

P.E.R.C. NO. 2013-87

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF TENAFLY,

Respondent,

-and-

Docket No. IA-2013-018

PBA LOCAL 376,

Appellant.

SYNOPSIS

The Public Employment Relations Commission affirms an interest arbitration award establishing the terms of a successor agreement between the Borough of Tenafly and PBA Local 376. The PBA appealed the award, asserting that the arbitrator modified contract provisions, mostly related to new hires, without making any cost analysis for each year of the contract. The PBA also argued that the arbitrator failed to sufficiently explain which statutory factors were deemed relevant or not relevant, and why. The Commission finds that the arbitrator could not cost out the award for new hires because it was not known at the time of arbitration how many new employees would be hired during the term of the new contract. The Commission also finds that the arbitrator addressed all of the N.J.S.A. 34:13A-16g statutory factors and adequately explained the relative weight given.

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, Loccke, Correia, Limsky & Bukosky,
attorneys (Leon B. Savetsky, of counsel and on the
brief)

For the Respondent, Ruderman & Glickman, P.C.,
attorneys (Mark S. Ruderman, of counsel; Ellen M. Horn,
on the brief)

DECISION

PBA Local 376 ("PBA") appeals from an interest arbitration award involving a unit of approximately 32 police officers in the ranks of patrol officer, sergeant and lieutenant who are represented by PBA Local 376.^{1/}

The arbitrator issued a conventional award as he was required to do pursuant to P.L. 2010, c. 105 effective January 1, 2011. A conventional award is crafted by an arbitrator after considering the parties' final offers in light of statutory factors.

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

The PBA primarily appeals the award asserting that the arbitrator modified contract provisions, mainly with respect to new hires, by removing and modifying longevity, vacation, personal days, and terminal leave without making any cost analysis for each year of the three year contract. Second, the PBA asserts that the arbitrator did not sufficiently indicate which statutory factors were deemed relevant, did not satisfactorily explain why the other statutory factors were not relevant, and, did not provide an analysis on each relevant factor. The PBA requests that the award be vacated and remanded.

The Borough responds that the Commission should affirm the award because the arbitrator gave due weight to all of the relevant statutory criteria; the arbitrator's inability to calculate the cost savings of the modification to or elimination of various benefits for new hires does not require more precise calculations and is not fatal to the award; and, the arbitrator more than sufficiently discussed his rationale supporting his determination that the net annual economic changes for each year of the agreement are reasonable under the statutory criteria.

The parties' final offers in pertinent part to the appeal are as follows.

The PBA's Final Offer:

1. WAGE INCREASE - The PBA proposes an across-the-board wage increase in each year of a three (3) year contract of two percent (2% across-the-board effective each January 1st).

The Borough'S Final Offer:

Article IX - Vacations

1. All employees hired after January 1, 2013 shall receive vacation under the following schedule:

Less than 1 year up to 10 days	1 day per month
Completion of 1 year to completion of 5 years	10 days
Commencement of 6th year to completion of 10 years	12 days
Commencement of 11th year to completion of 15 years	15 days
Commencement of 16th year to completion of 25 years	20 days
Commencement of 26th year	25 days

2. Vacation leave shall be prorated during the last year of service.

3. Employee must secure chief's written permission to carry over vacation time.

4. In Section 7 specify that the employee must receive from chief of police written permission to carry over vacation time.

Article X - Holidays and Personal Days

1. In Section 3 specify employees hired after January 1, 2013 shall be entitled to 2 personal days per year.

Article XII - Sick Leave

1. Employees hired after January 1, 2013 shall be entitled to 12 sick days after the first year of service.

Article XVII - Terminal Leave

1. Employees hired after January 1, 2013 shall not be entitled to terminal leave.

Article XX - Wages Detective Stipend and Longevity

1. 2013 0%
- 2014 0%
- 2015 0%
- 2016 0%
- 2017 0%

The arbitrator issued a 170-page Opinion and Award. After summarizing the parties' arguments on their respective proposals, and addressing the required statutory factors, the arbitrator awarded the following in pertinent part to this appeal:

AWARD

1. Term

Three (3) years - Effective January 1, 2013 through December 31, 2015.

2. Salary/Salary Guides/Longevity

Eliminate all 3 salary guides and replace them with the guides below. Longevity for all employees hired on or before May 6, 2013, will be suspended for the duration of the 2013-2015 Agreement. Longevity is eliminated for employees hired on or after May 7, 2013.

