we stated:

we must 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. In order for us to make that determination, the arbitrator must state what the total base salary was for the last year of the expired contract and show the methodology as to how base salary was calculated. We understand that the parties may dispute the actual base salary amount and the arbitrator must make the determination and explain what was included based on the evidence submitted by the parties. Next, the arbitrator must calculate the costs of the award to establish that the award will not increase the employer's base salary costs in excess of 6% in the aggregate. The statutory definition of base salary includes the costs of the salary increments of unit members as they move through the steps of the salary guide. Accordingly, the arbitrator must review the scattergram of the employees' placement on the guide to determine the incremental costs in addition to the across-the-board raises awarded. The arbitrator must then determine the costs of any other economic benefit to the employees that was included in base salary, but at a minimum this calculation must include a determination of the employer's cost of longevity. Once these calculations are made, the arbitrator must make a final calculation that the total economic award does not increase the employer's costs for base salary by more than 2% per contract year or 6% in the aggregate.

Here, the parties disagreed as to the incremental, education, and longevity costs. The arbitrator relied on the PBA's calculations, justifying such reliance as follows:

In resolving the dueling scattergrams, I would admittedly ordinarily use the municipality's document, which is kept in the ordinary course of business, and would presumably be the most accurate. However, the figures contained in the exhibit in the SOA binder upon which the City relies are at

variance with the above numbers. Despite a significant amount of time, I have been unable to decipher them. Such may not be said of Union Exhibit 4.

Moreover, while it did not separately break out the guide movement, I was able to accomplish that calculation by finding the number of individuals not at maximum, with their corresponding advancement during the life of the successor agreement. For example, eight individuals moved from \$58,883 to \$70,311; 22 individuals moved from \$77,090 to \$95,231; five individuals moved from \$83,870 to the maximum of \$95,231.

I then merely took the cost of increment between steps and plugged it in. This amounted to \$2,325; \$2,324; \$6,779; \$6,779; \$6,780; \$11,361, respectively. The longevity and educational incentive figures were individually broken down by year. I understand the City's argument that we do not know where the PBA's figures came from, but it strikes me as curious that they would be acceptable for the purposes of calculating the base salary, then suddenly become suspect. Because all of the Union's figures prove, I have used them in all future calculations. [Award at 110-111]

The arbitrator then did his base salary calculation and proof that he was in compliance with the 2% cap. The parties' agreement reflects that the City pays increments on an officer's anniversary date. The arbitrator did not prorate the incremental costs to reflect that practice.

We remand the award to the arbitrator for re-calculation. In New Milford, we acknowledged that parties may not always agree on base salary information and calculations. In those circumstances, the arbitrator must make a determination based on

the evidence presented. We find that the arbitrator's explanation that he could not decipher the City's calculations does not meet the standards under the amended interest arbitration law.^{3/}

Thus, we remand this matter back to the arbitrator and direct the City, and all public employers in interest arbitration, to provide arbitrators with the required base salary information and calculations. Such information must include, at a minimum, in an acceptable and legible format, the following information:

1. A list of all unit members, their base salary step in the last year of the expired agreement, and their anniversary date of hire;
2. Costs of increments and the specific date on which they are paid;
3. Costs of any other base salary items (longevity, educational costs etc.) and the specific date on which they are paid; and
4. The total cost of all base salary items for the last year of the expired agreement.^{4/}

3/ We can not fault the arbitrator for not being able to decipher the list given to him by the City as it was not submitted in an acceptable and legible format.

4/ At the outset of being assigned to a case, the interest arbitrator should set a schedule for the public employer to provide the required base salary information and calculations, and another date for the union to respond to that information. The arbitrator should have the parties' (continued...)

We further clarify that the above information must be included for officers who retire in the last year of the expired agreement. For such officers, the information should be prorated for what was actually paid for the base salary items. Our guidance in New Milford for avoiding speculation for retirements was applicable to future retirements only.

Finally, we address the PBA's objection to the certifications provided by the City in its appeal package. We do not normally permit a party to supplement a record after a proceeding, particularly if the evidence or argument was available at the time of the hearing. See Ocean Cty. Prosecutor, P.E.R.C. No. 2012-59, 38 NJPER 363 (¶124 2012); Union Tp., P.E.R.C. No. 2002-55, 28 NJPER 198 (¶33070 2002). The City's supplemental certifications only provide a net opinion as to the accuracy of the City's calculations and the City has not asserted that these witnesses were precluded from testifying at the hearing. Therefore, we reject the certifications as the PBA has not had an opportunity to cross-examine the witnesses.^{5/}

^{4/} (...continued)
positions regarding the base salary information and calculations prior to the arbitration hearing date. The arbitration hearing is the proper forum to address any dispute and/or confusion over the base salary information and calculations.

^{5/} We have permitted certifications in interest arbitration appeals in response to arguments made on appeal. See Borough of Ramsey, P.E.R.C. No. 2012-60, 39 NJPER 17 (¶3 2012).

ORDER

The interest arbitration award is remanded to the arbitrator for reconsideration within 45 days in accordance with this decision. Any appeal from the new award is de novo and must be filed within seven days of receipt of the award.

BY ORDER OF THE COMMISSION

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

ISSUED: May 13, 2013

Trenton, New Jersey