For Sergeants, Lieutenants, and all Patrol Officers at the top step of their respective salary guides as of December 31, 2012, a wage freeze and a longevity freeze at their December 31, 2012 levels for the duration of the 2013 - 2015 Agreement. Their salaries for 2013, 2014 and 2015 are as follows:

2013, 2014, 2015

Patrol Officer	125215
Sergeant	132402
Lieutenant	138976

For Patrol Officers who have not reached the top step of their salary guide as of December 31, 2012, and were hired on or after January 17, 2006, but prior to January 13, 2009, a longevity freeze at their December 31, 2012 levels for the duration of the 2013-2015 Agreement, 2 new steps effective January 1, 2013, step movement for 2013 (1 step), step movement for 2014 (1 step), but no step movement for 2015:

Employees hired on or after 1/17/06 but prior to 1/13/09
(Not at top step as of 12/31/12)

	EFF.	EFF.	EFF.
POSITION	1/1/2013	1/1/2014	1/1/2015
PATROL OFFICER			
After Six Years	115924	115924	115924
After Seven Years	119021	119021	119021
After Eight Years	122118	122118	122118
After Nine Years	125215	125215	125215

Sergeant	132402	132402	132402
Lieutenant	138976	138976	138976

For Patrol Officers who have not reached the top step of their salary guide as of December 31, 2012, and were hired on January 13, 2009, a longevity freeze at their December 31, 2012

levels for the duration of the 2013-2015 Agreement, 4 new steps effective January 1, 2013, step movement for 2013 (1 step), step movement for 2014 (1 step), but no step movement for 2015:

Employees hired on January 13, 2009
(Not at top step as of 12/31/12)

	EFF.	EFF.	EFF.
POSITION	1/1/2013	1/1/2014	1/1/2015
PATROL OFFICER			
After Three Years	81859	81859	81859
After Four Years	87279	87279	87279
After Five Years	92698	92698	92698
After Six Years	98118	98118	98118
After Seven Years	103537	103537	103537
After Eight Years	108957	108957	108957
After Nine Years	114376	114376	114376
After Ten Years	119796	119796	119796
After Eleven Years	125215	125215	125215
Sergeant	132402	132402	132402
Lieutenant	138976	138976	138976

For Patrol Officers who have not reached the top step of their salary guide as of December 31, 2012, and were hired on or after January 1, 2012, a longevity freeze at their December 31, 2012 levels for the duration of the 2013-2015 Agreement, 4 new steps effective January 1, 2013, step movement for 2013 (1 step), step movement for 2014 (1 step), but no step movement for 2015:

Employees hired on or after January 1, 2012:

Commencement of 11th year 15 days
to completion of 15 years

Commencement of 16th year 20 days
to completion of 25 years

Commencement of 26th year 25 days

Vacation leave shall be prorated during the last year of service.

Employee must secure chief's written permission to carry over vacation time.

In Section 7, specify that the employee must receive written permission from the chief of police to carry over vacation time.

Personal Days - Amend Article X. Section 3 to include:

Employees hired on or after May 7, 2013 shall be entitled to 3 personal days per year.

Terminal Leave - Amend Article XVII to include:

Employees hired on or after May 7, 2013 shall not be entitled to terminal leave.

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.

P.L. 2010, c. 105 amended the interest arbitration law. N.J.S.A. 34:13a-16.7 provides:

a. As used in this section:

"Base salary" means the salary provided pursuant to a salary guide or table and any amount provided pursuant to a salary increment, including any amount provided for longevity or length of service. It also shall include any other item agreed to by the

parties, or any other item that was included in the base salary as understood by the parties in the prior contract. Base salary shall not include non-salary economic issues, pension and health and medical insurance costs.

"Non-salary economic issues" means any economic issue that is not included in the definition of base salary.

b. An arbitrator shall not render any award pursuant to section 3 of P.L. 1977, c. 85 (C.34:13A-16) which, on an annual basis, increases base salary items by more than 2.0 percent of the aggregate amount expended by the public employer on base salary items for the members of the affected employee organization in the twelve months immediately preceding the expiration of the collective negotiation agreement subject to arbitration; provided, however, the parties may agree, or the arbitrator may decide, to distribute the aggregate monetary value of the award over the term of the collective negotiation agreement in unequal annual percentages. An award of an arbitrator shall not include base salary items and non-salary economic issues which were not included in the prior collective negotiations agreement.

Borough of New Milford P.E.R.C. No. 2012-53, 38 NJPER 340

(¶116 2012) was the first interest arbitration award that we reviewed under the new 2% limitation on adjustments to base salary. We held:

Accordingly, we modify our review standard to include that 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.

The crux of the PBA's argument is that the arbitrator erred by not providing a cost analysis for benefit modifications for new hires in the new contract because he was unable to provide such an analysis based on the speculative nature of who would be hired during the term of the contract. In Borough of Ramsey P.E.R.C. No. 2012-60, 39 NJPER 17 (¶3 2012), we discussed this issue regarding the speculative nature of unknown future employment actions by the employer and employees:

In New Milford, we determined that reductions in costs resulting from

retirements or otherwise, or increases in costs stemming from promotions or additional new hires, should not affect the costing out of the award. N.J.S.A. 34:13a-16.7(b) speaks only to establishing a baseline for the aggregate amount expended by the public employer on base salary items for the twelve months immediately preceding the expiration of the collective negotiation agreement subject to arbitration.

The Cost Out of the Award

In this case, the arbitrator cited both New Milford and Ramsey and complied with the guidance we provided when he fashioned his award. It should also be noted that both final offers from the parties had to be rejected by the arbitrator because both resulted in a violation of the 2% cap.^{2/} The salary information provided to the arbitrator by the Borough which was not refuted by the PBA,^{3/} indicated that the Borough had expended \$3,763,060 in the twelve months preceding the expiration of the contract. Based on that figure, the arbitrator could not award base salary increases of more than \$225,784 over the three year term of the new contract.

Neither the arbitrator nor the parties had the ability to cost out the award with respect to additional new hires because

2/ The Borough's final offer of 0% salary increase for the term of the contract still resulted in a violation of the 2% cap based on step increments and longevity increments for existing employees.

3/ Neither party provided the exhibits that were part of the interest arbitration record.

it was not known at the time of the arbitration proceeding how many new employees would be hired during the term of the new contract. The arbitrator stated in his award:

In accordance with PERC's standards, by utilizing the same complement of officers employed by the Borough as of December 31, 2012 over a term of three (3) years, and assuming for the purposes of comparison there are no resignations, retirements, promotions or additional hires, the increases to base salary awarded herein increase the total base salary including salary, holiday pay, education pay and longevity pay as follows:

<u>Base Year</u>	<u>Total Base Salary</u>	<u>Increase from Prior Year</u>
2012	\$ 3,763,060	
2013	\$ 3,922,636	\$106,222
2014	\$ 4,029,877	\$107,242
2015	\$ 4,029,877	\$ <u>0</u>

Total Increase \$213,464^{4/}

^{4/} The \$213,464 complied with the statutory 2% cap. We also note that the PBA cited Point Pleasant Boro. P.E.R.C. No. 2013-28, 39 NJPER 203 (¶65 2012) (award vacated and remanded to a new arbitrator), asserting that the facts in that decision were similar to the instant case because "[T]here was no detailed analysis of how the items which he awarded would be calculated in any of the years of the four (4) years which he awarded." However, in Point Pleasant we determined that the award had to be vacated because, unlike in this case, "There was no detailed analysis of the costs of the base year, including increments and longevity. There was no analysis as to how these costs would be calculated in any of the years of the four years awarded, nor was there a calculation demonstrating how the award met the 2% salary cap requirements of N.J.S.A. 34:13A-16.7." Additionally, there was also a violation of the mandatory health care contributions established by P.L. 2011 c., 78. Point Pleasant.

Consideration of the Statutory Criteria

With respect to the consideration of the statutory criteria to this award, the arbitrator addressed all nine factors^{5/} on pages 143 through 154 of his decision. For example, he considered the lawful authority of the employer and the financial impact on the governing unit, its residents and taxpayers by addressing the tax levy cap and the appropriations cap based on the evidence that was introduced. The arbitrator gave greater weight to the interests and welfare of the public, the statutory restrictions imposed on the employer (the 2% cap) and the internal comparisons with the Borough's four other employee units. The arbitrator weighed the other factors and satisfactorily explained why they were not relevant. For example, the arbitrator gave little or no weight to comparisons with private employment, external employment comparisons, and the cost of living.

The arbitrator was essentially constrained by the 2% cap as set forth above where even the 0% final offer from the Borough violated the cap. The arbitrator ultimately concluded:

I conclude that the terms of this Award represent a reasonable determination of the issues after applying the statutory criteria. I have given greater weight to the interests and welfare of the public, the

^{5/} The arbitrator noted that there were no stipulations of the parties.

Hard Cap,^{6/} and internal comparisons. I have also considered all of the other factors and conclude there is nothing in the record that compels a different result than I have determined in this proceeding.

Based on the totality of the arbitrator's decision and award, taking into account the constraints placed on him based on the 2% cap, we find that the arbitrator gave due weight to the subsection 16g factors judged relevant to the resolution of this matter and explained the weight he afforded to each of the factors in an appropriate manner.

ORDER

The award is affirmed.

BY ORDER OF THE COMMISSION

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

ISSUED: June 13, 2013

Trenton, New Jersey

^{6/} The "Hard Cap" is the 2% statutory cap.